HOUSE OF LORDS

European Union Committee

9th Report of Session 2005-06

Ensuring Effective Regulation in the EU

Report with Evidence

Ordered to be printed 19 July 2005 and published 8 September 2005

Published by the Authority of the House of Lords

London : The Stationery Office Limited
£15.50

HL Paper 33

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(Q) refers to a question in oral evidence
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ABSTRACT

In March 2005 the European Commission issued a Communication entitled "Better Regulation for Growth and Jobs in the European Union". This Communication proposes three key action lines to improve Europe's regulatory environment: promoting design and application of better regulation tools, working more closely with Member States and reinforcing the constructive dialogue between regulators and stakeholders.

Regulatory reform in Europe is important if the Lisbon Agenda is to succeed. Without more effective regulation it will be difficult to promote Europe's competitiveness, stimulate growth and employment and improve the European Union's image.

In this Report the Committee welcomes the Communication's initiatives and the attitudinal change that seems to be filtering through the Commission but calls on the EU Institutions and the UK Presidency to ensure better regulation initiatives are now implemented efficiently and assessed fully.

We recommend that all key legislative proposals should be accompanied by a full impact assessment which should be drafted at an early stage and revised throughout the legislative process. Officials must be encouraged to consider all options when completing an impact assessment, including the "do-nothing option" and achieving their aims through non-legislative means.

We support the Commission's approach to the revision of the *acquis* and urge the Council and Parliament to meet their commitment under the Inter-Institutional Agreement on Better Law-making to adopt structures to expedite simplification proposals.

We urge the Government to ensure that the better regulation programme is seen to be at the top of the European Union's political agenda and given appropriate publicity during the UK Presidency of the EU.

Ensuring Effective Regulation in the European Union

CHAPTER 1: DEFINITIONS AND CULTURE CHANGE

What do we mean by "better regulation"?

1. There are many good reasons why regulation at the European Union level is necessary, for example when Member States agree to replace or harmonise their existing national regulations in order to deal with a cross border problem and also to facilitate the removal of national barriers to trade. Many have, however, argued that the European Union, with the acquiescence of its Member States, regulates too much, or could do so better.

2. Much European Union regulation is broadly accepted as being an essential part of a single market. But, in recent years, an increasing number of European Union regulatory instruments have been seen by many as either unnecessary or as an undesirable burden on industry. Regulation of this sort has damaged Europe's reputation and there is therefore much talk of "better regulation" in the European Union.

3. Nevertheless, there seems to be widespread disagreement over what "better regulation" might mean and what it should mean. It is often easier and more fruitful to outline the objectives of better regulation than to describe what "better regulation" might actually be. Perhaps a simple but effective statement "better regulation has to be better than what we have got already"[1]is as close as we need to get to defining the principle.

4. The European Commission offer their own, fuller, definition of the policy of better regulation:

   "'Better regulation' may be defined as a policy which aims to ensure that (existing and future) European Union legislation is as concise and straightforward as its subject matter permits and is as light as is commensurate with the proper protection of the various public interests at stake and the burden it imposes on economic operators." (p 15)

5. Such a definition emphasises the importance of light, focused regulation which does not impose unnecessary burdens on business. Many of our witnesses stressed that regulators must not intervene where they are not needed: even if witnesses could not define exactly what better regulation *should* be, they were keen to define what they felt it *should not* be.

6. The Minister, the Rt Hon. John Hutton MP[2] outlined what he described as the "cardinal principle" of better regulation:

   "Probably the cardinal principle of 'better' regulation is that you regulate as a last resort and not as a first resort and you do so only after you have excluded other options and you are clear about the cost of the regulatory proposals you

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1 These are the words of Mr John Cridland, Deputy Director-General of the CBI (Confederation of British Industry), Q 1

2 Chancellor of the Duchy of Lancaster

are putting forward outweighing the burden and cost to individuals and businesses." (Q 41)

7. A similar approach was taken by our academic witnesses, Mr Ambler and Mr Chittenden[3], in their written evidence, who stressed that, "Regulation should only be used where it is needed and should be withdrawn as soon as possible. In other words, 'better' should mean 'just enough'" (p 1).

8. Regulation, it seems—though often regarded as being necessary to the proper functioning of a single market—should be tightly constrained and kept under close surveillance.

9. Because of the difficulties involved in clarifying better regulation, it also makes sense to talk of more effective regulation—that is regulation that does what it needs to do well and no more.

The Principles of Good Regulation

10. It may accordingly be hard to form a definition of better regulation. It is nevertheless be possible, and desirable, to outline principles to govern better regulation policies. The UK Better Regulation Task Force[4] has set out some principles which provide a good starting point for understanding the aim of better regulation initiatives.

11. The Task Force's five principles of good regulation[5] are:

- Proportionality: regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
- Accountability: regulators must be able to justify decisions, and be subject to public scrutiny.
- Consistency: government rules and standards must be joined up and implemented fairly.
- Transparency: regulators should be open, and keep regulations simple and user friendly.
- Targeting: regulation should be focused on the problem, and minimise side effects.

12. Whilst we, of course, recognise that applying similar principles to different markets (i.e. the UK market and the EU market) will produce different outcomes, many of our witnesses praised the clarity of the Task Force principles and said that they could be put to use at European Union level very effectively. The Minister said, "I think the principles…which are absolutely on the button in terms of UK better regulation, have a direct read across to European Union law-making as well". (Q 39)

13. Mr John Cridland was happy to associate the CBI with the Task Force's principles saying, "I think those five principles sum up what businesses'

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3 Senior Fellow, London Business School and Professor, Manchester Business School respectively.

4 The Better Regulation Task Force was established in September 1997. It is an independent body that advises Government on action to ensure that regulation and its enforcement accord with the five Principles of Good Regulation. See: http://www.brtf.gov.uk/ourwork/

5 Outlined in their 'Principles of Good Regulation' leaflet, published 1998, revised 2000. See: http://www.brtf.gov.uk/docs/pdf/principlesleaflet.pdf

ambitions are for a much better approach and philosophy to regulation" (Q 1). The CBI, too, noted that the principles would be compatible with the European Union's law-making process, "The CBI agrees with the principles for good regulation set out by the UK Better Regulation Task Force … these principles … must be adhered to not only in the UK but also at EU level" (p 10).

14. Commissioner Verheugen[6] commented on the principles the Commission works to, which are very similar to the UK Better Regulation Task Force principles. They are: necessity, proportionality, subsidiarity, transparency, accountability, accessibility and simplicity. These principles stem from the discussions of the Mandelkern Group of Member States experts on better regulation, set up in November 2000[7]. The principles are explained fully in the Mandelkern Group's Report, published on 13 November 2001[8].

15. These principles were agreed by Member States and the Commission working together. **We accept Commissioner Verheugen's view that there is no need "to start the discussion on changing these principles. What we do need to do is to see that the seven principles agreed are respected". (Q 83)**

Why is regulatory reform important?

Economic Growth and Competitiveness

16. The title of the recent Commission Communication "Better Regulation for Growth and Jobs in the European Union"[9] highlights the Commission's primary concern—the Communication focuses on improving European and national legislation in order to promote European competitiveness and thereby stimulate growth and employment.

17. Better regulation will, it is argued, help to make the European Union a more attractive place to invest and work in because it will stimulate economic growth, employment opportunities and productivity. An efficient regulatory environment helps build the foundations of a successful, prosperous Europe. The CBI believes that "an appropriate regulatory environment is a key factor in ensuring both fair competition and the efficient operation of open markets". (p 10)

18. Regulatory reform is also central to the success of the Lisbon Agenda. The Joint Statement by the Six Presidencies[10] drew attention to this connection:

"As we seek to refocus the Lisbon agenda through the mid-term review, so too must we develop clear objectives and goals that enable us to take a

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6 Vice-President of the Commission, Commissioner for Enterprise and Industry since November 2004, previously Member of the European Commission for Enlargement, September 1999-November 2004.

7 The Mandelkern Group of Member State experts on better regulation was set up by Ministers of Public Administration, in November 2000. Its task was to develop a coherent strategy to improve the European regulatory environment. Chaired by Dieudonne Mandelkern, a French government official, the Group produced a final report in November 2001 which was presented to the Laeken meeting of the European Council.

8 http://www.cabinetoffice.gov.uk/regulation/europe/documents/pdf/mandfinrep.pdf

9 COM (2005) 97 final. http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0097en01.pdf

10 "Advancing regulatory reform in Europe", A Joint Statement of the Irish, Dutch, Luxembourg, UK, Austrian and Finnish Presidencies of the European Union, 7 December 2004. See: http://www.hm-treasury.gov.uk/media/B39/14/advancing_regulatory_reform_in_europe.pdf

comprehensive view of how regulation is affecting business and competitiveness across Europe and bring to an end the increase in administrative burdens in our economies associated with EU regulation, while remaining committed to our wider objectives to promote environmental sustainability and social cohesion."[11]

A means of reconnecting with the citizens of Europe?

19. There are also those who argue that improving regulation in the European Union would help to restore citizens' trust in the EU. Commissioner Verheugen, for example, talked of the feelings of European citizens towards regulation in the European Union:

"I can tell you that if you discuss with every citizen, but in particular with entrepreneurs and companies, "How do you see the European Union, and what is in your view the biggest problem that you have with the European Union?" you normally get the answer, "The European Union is over-regulating and over-regulated." Whether that is true or not I do not comment, but it is a perception; it is a Europe-wide perception." (Q 76)

20. The Commissioner went on to say that such perceptions can have very damaging effects on investment and consumer confidence and can also harm the image the public has of the European Union. He suggested that improving European Union regulation would show that the European Union's institutions "respond to the concerns and the recommendations of the citizens and that we really want to make a difference". (Q 76)

21. The CBI also stressed the potential regulatory reform initiatives have to foster trust amongst citizens in the European Union: "The CBI believes that effective consultation will also help to facilitate greater involvement, understanding and trust in the European Union and its institutions". (p 12)

22. **We believe that involving Europe's stakeholders in better regulation initiatives could help to improve the image of the European Union and foster understanding of its institutions and working practices.**

What has already been done to try to ensure effective regulation?

Declaration 39, adopted by the Heads of State and Government at the Intergovernmental Conference in Amsterdam, 1997

23. As a first step towards improving the regulatory environment, the European Union institutions adopted drafting guidance, contained in the Inter-Institutional Agreement of December 1998, relating to the quality of drafting of Community legislation. They ensured the guidelines were applied by re-structuring their internal organisation as far as they found it was necessary to do so.

Commission Communication, June 2002: an Action Plan for Simplifying and Improving the Regulatory Environment[12]

24. The recommendations of the Mandelkern Group led the Commission to issue a Communication in 2002, which introduced a new integrated impact

11 Page 8 of the Joint Statement (see footnote 10)

12 COM (2002) 278. http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2002/com2002_0278en01.pdf

assessment system, roadmaps, instruments which provide an alternative approach to legislation (e.g. co-regulation, self-regulation), minimum standards for consultation of interested parties and guidelines for gathering and using expert advice.

Commission Communication, November 2003: Updating and Simplifying the Community Acquis[13]

25. A further Communication in 2003 aimed at streamlining and simplifying the regulatory environment by reducing the volume of existing European Union legislation and presenting the *acquis*[14] in a more "user-friendly" way.

The Six Presidency Initiative: Advancing Regulatory Reform in Europe

26. In December 2004 the Ministers of Finance and Economic Affairs of six Member States (the original four, Ireland, Netherlands, Luxembourg and the UK were joined by Austria and Finland—the Member States that will hold the Presidency in 2006), representing their countries in the ECOFIN and Competitiveness Councils, signed a letter aimed at lending new impetus to the process of better regulation.

27. The Six Presidencies Joint Statement followed and built on the earlier Four Presidencies' Joint Initiative of January 2004, setting out the Presidencies' objectives for regulatory reform in the coming years.

The April 2005 Commission Communication: Better Regulation for Growth and Jobs in the European Union[15]

28. The latest Communication builds on the previous Commission Communication of 2002. The Communication proposes 3 key lines of action:

- promoting the design and application of better regulation tools (especially impact assessment and simplification),
- working more closely with Member States to ensure better regulation principles are applied consistently throughout the European Union by all regulators,
- reinforcing a constructive dialogue between all regulators at European Union and national level, and stakeholders.

29. The Communication outlines the purpose of the European Union's better regulation policy:

"The European Union's better regulation policy aims to improve regulation, to better design regulation so as to increase the benefits for citizens, and to reinforce the respect and effectiveness of the rules, and to minimise economic costs—in line with the European Union's proportionality and subsidiarity principles"[16]:

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13 COM (2003) 71. http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2003/com2003_0071en01.pdf

14 The term *acquis* (or sometimes *acquis communautaire*) is used in European Union Law to refer to the total body of EU law accumulated so far.

15 COM (2005) 97 final (see footnote 9)

16 Page 2 of the Commission Communication (see footnote 9)

and an account is given of the actions of the European Union in this field over the past four years:

"Over the last four years, the European Union has launched a broad strategy to improve the regulatory environment and thus provide a more effective, efficient and transparent regulatory system for the benefit of citizens and reinforce competitiveness, growth and sustainable development"[17].

Culture Change in the Barroso Commission?

30. Many of our witnesses have talked of a "culture change" which accompanied the introduction of the Barroso[18] Commission[19]. Though hard to pin down concretely this "culture change" seems to be crucial to the success of the Commission's better regulation programme.

31. The Institute of Directors stressed the importance of this attitudinal shift saying "Bolting new processes or methodologies onto the existing EU machine will not be enough. These policy developments must be underpinned by a fundamental change in the European Union's culture". (p 20)

32. Whilst it may still be true that "The culture of Brussels is to produce directives"[20]it seems that change may be afoot. The Minister said of the better regulation programme:

"It is not about dismantling the *acquis*, it is not about a full-on onslaught about what it means to be European, but the language is changing and the dynamic is changing. I think we have gone from the perspective of maybe a couple of years ago when there were not many people talking this sort of language in the European Union to now where I think it is probably the common language in the European Union". (Q 67)

33. Commissioner Verheugen said that the issue of better regulation was "extremely important for the Barroso Commission, and a top priority" (Q 76). He stressed, "I think the perception that Europe is over-regulated and over-regulatory is a very damaging one, and we have decided to change that … it is really a top-down approach. But of course all the Commissioners are supporting it" (Q 82). He stated what he felt needed to be done to change the situation in simple terms, saying "I think that the present institutions simply have to change the policy of bureaucracy". (Q 92)

34. **We welcome Commissioner Verheugen's forthright approach to culture change in the European Union and signs of attitudinal change throughout the institutions of the European Union.**

Structure of this Report

35. In chapter 2 of this report we explore the "tools" that can be used to help ensure better regulation. We consider impact assessment, simplification and consultation and look at the position of SMEs[21] and the case that could be

17 Annex 1 of the Commission Communication (see footnote 9)

18 José Manuel Barroso, President of the Commission since November 2004.

19 Introduced in November 2004.

20 Mr John Cridland, Deputy Director-General, CBI, Q 4

21 Small and medium sized enterprises

made for a new regulatory body to oversee regulation in the European Union.

36. Chapter 3 explores the extent to which the European Union institutions are co-operating to ensure effective regulation. We consider the effects of the Inter-institutional Agreement on Better Law-Making[22] and look at the role of Member States in improving the regulatory environment.

37. Chapter 4 looks at better regulation in relation to the UK Presidency of the European Union, which began on July 1 2005. We look at the ambitions of the Presidency in this area and consider what progress might be made before Austria assumes the Presidency in January 2006. We also consider the quantity and quality of communications between the Commission and the UK Presidency.

38. Chapter 5 contains a summary of our recommendations and conclusions

39. **We make this Report to the House for Debate.**

[22] C321/1, 2003. http://europa.eu.int/comm/secretariat_general/regdoc/liste.cfm?CL=en

CHAPTER 2: THE BETTER REGULATION "TOOLBOX"

Impact Assessment

The Purpose of Impact Assessment

40. Impact assessment is an aid to political decision-making. The process of putting together an impact assessment involves gathering and presenting facts and information which help in determining possible policy options. An impact assessment can point out the benefits and drawbacks of a proposal and help ensure that the regulation proposed is really necessary and not overly burdensome.

41. The Commission define impact assessment as "a set of logical steps which structure the preparation of policy proposals. It involves building on and developing the practices that already accompany the process of policy development by deepening the analysis and formalising the results in an autonomous report"[23].

42. The recent Commission Communication[24] explains the Commission's belief in impact assessment, "The Commission's commitment to integrated impact assessment is based on the principle of sustainable development and is designed to allow policy makers to make choices on the basis of careful analysis of the potential economic, social and environmental impacts of new legislation"[25].

43. Impact assessments explore not only the potential economic impact of a proposal but also the effects it might have on society and the environment. As such, an impact assessment should be fully comprehensive and should consider the impact a piece of regulation will have on all aspects of Europe's economic and social landscape.

44. If the system works correctly an impact assessment can have a substantial effect on a piece of regulation, as The Minister noted with reference to the REACH Directive:

> "The REACH Directive is the best example I would give to the Committee of where you have an impact assessment that is beginning to make a difference … The benefits to the UK and the European Union chemical industry will be significant because of the improvements an impact assessment will make." (Q 54)

Which Proposals will be subject to Impact Assessment?

45. Initiatives set out in the Commission Legislative and Work Programme (key legislative proposals as well as important cross-cutting policy-defining non-legislative proposals) will all be subject to impact assessment. Roadmaps will be published to give a first indication of the major areas to be assessed. These roadmaps will be publicly available; indeed it is already possible to obtain Roadmaps for the 2005 Legislative and Work Programme.

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23 Impact Assessment Guidelines, SEC (2005) 791/3, page 4.

24 COM (2005) 97 final (see footnote 9)

25 Page 5 of the Commission Communication (see footnote 9)

46. **We welcome the introduction of roadmaps and call on the Commission to realise its promise to consider earlier and more strategic use of these roadmaps in the planning and programming of Commission initiatives.**

47. **At present there seems to be no requirement for Member State initiatives to include an impact assessment. We believe that all key proposals should be accompanied by an impact assessment whether these proposals are initiated by the Commission or Member States (under the Third Pillar) to ensure that all possible policy options have been assessed *ex-ante*.**

Ensuring Impact Assessments are Effective

48. Whilst it is undoubtedly true that impact assessments can be a useful tool in the struggle to ensure effective regulation, this is only the case if drafters adhere to the guidelines and produce exhaustive, clear assessments, and if, once completed, impact assessments are consulted and respected by the relevant institutions.

49. On 15 June 2005 the Commission issued a revised set of Impact Assessment Guidelines which replace the 2002 "*Impact Assessment in the Commission—Guidelines*". The guidelines set out the procedural rules for and key analytical steps in impact assessment as well as explaining the purpose of the assessments and the effects they are intended to have.

50. **We welcome the introduction of these revised guidelines and the Commission's decision to make them public.**

51. Several of our witnesses have stressed the importance of officials' actions as regards impact assessments. The CBI say: "There must be an unambiguous commitment by the Commission to using the lightest touch instrument possible and regulation as a 'last resort', and the 'do nothing' option should always be available" (p 11).

52. The UK Better Regulation Task Force echo their comments saying: "Officials must be sure that intervention is absolutely necessary and that an alternative regulatory tool is inappropriate before they decide to legislate" (p 6). Mr Ambler and Mr Chittenden comment on the guidelines in a similar way: "The main question is whether UK departments, and by inference EU directorates, use the guidelines to tick the boxes and go through the motions to facilitate the passage of the regulation or follow the spirit of the guidelines and seriously consider not regulating, achieving the goal by other means, doing so more simply etc" (p 3).

53. **It is important that the impact assessment process is taken seriously and does not descend into another "tick the box" exercise. Officials must be encouraged to consider all options when completing an impact assessment, including both the "do-nothing" option and achieving their aims through non-legislative means.**

Who should conduct Impact Assessments?

54. In the Commission, impact assessments are carried out by the services responsible for the proposed legislation. For major proposals, an inter-service steering group has to be formed to ensure that relevant economic, social and

environmental aspects are considered as part of the impact assessment process.

55. There are those who believe the credibility of impact assessments would be improved if they were not completed by the same people who are proposing the legislation.

56. The CBI, for example, argues that "the same bodies responsible for proposing a new regulatory initiative should not conduct the associated RIA … keeping the 'proposers' and 'analysers' separate would give an assurance of independence that would lend credibility to the system". (p 12)

57. Their view is challenged by Sir David Arculus[26] who believes that, "The impact assessment should inform the making of the legislation. It seems to me that it is sensible that those impact assessments should be done by the officials who are producing the legislation" (Q 21).The Minister, too, thinks that the responsibility for drafting impact assessments should rest with those who propose the regulation, "I think there is a genuine difficulty in outsourcing the Impact Assessment, generally, and putting it in a place outside of the Commission. I do not think that will be a very sensible thing to do" (Q.47).

58. **We conclude that it is right that the Directorate-General responsible for a proposal should also be responsible for completing an impact assessment on that proposal. This ensures efficient use of resources and avoids unnecessary duplication of work. It is also desirable that the "proposers" should be the "analysers" to ensure they think through all aspects of their proposals carefully, amend them as necessary and make use of the feedback they receive from stakeholders on the impact of a proposal.**

When should Impact Assessments be undertaken?

59. Currently an impact assessment is drafted once an individual Directorate-General decides that they are going to be proposing a piece of legislation. Mr Cridland suggests that this is too late and means "they have a Directive in mind and they then justify that Directive by seeking to establish that the costs are not disproportionate" (Q 20).

60. The House of Lords Select Committee on the Merits of Statutory Instruments[27] has also stressed that "it is crucial that the regulatory issues are thoroughly explored much earlier in the legislative process because it is impossible to make changes later on"[28]. In their opinion, regulatory issues must be fully explored before primary legislation is agreed to because the regulation can not then be changed at a later date. **We agree.**

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26 Chairman of the UK Better Regulation Task Force

27 The Committee was appointed on 17 December 2003 to examine the merits of any statutory instrument which is subject to either the affirmative or negative procedure. The Committee has power to draw the "special attention of the House" to any of the instruments which it considers to be: a) politically or legally important or that gives rise to issues of public policy likely to be of interest to the House; b) inappropriate in view of the changed circumstances since the passage of the parent Act; c) inappropriately implementing European Union legislation; or d) imperfectly achieving its policy objectives.

28 See Appendix 2, Letter from Lord Filkin, Chairman of the Select Committee on the Merits of Statutory Instruments to Lord Grenfell, Chairman of our Committee.

61. **The purpose of impact assessment is to compare a legislative approach with non-legislative approaches and weigh up the costs of regulation against the benefits. We believe that if this process is to be effective impact assessments must be undertaken at an early stage and must be revised as proposals proceed through the EU Law-making process.**

Impact Assessments, the European Parliament and the Council

62. Plans are afoot to tackle the question of whether or not impact assessments should be revised or rewritten in the light of amendments made to the basic legislative instruments. The recent Commission Communication[29] says:

"The Inter-Institutional Agreement on Better Law-Making acknowledges the importance of impact assessments in improving the quality of community legislation and also sets out that, where the co-decision procedure applies, the European Parliament and the Council may have impact assessments carried out prior to the adoption of any substantive amendment they make. The Commission believes that it is vital that this be done and hopes to soon agree with the European Parliament and the Council on the key elements of a common approach to assessments carried out at the different stages in the legislative process."[30]

63. **We welcome these assurances that the question of substantive amendments in relation to impact assessments is being dealt with and we urge the Commission, Parliament and Council to make progress on firming up the procedure for drawing up and revising impact assessments throughout the legislative process.**

64. If impact assessments are to influence legislation as intended the Council and the European Parliament must make proper use of them.

65. The British Chambers of Commerce have suggested that "There is little indication that the Council or the Parliament is yet systematically referring to Commission impact assessments, or that they are developing procedures for evaluating their amendments to legislative proposals, as foreseen in the 2003 Inter-Institutional Agreement on Better Lawmaking"(p 9).

66. Commission impact assessments are not drafted solely for the benefit of the Commission but for the benefit of all European Union institutions and, indirectly, all European Union Citizens. They must be read and respected. It is important that the Council and the European Parliament should make systematic use of the Commission's strengthened impact assessments, as agreed within the Competitiveness Council.

67. **To this end we recommend that MEPs should be sent one page summaries of impact assessments to enable them to get to grips with the material quickly and efficiently.**

68. This may persuade MEPs to use impact assessments as an everyday debating tool which would be a very desirable practice for them to adopt and would considerably raise the profile of the impact assessment process.

69. We agree with Sir David Arculus who said, "Impact assessments should be done right through the process. There should be a partial, initial impact

29 COM (2005) 97 final (see footnote 9)

30 Page 6 of the Commission Communication (see footnote 9)

assessment at the beginning before the consultation. After the consultation there should be another one and after the political debate there should be further amendments to it. I think the impact assessments have got to inform the full process that the Commission goes through" (Q 19).

70. Commissioner Verheugen is fully aware of this issue and is very clear in his opinion that substantial amendments made in the Parliament or the Council must be followed by full impact assessment: "If in the co-decision process Parliament and/or Council produce amendments, changes which are not only just minor but real changes, then there should be an Impact Assessment" (Q 78).

71. **We recommend that the European Parliament and Council should produce an impact assessment on any occasion when in the course of debate they depart substantially from a Commission proposal.**

Ex-post Assessment

72. The UK Better Regulation Task Force explains why *ex-post* assessment would be valuable: "We believe that European Union legislation should be routinely reviewed after implementation to assess its impact. It is important to assess whether the policy objectives have been met, whether there have been any unforeseen consequences or if any further action is necessary. A review is also needed to check the validity of initial Impact Assessment and ensure the on-going viability of the IA process" (p 7).

73. Ex-post assessment would improve the quality of impact assessment as lessons could be learnt from mistakes and successes. Ex-post assessment would also help examine whether legislators are achieving what they intended to achieve. The Law Society picks up this point saying, "We consider that the Select Committee's suggestion that European Union legislation could be examined as a matter of routine after implementation to assess its regulatory impact is a helpful one … we consider that legislation should be reviewed for its effectiveness and the extent to which the legislators have achieved what was intended before any new further legislation in this field can be adopted" (p 25).

74. **We recommend that ex-post assessment of the regulatory impact of European Union legislation should be the rule rather than the exception and that the first such assessment should be carried out by the Commission no more than one year after the entry into force of the instrument in question.**

What future plans does the Commission have for Impact Assessments?

75. The Commission is intending to explore how to integrate the measurements of administrative costs more effectively into impact assessments. This measure was called for in the Six Presidencies Statement[31]: "a common European methodology for the measurement of administrative burdens should be presented and implemented by the Commission as soon as possible in 2005 … Before the end of 2005, assessment of the administrative burden should be included in integrated European Commission impact assessments for all new Directives"[32].

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31 "Advancing regulatory reform in Europe" (see footnote 10)

32 Page 4 of the Joint Statement (see footnote 10)

76. UNICE have also stressed the importance of this measure, "A commonly accepted methodology for measuring administrative burdens should be introduced in the impact assessments as soon as possible" (p 27).

77. **Earlier this year the Commission launched a pilot phase "aimed at testing methods for the quantitative assessment of such burdens associated with existing and proposed Community legislation"**[33] with a view to eventually developing a common approach to measure administrative costs across European Union institutions and Member States. The results of the pilot phase are expected by the end of the 2005. **Once the results of the pilot phase have been assessed the Commission will decide on whether and how to best integrate the approach into the impact assessment method. We welcome these measures**.

78. The recent Commission Communication includes a pledge to launch "by early 2006, a comprehensive independent evaluation of the Impact Assessment system as it has evolved and been implemented since 2002"[34]. **We urge the Commission to stand by this pledge and we look forward to considering the evaluation.**

Simplification

Screening Pending Proposals

79. The Commission also intends to screen proposals that are pending before the Council or Parliament with regard to their general relevance and their impact on competitiveness. This could lead the Commission to consider the possible modification, replacement or even withdrawal of such pending proposals.

80. The screening will focus on proposals adopted before 1 January 2004, and in particular those which have not made significant progress for a substantial period of time, those for which impact assessments were not carried out, and those where new scientific evidence, market developments or society changes justify a review. The Commission estimates that 215 such proposals are pending in the European Council and Parliament[35].

81. This screening is welcomed by the Government. The Minister said, "We need to see clear proposals coming from the Commission on simplification. I, and I know many others, am waiting to see what happens in September when the Commission come forward with their proposals for not proceeding with legislation that, in the view of the Commission, should not be proceeded with". (Q 38)

82. The Minister also spoke of the screening of pending proposals when questioned about UK Presidency priorities in the area of better regulation. He said, "During our Presidency the Commission has also pledged to withdraw unnecessary pending legislative proposals, especially, if they have not been accompanied by proper impact assessments. We really would like to see progress in that department … we will be supporting Commissioner Verheugen and his colleagues in bringing that work to fruition". (Q 62)

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33 Page 6 of the Commission Communication (97 final) (see footnote 9)

34 Page 6 of the Commission Communication (see footnote 9)

35 Verheugen evidence, Q 76, "The pending proposals we have in the European Parliament and the Council are 215."

83. **We support the Commission's work on screening pending proposals and await the September announcements with interest. We will review this programme when we consider the Commission's Annual Work Programme in the autumn.**

The Simplification of the Acquis

84. The Six Presidencies Joint Statement pointed out that as well as addressing new regulatory proposals the Commission must consider the burdens imposed by the existing stock of regulation and should do this "through properly focused and systematic simplification of the *acquis*"[36].

85. The Commission seem to have been previously aware of this issue as in February 2003 they had launched a framework of actions to reduce the volume of the Community *acquis*, to improve the accessibility of legislation and to simplify existing legislation. On this basis the Commission has formed a rolling programme for simplification, "Updating and Simplifying the Community *Acquis*"[37].

86. Acting on this programme and in response to suggestions from Member States to identify legislation that might benefit from simplification, a Council priority list of around 20 items of legislation was agreed at the 2004 Nov Competitiveness Council.

87. In its 2005 Communication the Commission proposes to take the following action to simplify existing EU legislation:

- Reinforce the mechanisms for identifying legislation in need of simplification;
- Develop integrated sectoral action plans for simplification where appropriate;
- Promoting the use of European standards as technical support to European legislation or as alternatives to legislation.

88. Commissioner Verheugen spoke of the Commission's approach to tackling the simplification of the *acquis*. He said:

"We do it sector by sector and so we examine the existing legislation, whether we still need it or whether it is obsolete, which is sometimes the case, whether it can be simplified or whether it must first be modernised. I think we will present the result of that exercise sector by sector, so we are not going to wait until we have examined the whole existing *Acquis,* but rather present sectoral results". (Q 82)

89. **We support Commissioner Verheugen's approach to the revision of the *acquis* and we welcome his assurances that the results of the exercise will be presented, sector by sector, as they are available. We believe that the review of the *acquis* should pay particular attention to assessing whether or not existing EU legislation is still necessary.**

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36 Page 6 of the Joint Statement (see footnote 10)

37 Expired end 2004 and due to be revised in 2006-07.

What can be done to ensure the simplification programme progresses?

90. There is a danger of a form of stalemate being reached on the Commission's simplification programme. Whilst it is clear that the Commission has done much worthy work in identifying proposals for simplification it is also clear that much more needs to be done to ensure that the promised reforms are delivered. As the UK Better Regulation Task Force note: "It is of little benefit to have a backlog of proposals identified for simplification without having the apparatus in place to be able to take action". (p 5)

91. The process in place at present for simplifying European Union legislation is complex and lengthy, as the CBI note, because "proposals for revision have to be put forward as an amending Directive of Legislation and then pass through the full process of negotiation and inter-institutional agreement" (p 11).

92. The Inter-institutional Agreement on Better Law-making states that:

"the European Parliament and the Council, whose task it would be as legislative authority to adopt at the final stage the proposals for simplified acts, need to modify their working methods by introducing, for example, ad hoc structures with the specific task of simplifying legislation"[38].

93. The UK Better Regulation Task Force Report *Make it Simple, Make it Better*[39], calls for "the European Union … to give urgent consideration to mechanisms that can enable 'simplification' to be done quickly without re-opening the fundamental political arguments"[40].

94. **We recommend that the Council and Parliament should meet their commitment under the Inter-Institutional Agreement on Better Law-making to adopt structures to expedite simplification proposals.**

Future Simplification Measures

95. The Commission's simplification programme is shortly to enter a new phase. A Communication will be issued in October to introduce a new integrated sectoral approach. Under this approach the Commission will no longer consider pieces of European Union legislation in isolation for simplification but will instead examine entire sectors of industry with a view to pinpointing the most oppressive categories of regulatory burden.

96. **We welcome this new approach and look forward to the new Communication being presented at the November Competitiveness Council. We call on the Council to consider and act on this Communication expeditiously.**

Consultation

The Purpose of Consultation

97. The Law Society clearly explains the purpose of consultation:

"The purpose of consultation is two-fold: explanation and consultation. It should explain what the proposal is intended to achieve and how it purports

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38 Paragraph 36 of the Inter-Institutional Agreement (see footnote 21)

39 Published December 2004

40 p.5

to achieve its aim…explaining any areas of uncertainty and problems identified. Secondly, it should seek views on the proposal". (p 22)

98. The CBI came up with a similar definition, "Genuine consultation should cover the need for action in a particular area, the rationale for action being taken at European Union level, and the basis for the choice of a particular legislative instrument". (p 12)

99. It is clear that effective consultation should provide both an opportunity for Officials to explain Commission proposals and an opportunity for interested parties to shape those proposals.

Current Consultation Methods

100. As a part of the impact assessment procedure the Commission adopted a set of "Minimum standards for consultation of interested parties"[41]. The standards were adopted in an attempt to enhance transparency and to encourage greater participation in the European Union's law-making process.

101. These minimum standards are referred to in the revised impact assessment guidelines, issued on 15 June 2005. These revised guidelines also include a list of the Commission's general principles for consultation.

102. Commissioner Verheugen spoke of the scope of current Commission consultations, "we consult the public on new legislative proposals using the internet and other modern ways of communication. I can tell you that in some areas of legislation we have thousands of comments which of course are carefully examined and, as far as possible, taken into account". (Q 83)

How might consultation be improved?

103. There is a real danger of "stakeholder fatigue" spreading throughout Europe. The Better Regulation Task Force claims "we have heard reports of 'consultation fatigue'" (p 6) and the CBI highlights the frustrations of business when presented with "*a fait accompli*" proposal (p 12) to comment on.

104. **Such stakeholder fatigue should be guarded against and to that end badly organised consultation, which could breed apathy and cynicism, must be avoided.** The UK Better Regulation Task Force is right to say that "the problem of 'consultation fatigue' could be mitigated if consultation exercises were better targeted in the first place and stakeholders could see that their responses had been listened to and had made a difference" (p 6).

105. **We therefore recommend that consultation should be better targeted and each consultation should be conducted as a meaningful and worthwhile process and not simply a wearisome "tick-the-box" exercise.**

106. It has been almost three years since the minimum standards were published and perhaps it is time for them to be updated. **We believe that the Commission should revise its minimum standards for consultation. The revised standards should ensure that consultation covers:**

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41 COM(2002)704 final. http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2002/com2002_0704en01.pdf

- **The need for legislative action in a particular area**
- **The adherence of the proposal to the principles of subsidiarity and proportionality**
- **The reasons behind the choice of a particular legislative instrument and the possibility of alternatives to traditional legislation**

107. As UNICE note it is important that, "All impact assessments, preparatory and background documents should be published to allow for effective and early involvement of stakeholders. It should be clear to all stakeholders how the Commission assesses the expected impacts of its proposals and they should be consulted throughout the process" (p 26).

108. Website improvements will also aid consultation practices. Each Commissioner will create a public better regulation window in the websites of the services under his or her responsibility. This will give businesses, NGOs and citizens the opportunity to identify administrative or bureaucratic burdens resulting from legislation under their respective areas of responsibility so that these views can be taken into account.

109. **We believe that the key to effective consultation is transparency. The consultation process must be understandable to all and the Commission should be able to be held accountable for all consultation it undertakes or fails to undertake. We welcome the new website initiatives but sufficient resources must be available to ensure websites are kept up to date.**

SMEs

110. The better regulation project is of huge importance to SMEs and the Commission are aware of the reasons for this: "I think for SMEs the Better Regulation project is even more important than for huge companies. It is obvious that the smaller the company is the higher the administrative burden as a result of legislation"[42].

111. Sir David Arculus and Mr Cridland listed some of the problems faced by small businesses in the current European Union regulatory environment. Sir David pointed to the brevity of consultation periods, and the potential for small businesses not to engage with internet consultation and consequently to be overlooked. Mr Cridland thought small businesses might be able to engage with the consultation process if it were started "earlier, at the conceptual stage" (Q 12) but was sceptical about the EU institutions' commitment to small businesses saying "I think there is a degree of unreality about the European institutions engaging directly with small businesses" (Q 12).

112. **Whilst we do not underestimate the challenges involved we believe that the Commission needs to consult fully with SMEs and to protect their interests and we were encouraged by Commissioner Verheugen's approach to this matter.**

113. The SME sector accounts for two-thirds of Europe's employment and almost 60% of economic output. The Forum for Private Business stresses that, "An

42 Commissioner Verheugen, Q 80

improvement in the performance of the European economy as a whole will only be possible if action is taken to strengthen the craft and SME sector, which … has been and will continue to be the most dynamic sector in terms of job creation and innovation" (p 18).

114. At present there is a directorate under the control of Commissioner Verheugen which is responsible for SMEs and there is also an SME envoy[43] who is employed to ensure that "the interests of SMEs are taken into account everywhere in the Commission—in legislation, in projects, in programmes, the way we spend money, procurement and everything"[44].

115. The Commission aims to build on these provisions for SMEs with a new major policy document to be issued in October 2005 containing a new strategy to support European SMEs[45]. Commissioner Verheugen was honest in saying that currently the development of the document is being hindered "as a result of the non-agreement on the next Financial Perspective because the financial instruments which I need are not yet in place" (Q 80). However, **we believe that the Commission are committed to supporting SMEs and await the October document with interest.**

116. **We also recommend that impact assessments should answer the following small business specific questions[46] to ensure SME interests are always in the minds of the drafters of proposed legislation:**

- **What is the benefit of compliance to SMEs?**
- **Will it disadvantage EU small businesses relative to global competitors?**
- **Will it contribute to an environment that encourages innovation?**
- **Will it lead to disproportionate administrative burdens for SMEs?**
- **Has the case for partial or total exemption of SMEs been considered?**

The Case for a New Regulatory Body in the European Union

Can a case be made for the creation of a new European Union body to oversee and improve regulation?

117. There are those who argue that a new body should be formed to oversee and improve European Union regulation. UNICE, for example argues that "the credibility of impact assessments would gain if they were entrusted to or verified by an independent body" (p 28). The British Chambers of Commerce suggests that "the creation of a central co-ordinating body to oversee and support impact assessments for all institutions will help to ensure that analysis contained in the assessments is objective and has a strong influence on decision-making" (p 9) and recommends that this body should

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43 For information on the SME envoy and their work see: http://europa.eu.int/comm/enterprise/entrepreneurship/sme_envoy/index.htm

44 Commissioner Verheugen, Q 80

45 SMEs based in EU Member States

46 As recommended in large part also by the Forum for Private Business, The British Chambers of Commerce, Federation for Small Businesses, Institute of Directors and Confederation of British Industry.

be "independent from, but available to, each of the three main European Union institutions" (p 9).

118. On the other hand there are those who claim that such a body would only add another unnecessary layer of bureaucracy to an already overly-bureaucratic European Union. The UK Better Regulation Task Force say, "we would be wary of recommending a new body to oversee regulation in the European Union … there is a danger that creating a brand new body would simply create another level of bureaucracy" (p 6). Commissioner Verheugen simply put in a plea for "no new bureaucracy and no new body"! (Q 91)

119. The Law Society were troubled by the impact a new regulatory body might have on European Union resources, "We do not consider that there is a case to be made for a new European Union body to oversee regulation. The duplication of budget, resource and remit that this would entail is unnecessary" (p 24).

120. **We conclude that, at present, there is no need for a new body to oversee regulation in the European Union. Such a body would only add yet another layer of bureaucracy to the European Union's regulatory environment and would entail an unnecessary duplication of resources.**

High-level national regulatory experts

121. Although they do not support the creation of a new European Union body to oversee regulation, in 2005 the Commission will set up a group of high-level national regulatory experts to advise the Commission on better regulation issues in general—in particular on simplification and impact assessment.

122. The group will look at both European Union and national legislation and in doing so will aim to be an effective interface between the Commission and governmental authorities.

123. Through this group the Commission intends to strengthen links with Member States as they assist them in their initiatives for improving national implementation of better regulation.

124. The Commission also intends to use the group to discuss the development of a set of common indicators to monitor progress in enhancing the quality of the regulatory environment, both at European Union level and in the Member States themselves, as a basis for benchmarking.

125. Another network, independent from the previous group, will be set up to advise the Commission. This group is to be composed of experts on better regulation issues, including academics and practitioners from the economic, social and environmental fields. This network will allow the Commission to call on external expertise to tackle any technical issues or problems they encounter.

126. Both groups will advise on general and methodological issues but are not to be given responsibility for systematically screening draft legislative proposals.

127. **We welcome the appointment of these groups but believe that their respective mandates need to be clarified. We recommend that the Commission reports at regular intervals on the work they are undertaking and the progress they are making as regards improving the regulatory environment.**

CHAPTER 3: CO-OPERATING TO ENSURE EFFECTIVE REGULATION

The Inter-Institutional Agreement on Better Law-Making

128. The Inter-Institutional Agreement on Better Law-Making was agreed in December 2003 by the three European Union institutions (European Parliament, Council and Commission) and aimed to "improve the quality of law-making by means of a series of initiatives and procedures"[47] which were set out in the document.

129. Its main elements included: improving inter-institutional coordination and transparency, providing a stable framework for "soft law" instruments that should facilitate their future use, increasing the use of impact assessment in Community decision-making, and modifying the working methods of the Parliament and the Council to accelerate the adoption of simplification proposals.

130. The Inter-Institutional Agreement should therefore have helped the European Union institutions to make substantial progress as regards better regulation initiatives—though it seems that, to some, the promise of the agreement has not been fulfilled.

131. It is clear that if the better regulation agenda is to succeed it needs the whole-hearted support of all the European Union institutions. The Minister stressed "It is not just the Commission that needs to sharpen its focus, it is the Council and the Parliament too. This is a collective responsibility" (Q 50). The British Chambers of Commerce say that "a policy environment that contributes to the Lisbon objectives of growth and employment can only be created if each of the three main European Union institutions is sincere and resolute in its pursuit of regulatory reform" (p 7).

132. However, it seems that this unity of purpose is not yet strongly in evidence. Sir David Arculus commented on this issue, when questioned, saying that "the Commission is the most committed of the three bodies to the action planned. The Parliament has some considerable distance to go. As far as the Council is concerned, I think there has been a mixed track record" (Q 3).

133. This view seems to be shared by many of our witnesses. The Minister said that "within the European Parliament there are concerns about what this agenda means" (Q 67) and Mr Cridland said that he "was not confident" (Q 37) that the European Union institutions were working together to ensure effective regulation, citing the handling of the REACH proposals as justification for his scepticism.

134. Mr Cridland also theorised on a possible cause of the lack of co-operation:

> "I think the big challenge with European institutions is that they are less joined-up than would be the case with parallel institutions at Member State level. That is not just between institutions; it can be within institutions" (Q 37).

135. Sir David Arculus concurred with his opinion, describing Europe as "unwieldy" (Q 37). A lack of communication, both internal and external,

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47 Paragraph 1 of the Inter-institutional agreement (see footnote 21)

seems to be responsible for the failed attempts at co-ordination and co-operation.

136. **We urge the European Union Institutions to stand by the pledges they made in the Inter-institutional Agreement on Better Law-Making and work closely together to improve the regulatory environment of the European Union.**

The Role of Member States

137. The Commission recognises the important role Member States have to play to help ensure effective regulation across the European Union. In their recent Communication they clearly state that "Better regulation is not a matter for the European Union alone. It cannot be achieved only by action at European Union level"[48].

138. The Communication goes on to call on Member States to demonstrate their commitment to better regulation principles:

"In order to guarantee that legislation is designed and implemented efficiently, under a common strategic approach, Member States must increase their efforts in promoting better regulation, in parallel with actions already put in place at the European Union level, so that the issue is tackled in a comprehensive manner"[49].

139. The Commission recommends that all Member States "establish national Better Regulation strategies and, in particular, impact assessment systems for the integrated assessment of economic, social and environmental impacts"[50].

140. Member States are at different stages as regards their commitment to better regulation and the provisions they have made for improving the regulatory environment[51].

141. **We recognise that action at European Union level will not be enough and urge Member States to tackle problems arising at national level and lend their full support to the Commission in their work on better regulation.**

142. **We recommend that national parliaments should exchange best practice in this area frequently**. We hope that COSAC[52], which is charged with assisting parliaments scrutinising EU legislation, will discuss how national parliaments scrutinise and work with Commission impact assessments. Opportunities like this should continue to be provided for the mutual benefit of all Member States.

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48 Page 8 of the Commission Communication (see footnote 9)

49 Page 3 of the Commission Communication (see footnote 9)

50 Page 8 of the Commission Communication (see footnote 9)

51 Appendix 3 provides a chart published with the June 2005 Commission Communication which gives an overview of measures Member States have taken in the area of better regulation and impact assessment.

52 COSAC is a co-operation between committees of the national parliaments dealing with European affairs as well as representatives from the European Parliament. http://www.cosac.org/en/cosac/

CHAPTER 4: BETTER REGULATION AND THE UK PRESIDENCY

Presidency Priorities

What should the UK Presidency be looking to achieve, in general terms, as regards Better Regulation?

143. In the evidence they submitted to us the Communication spelt out what it anticipated the UK would achieve during its Presidency:

"During its Presidency, the UK will no doubt continue to point out how, in a fiercely competitive global market, better regulation can benefit growth and jobs in the European Union, while explaining that more effective regulation does not imply the setting aside or weakening of legitimate public interests such as health and safety, the environment and consumer protection." (p 15)

144. Many of our witnesses agreed with the Commission and stressed the need for the UK Presidency to continue to place the better regulation programme at the top of the European Union's political agenda.

145. The CBI, for example, said, "The most useful achievement the UK Government can realise during its presidency, is the continued placement of the better regulation programme at the top of the European Union's political agenda." (p 10)

146. **We urge the Government to ensure that the better regulation programme is seen to be at the top of the European Union's political agenda and given appropriate publicity.**

147. In order to achieve this aim the Government should heed the advice of Sir David Arculus and the UK Better Regulation Task Force and ensure that it continues to strive for, and achieve, better regulation at a national level[53].

148. A recurring theme of the evidence we have received is that plans and ideas must now be turned into action. The Institute of Directors makes this point very forcefully saying:

"While good intentions are welcome, the business community is now looking for delivery. We cannot stress strongly enough that maximum political energy must be put into turning the existing plans into action. This is far more important than drawing up further policy documents or action programmes." (p 20)

149. **We therefore urge the Government to focus on turning existing plans for effective regulation into reality during the period of the UK Presidency.**

150. **The CBI believes that, when the Presidency ends, the Government should "bequeath to the succeeding Austrian Presidency both a programme of work to follow and a list of the areas in which success has been achieved, to act as a blue-print and a best practice guide respectively" (p 10). We agree and urge the Government to act on this advice.**

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[53] Sir David Arculus, Q 37, "As far as the UK's contribution is concerned I believe that the UK should become an exemplar of better regulation because I think if we do that we are going to have more emphasis on the European agenda than if we do not do it."

BOX 1

Prospects for the EU in 2005: The UK Presidency of the European Union, Cm 6611; Paragraph 30, on Better Regulation

> The Inter-Institutional Agreement on Better Law-Making demonstrated the commitment of the European Parliament, Commission and Council to improving the regulatory environment in Europe. This also remains a top priority for the UK Government. Günter Verheugen, Vice-President of the Commission for Enterprise and Industry, has pledged to make reducing red tape his personal trade mark. Working closely with the Commission, Parliament and Member States, the Government will be focusing on three important reform areas during the UK Presidency. First, we must improve the policy making process with better consultation and impact assessments, which will include tasting all regulatory proposals in the Commission's 2005 work programme for their impact on competitiveness. Second, the EU will launch in October a major new programme to reduce the volume and complexity of EU legislation in order to ease the burden on business. Third, the UK will aim to reach agreement among Member States and the Commission on a common methodology for the measurement of the administrative burden of legislation, which, once agreed, would be included in all impact assessments…

Ministerial Ambitions

151. The Minister was very clear on the need for the UK Presidency to make progress on the specifics of the better regulation programme. He said "I have tried to make it clear to the Committee today that we are not going to operate the UK Presidency at the level of a generality, we must ground it in some specifics" (Q 66) and went on to explain that "it is not just the generalities that we want to make progress with. Notwithstanding the limitations that are built into a six month Presidency, we do want to make progress and be seen to be making progress on this agenda" (Q 62).

152. Bearing this statement of intent in mind, he listed four areas that he wanted the UK Presidency to make real progress on (Q 62). They were:

- A desire to improve the quality of new EU legislation through better consultation and the more widespread use of Impact Assessment. The Presidency will call on the Commission to stand by its agreement to produce Impact Assessments for all of its new proposals for legislation in 2005.
- A push for progress on the withdrawal of unnecessary pending legislative proposals, especially those not accompanied by proper impact assessments.
- A push for progress on the simplification of proposals resulting from the Commission's rolling simplification programme, launched in 2003.
- A desire to strengthen the regulatory framework and a push for the completion of a common methodology for measuring administrative burdens by the end of 2005.

153. These aims broadly meet with Sir David Arculus' expectations of the UK Presidency:

"I think the biggest point of all is that we want impact assessments done on all new pieces of law coming out of Europe. The second big point is that we want the Council to use those impact assessments when they are making decisions. We need to concentrate on a simplification mechanism … we also need to think about this whole issue of alternatives to legislation" (Q 6).

154. **We welcome the Minister's[54] intentions to root the Presidency's efforts in specific aims and objectives. We urge the Government to focus on these specific aims throughout the Presidency and to make real progress in these areas.**

Co-operation between the Commission and the Presidency

155. Commissioner Verheugen confirmed that the Commission and the UK presidency are working together, towards the same goals. He said:

"I was in London to discuss the priorities for the UK Presidency with your Government, and it will be interesting to tell you that it was one of the main topics during our discussion in London last Friday, and perhaps the only clear result of our meeting, that the Presidency and Commission are fully in line and share the same commitment." (Q 76)

156. **We conclude that co-operation between the Commission and the UK Presidency will be crucial to the success of the UK Presidency's efforts in the field of better regulation. We therefore urge the Commission and the UK Presidency to continue to work closely together throughout the six month period. The Government should report to Parliament on the progress that has been made by the end of the Presidency.**

54 The Rt Hon. John Hutton MP, Chancellor of the Duchy of Lancaster

CHAPTER 5: SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

What do we mean by "better regulation"?

157. Commissioner Verheugen commented on the principles the Commission works to, which are very similar to the UK Better Regulation Task Force principles. They are: necessity, proportionality, subsidiarity, transparency, accountability, accessibility and simplicity. These principles stem from the discussions of the Mandelkern Group of Member States experts on better regulation, set up in November 2000. The principles are explained fully in the Mandelkern Group's Report, published on 13 November 2001. These principles were agreed by Member States and the Commission working together. We accept Commissioner Verheugen's view that there is no need "to start the discussion on changing these principles. What we do need to do is to see that the seven principles agreed are respected" (paras 14, 15)

Why is regulatory reform important?

158. We believe that involving Europe's stakeholders in better regulation initiatives could help to improve the image of the European Union and foster understanding of its institutions and working practices. (para 22)

Culture Change in the Barroso Commission?

159. We welcome Commissioner Verheugen's forthright approach to culture change in the European Union and signs of attitudinal change throughout the institutions of the European Union. (para 34)

Which Proposals will be subject to Impact Assessment?

160. Initiatives set out in the Commission Legislative and Work Programme (key legislative proposals as well as important cross-cutting policy-defining non-legislative proposals) will all be subject to impact assessment. Roadmaps will be published to give a first indication of the major areas to be assessed. These roadmaps will be publicly available; indeed it is already possible to obtain Roadmaps for the 2005 Legislative and Work Programme. We welcome the introduction of roadmaps and call on the Commission to realise its promise to consider earlier and more strategic use of these roadmaps in the planning and programming of Commission initiatives. (paras 45, 46)

161. At present there seems to be no requirement for Member State initiatives to include an impact assessment. We believe that all key proposals should be accompanied by an impact assessment whether these proposals are initiated by the Commission or Member States (under the Third Pillar) to ensure that all possible policy options have been assessed *ex-ante*. (para 47)

Ensuring Impact Assessments are effective

162. We welcome the introduction of revised impact assessment guidelines and the Commission's decision to make them public. (para 50)

163. It is important that the impact assessment process is taken seriously and does not descend into another "tick the box" exercise. Officials must be

encouraged to consider all options when completing an impact assessment, including both the "do-nothing" option and achieving their aims through non-legislative means. (para 53)

Who should conduct Impact Assessments?

164. We conclude that it is right that the Directorate-General responsible for a proposal should also be responsible for completing an impact assessment on that proposal. This ensures efficient use of resources and avoids unnecessary duplication of work. It is also desirable that the "proposers" should be the "analysers" to ensure they think through all aspects of their proposals carefully, amend them as necessary and make use of the feedback they receive from stakeholders on the impact of a proposal. (para 58)

When should Impact Assessments be undertaken?

165. The House of Lords Select Committee on the Merits of Statutory Instruments has also stressed that "it is crucial that the regulatory issues are thoroughly explored much earlier in the legislative process because it is impossible to make changes later on". In their opinion, regulatory issues must be fully explored before primary legislation is agreed to because the regulation can not then be changed at a later date. We agree. (para 60)

166. The purpose of impact assessment is to compare a legislative approach with non-legislative approaches and weigh up the costs of regulation against the benefits. We believe that if this process is to be effective impact assessments must be undertaken at an early stage and must be revised as proposals proceed through the EU Law-making process. (para 61)

Impact Assessments, the European Parliament and the Council

167. We welcome assurances that the question of substantive amendments in relation to impact assessments is being dealt with and we urge the Commission, Parliament and Council to make progress on firming up the procedure for drawing up and revising impact assessments throughout the legislative process. (para 63)

168. We recommend that MEPs should be sent one page summaries of impact assessments to enable them to get to grips with the material quickly and efficiently. (para 67)

169. We recommend that the European Parliament and Council should produce an impact assessment on any occasion when in the course of debate they depart substantially from a Commission proposal. (para 71)

Ex-post Assessment

170. We recommend that ex-post assessment of the regulatory impact of European Union legislation should be the rule rather than the exception and that the first such assessment should be carried out by the Commission no more than one year after the entry into force of the instrument in question. (para 74)

What future plans does the Commission have for Impact Assessments?

171. Earlier this year the Commission launched a pilot phase "aimed at testing methods for the quantitative assessment of such burdens associated with

existing and proposed Community legislation" … Once the results of the pilot phase have been assessed the Commission will decide on whether and how to best integrate the approach into the impact assessment method. We welcome these measures. (para 77)

172. The recent Commission Communication includes a pledge to launch "by early 2006, a comprehensive independent evaluation of the Impact Assessment system as it has evolved and been implemented since 2002". We urge the Commission to stand by this pledge and we look forward to considering the evaluation. (para 78)

Screening Pending Proposals

173. We support the Commission's work on screening pending proposals and await the September announcements with interest. We will review this programme when we consider the Commission's Annual Work Programme in the autumn. (para 83)

The Simplification of the *Acquis*

174. We support Commissioner Verheugen's approach to the revision of the *acquis* and we welcome his assurances that the results of the exercise will be presented, sector by sector, as they are available. We believe that the review of the *acquis* should pay particular attention to assessing whether or not existing EU legislation is still necessary. (para 89)

What can be done to ensure the simplification programme progresses?

175. We recommend that the Council and Parliament should meet their commitment under the Inter-Institutional Agreement on Better-Lawmaking to adopt structures to expedite simplification proposals. (para 94)

Future Simplification Measures

176. We welcome this new approach and look forward to the new Communication being presented at the November Competitiveness Council. We call on the Council to consider and act on this Communication expeditiously. (para 96)

How might consultation be improved?

177. Stakeholder fatigue should be guarded against and to that end badly organised consultation, which could breed apathy and cynicism, must be avoided. (para 104)

178. We recommend that consultation should be better targeted and each consultation should be conducted as a meaningful and worthwhile process and not simply a wearisome "tick-box" exercise. (para 105)

179. We believe that the Commission should revise its minimum standards for consultation. The revised standards should ensure that consultation covers:

- The need for legislative action in a particular area
- The adherence of the proposal to the principles of subsidiarity and proportionality

- The reasons behind the choice of a particular legislative instrument and the possibility of alternatives to traditional legislation (para 106)

180. We believe that the key to effective consultation is transparency. The consultation process must be understandable to all and the Commission should be able to be held accountable for all consultation it undertakes or fails to undertake. We welcome the new website initiatives but sufficient resources must be available to ensure websites are kept up to date. (para 109)

SMEs

181. Whilst we do not underestimate the challenges involved we believe that the Commission needs to consult fully with SMEs and to protect their interests and we were encouraged by Commissioner Verheugen's approach to this matter. (para 112)

182. We believe that the Commission are committed to supporting SMEs and await the October document with interest. (para 115)

183. We also recommend that impact assessments should answer the following small business specific questions[55] to ensure SME interests are always in the minds of the drafters of proposed legislation: (para 116)

- What is the benefit of compliance to SMEs?
- Will it disadvantage EU small businesses relative to global competitors?
- Will it contribute to an environment that encourages innovation?
- Will it lead to disproportionate administrative burdens for SMEs?
- Has the case for partial or total exemption of SMEs been considered?

Can a case be made for the creation of a new European Union body to oversee and improve regulation?

184. We conclude that, at present, there is no need for a new body to oversee regulation in the European Union. Such a body would only add yet another layer of bureaucracy to the European Union's regulatory environment and would entail an unnecessary duplication of resources. (para 120)

High-level national regulatory experts

185. We welcome the appointment of these groups but believe that their respective mandates need to be clarified. We recommend that the Commission reports at regular intervals on the work they are undertaking and the progress they are making as regards improving the regulatory environment. (para 127)

The Inter-Institutional Agreement on Better Law-Making

186. We urge the European Union Institutions to stand by the pledges they made in the Inter-institutional Agreement on Better Law-Making and work closely together to improve the regulatory environment of the European Union. (para 136)

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[55] As recommended in large part also by the Forum for Private Business, The British Chambers of Commerce, Federation for Small Businesses, Institute of Directors and Confederation of British Industry.

The Role of Member States

187. We recognise that action at European Union level will not be enough and urge Member States to tackle problems arising at national level and lend their full support to the Commission in their work on better regulation. (para 141)

188. We recommend that national parliaments should exchange best practice in this area frequently. (para 142)

What should the UK Presidency be looking to achieve, in general terms, as regards better regulation?

189. We urge the Government to ensure that the better regulation programme is seen to be at the top of the European Union's political agenda and given appropriate publicity. (para 146)

190. We urge the Government to focus on turning existing plans for effective regulation into reality during the period of the UK Presidency. (para 149)

191. The CBI believes that, when the Presidency ends, the Government should "bequeath to the succeeding Austrian Presidency both a programme of work to follow and a list of the areas in which success has been achieved, to act as a blue-print and a best practice guide respectively". We agree and urge the Government to act on this advice. (para 150)

192. We welcome the Minister's intentions to root the Presidency's efforts in specific aims and objectives. We urge the Government to focus on these specific aims throughout the Presidency and to make real progress in these areas. (para 154)

Co-operation between the Commission and the Presidency

193. We conclude that co-operation between the Commission and the UK Presidency will be crucial to the success of the UK Presidencies efforts in the field of better regulation. We therefore urge the Commission and the UK Presidency to continue to work closely together throughout the six month period. The Government should report to Parliament on the progress that has been made by the end of the Presidency. (para 156)

APPENDIX 1: LIST OF WITNESSES

The following witnesses gave evidence. Those marked ** gave both oral and written evidence; those marked * gave oral evidence only; those without an asterisk gave written evidence only.

Commissioner Günter Verheugen, European Commission*

Erik Berggren, Senior Adviser, UNICE

European Commission Services

Francis Chittenden, Professor, Manchester Business School.

James Walsh, Head of European and Regulatory Affairs, Institute of Directors

John Cridland, Deputy Director-General, CBI**

Lord Filkin, Chairman, House of Lords Merits of Statutory Instruments Committee

Sir David Arculus, Chairman, Better Regulation Task Force**

Stephen Crampton, EU adviser, Which?

The British Chambers of Commerce

The Environment Agency

The Forum of Private Business

The Law Society of England and Wales

The Rt Hon. John Hutton MP, Chancellor of the Duchy of Lancaster*

Tim Ambler, Senior Fellow, London Business School.

APPENDIX 2: LETTER FROM LORD FILKIN, THE CHAIRMAN OF THE HOUSE OF LORDS SELECT COMMITTEE ON THE MERITS OF STATUTORY INSTRUMENTS

I am writing, on behalf of the Merits of Statutory Instruments in relation to your inquiry into ensuring effective regulation in the EU. I understand that your have almost completed your investigation but unfortunately we were not aware that your inquiry was underway until very recently. There is no doubt that our two Committees have a common interest in issues relating to better regulation and, on behalf of the Merits Committee, I would like to make the following comments based on that common interest and in the light of our experience so far.

One of the grounds on which we may bring a statutory instrument to the special attention of the House is that we consider that it may inappropriately implement EU legislation; and in the 15 or so months since the Merits Committee formally took up its scrutiny of statutory instruments, we have of course seen many which serve to implement EU legislation. This ground provides a basis for the Committee to consider whether an instrument represents "gold-plating" in the UK's implementation of EU requirements, and to draw any examples of this approach to the House's attention.

Some of our Reports querying EU-related implementation have been taken up and brought into debate in the House. Only this week we reported on SI 2005/1605 Registration of Fish Buyers and Sellers and Designation of Fish Auction Sites Regulations 2005, which implements EU legislation regarding first marketing and purchasing of fish, because of our concern that the Regulations would impose a disproportionate burden on buyers of direct sale fish from smaller vessels. We hope that Members of the House will wish to take up the issues we raise in debate.

The Merits Committee's scrutiny of statutory instruments takes in their wider policy context and we take a close interest in the regulatory impact, on an individual basis. However, there is a significant difference between our ability to have purchase on statutory instruments that originate from EU legislation compared to those that originate from the UK Parliament. In the latter case, it is conceivable that, in the light of our scrutiny, Departments could make significant changes to the ways in which they implement regulation emanating from statute. In the case of EU-originating legislation, the purchase of the Lords or the UK Parliament is much more limited.

If we found serious criticisms of the efficacy, burden or cost of a regulation, then unless it was a "gold-plating" issue, there is little that the UK Parliament can do. My conclusion from this is that it is crucial that the regulatory issues are thoroughly explored much earlier in the legislative process because it is impossible to make changes later on.

This means I believe that the UK Ministers, even more than is the case for domestic legislation, need to insist that the issues are fully explored of how EU legislation is going to be implemented, what the models for doing so are, whether they look cost-effective or not and whether there might be less burdensome ways of achieving the policy outcomes sought. This needs to be done before the primary legislation is agreed because in practice the regulation cannot be changed afterwards. The EU Committee is uniquely able to press these issues on UK Ministers at this early point in the process. When the Merits Committee comes to explore them, it can often be too late.

We need to explore these issues between us.

APPENDIX 3: OVERVIEW OF MEASURES MEMBER STATES ARE TAKING TO HELP ENSURE EFFECTIVE REGULATION

Overview of measures in the area of Better Regulation and impact assessment[33]

	Better regulation programme	Specific RIA policy	Obligatory RIA	Alternative instru-ments considered	Guidelines on RIA	Coordinating body for RIA	Consultation part of RIA	Formal consul-tation procedures	Direct stakeholder consultation	Tests of impact on small enterprises	Exemptions for SMEs	*Total Y+(Y)*
Belgium	(Y)	N.A.	(Y)	N.A.	(Y)	(Y)	N	(Y)	(Y)	(Y)	N	*7*
Czech Republic	Y	N.A.	N	Y	N.A.	N.A.	N.A.	N.A.	N.A.	(Y)	N	*3*
Denmark	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	*10*
Germany	Y	N.A.	N.A.	N.A.	Y	Y	Y	Y	N.A.	N.A.	N.A.	*5*
Estonia	N	N	Y	Y	Y	N.A.	N.A.	N	N	N.A.	Y	*4*
Greece	(Y)	(Y)	N	N	N	N	Y	N	N	N	N.A.	*3*
Spain	Y	(Y)	Y	Y	(Y)	(Y)	N	N	N	N	N.A.	*6*
France	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	*0*
Ireland	Y	N	N	(Y)	(Y)	N	(Y)	(Y)	N	N	N	*5*
Italy	(Y)	Y	N	(Y)	Y	(Y)	(Y)	N	Y	(Y)	N	*8*
Cyprus	N	N	N	N	N	N	N	N	N	N	N.A.	*0*
Latvia	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	N	*9*
Lithuania	N.A.	Y	Y	Y	Y	N.A.	N.A.	N.A.	N	N.A.	N.A.	*4*
Luxembourg	Y	N.A.	Y	Y	N.A.	Y	Y	Y	N	N	Y	*7*
Hungary	Y	(Y)	Y	N	N	Y	(Y)	(Y)	N	N	N	*6*
Malta	Y	N.A.	N.A.	N	N.A.	(Y)	N	N	Y	N	Y	*4*
Netherlands	Y	Y	N.A.	Y	Y	Y	N	N	Y	(Y)	Y	*8*
Austria	Y	Y	Y	Y	Y	N	Y	Y	Y	N.A.	N	*8*
Poland	Y	Y	Y	Y	Y	Y	Y	Y	(Y)	N	Y	*10*
Portugal	N	N	N	N	N	N	N	N	N	N	N	*0*
Slovenia	Y	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	*1*
Slovakia	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	(Y)	N.A.	N	*1*
Finland	Y	Y	Y	Y	Y	(Y)	Y	Y	Y	N.A.	N.A.	*9*
Sweden	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	*9*
United Kingdom	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	*10*
Total Y+(Y)	*19*	*13*	*12*	*15*	*15*	*14*	*12*	*12*	*11*	*7*	*5*	

Legend

Y	*Measures exist*	***(Y)***	*Measures planned/ Available partially*	***N***	*No measures exist*	***N.A.***	*Information not available*

[33] Commission Staff Working Paper: Report on the implementation of the European Charter for Small Enterprises in the Member States of the European Union - SEC(2005) 167, 8.2.2005, p. 36.

APPENDIX 4: RECENT REPORTS FROM THE SELECT COMMITTEE

Recent Reports from the Select Committee

Session 2003-04

The Future Role of the European Court of Justice (6th Report Session 2003-04, HL Paper 47)

Remaining Government Responses for Session 2002-03 (7th Report Session 2003-04, HL Paper 60)

Proposed Constitutional Treaty: Outcome of the Irish Presidency and the Subsidiarity Early Warning Mechanism (22nd Report Session 2003-04, HL Paper 137)

Annual Report 2004 (32nd Report Session 2003-04, HL Paper 186)

Session 2004-05

Developments in the European Union: Evidence from the Ambassador of the Grand Duchy of Luxembourg and the European Parliament's Constitutional Affairs Committee (3rd Report Session 2004-05, HL Paper 51)

Strengthening national parliamentary scrutiny of the EU – the Constitution's subsidiarity early warning mechanism (14th Report Session 2004-05,HL Paper 101)

Finland's National Parliamentary Scrutiny of the EU (16th Report, Session 2004-05, HL Paper 103)

Session 2005-06

Evidence by Commissioner Franco Frattini, Commissioner for Justice, Freedom and Security on Justice and Home Affairs Matters (1st Report, Session 2005-06, HL Paper 5)

Minutes of Evidence

TAKEN BEFORE THE EUROPEAN UNION COMMITTEE (SUB-COMMITTEE A)
TUESDAY 14 JUNE 2005

Present	Bowness, L	Neill of Bladen, L
	Brown of Eaton-under-Heywood, L	Radice, L
	Dubs, L	Renton of Mount Harry, L
	Geddes, L	Thomas of Walliswood, B
	Grenfell, L (Chairman)	Tomlinson, L
	Harrison, L	Woolmer of Leeds, L
	Marlesford, L	Wright of Richmond, L

Examination of Witnesses

Witnesses: Sir David Arculus, Chairman, Better Regulation Task Force, and Mr John Cridland, Deputy Director-General, CBI, examined.

Q1 ***Chairman:*** May I begin by welcoming Sir David Arculus and John Cridland. This is the first evidence session of our inquiry. As you know, we are looking into the whole question of how to ensure effective regulation in the European Union. It is going to be a fairly short inquiry because we are under some time constraints. Some in the other place decided that they would like to go on holiday on 21 July and we had been expecting it to be a little later than that. You are going to be very key witnesses for us. We will be talking to others afterwards including, we hope, Günter Verheugen in Brussels who is obviously a key player in this. We could not begin with a better pair of witnesses than you two and so we are very happy to have you here indeed. We are on the record. We will be sending you a transcript afterwards so that you can check and see that your remarks have been properly reflected. I would like to begin by raising what may seem like a rather simple question but underneath it there are some very important issues and that is whether we ought to be looking first at what is "better" regulation or whether we ought to be deciding what is "good" regulation. I know that the CBI is interested in what constitutes good regulation from a business perspective and, therefore, I think we might begin by getting a view from both of you as to what is meant by good regulation. Can the principles for good regulation as set out by the Better Regulation Task Force help us to reach consensus on what a definition of good regulation is?

Mr Cridland: From the CBI point of view, my Lord Chairman, better regulation has to be better than what we have got already. The business community has found so much of what has emanated from the European institutions in recent years frustrating, not so much at a philosophical level but at a practical and pragmatic level, in that the nature of European Union policy making institutions has tended to lead to complex, compromise-based legislation which the business community has found hard to digest. Our expectations are quite modest as to what can be achieved and from that point of view "good" may be the right term, but "better" is certainly a description of where we need to get to from where we are. The CBI is very happy to associate itself with the Better Regulation Task Force's principles. I think those five principles sum up what businesses' ambitions are for a much better approach and philosophy to regulation.

Sir David Arculus: I think the first thing to say is better regulation is for the benefit of all, not just for business. Better regulation is for the public sector, charities, consumers, regulators, to name but a few. What we try not to do is to challenge policy because that is a political decision. What we try to look at particularly is simplification and whether the regulations that are introduced accord with our five principles, which are to be proportionate, accountable, consistent, targeted and transparent. We have found some confusion there. In particular, we did a study recently called *Make it Simple, Make it Better* which was about simplification in whatever way possible in the European Union. I think what we found was that a lot of legislation came about as a result of political compromises. Often it took a long time to come through the system and when it finally hit the ground, it did not exactly hit the ground running because the compromises did not work on the ground, but it was extremely difficult to amend the legislation once it had been introduced. One of the things we have called for is an *ad hoc* mechanism which would enable simplification to take place. There is a great reluctance on the part of members of the Commission, the Council and the Parliament to

re-open compromises that have been made even if they do not work on the ground.

Q2 ***Chairman:*** So we can take it that the five principles that you enumerated in your report are broadly accepted by the CBI?
Mr Cridland: Indeed.

Q3 ***Chairman:*** To what extent do you believe that the United Kingdom Government, particularly during the Presidency, would wish us to make progress on this? What has their reaction been? Have they more or less agreed with your five principles? Have they taken this as a basis for what they plan to do during the Presidency?
Sir David Arculus: Yes. I think there are some signs of improvement in Europe at the present time. The Commission, the Council and the Parliament have signed up to an inter-institutional agreement on better law making which has some fine principles inside it. I would say the Commission is the most committed of the three bodies to the action planned. The Parliament has some considerable distance to go. As far as the Council is concerned, I think there has been a mixed track record. I think the "Six Presidency initiative" is a very good one because what has happened so often in Europe is that a Presidency such as ours has come in with a particular agenda, it has not made a great difference in a period of six months and then somebody else has come in with a completely different agenda. What we have managed to get now is six presidencies all concentrating to a greater or lesser extent on better regulation. I think there is a real chance that things at Council level will improve.

Q4 ***Chairman:*** I am interested that you have addressed immediately the existence of the Six Presidency report which we have read. The thrust of our inquiry is going to be to see the extent to which Verheugen and the Commission will succeed in addressing the points raised by the Six Presidencies because that was a very clear steer. From one's reading of the Commission's document on this, it looks as though they are pretty close to what the presidencies were asking for. I would like to ask Mr Cridland, who presumably saw the Six Presidencies report, whether he thinks there were some areas in which it was lacking emphasis or were there some gaps in there that you would like to see filled?
Mr Cridland: I think if one contrasts the position we now have in Brussels with the position we have in London, the overall scenario, I would agree with Sir David, is very encouraging, the most encouraging we have had, but I think the difference is one of phasing. I think the position in Brussels reminds me of where the position in the UK was three or four years ago. It takes a long time to bed these sorts of initiatives into the body politic. It will take a while before all the key agents of European policy realise this is here and here to stay and not, as Sir David said, just another single presidency initiative. It takes even longer to begin to challenge the culture of regulation making. That has been a problem within Whitehall. It has not been entirely dealt with within Whitehall, but over a period of years I think the Better Regulation Initiative has laid deeper and deeper roots. We are in the early days in Brussels. Although there has been quite a long period of debate about this, I think it is only in the last year that the initiative has begun to root. It is only in the last year that we have seen real ownership in the Commission. I would agree, I think we are now seeing real ownership in the Commission. In our deliberations with the Commissioners, particularly Mr Verheugen, we have been encouraged by that level of engagement, but there is a lot of inertia within the system. It is easy for the CBI as a business organisation to say that Brussels' officials should start with a blank sheet of paper and look at a full range of alternatives to regulation to achieve policy objectives, but the culture of Brussels is to produce Directives. It is easy to say that we now have a commitment to six presidencies and the support of the Commission, but we are in an environment where the Lisbon Economic Reform Agenda has been significantly slowed down and derailed by the inertia factor of individual Member States with their own national interests. I cannot help but believe that when tough issues come to Council and when the Commission proposes simplification measures then that same cocktail will repeat itself, that we will have Member States with national interests in areas of regulation that they will not want to see undermined. Whatever we say about this thrust in Brussels, from the Presidency and the Commission, we have a situation under the powers of co-decision that requires the Parliament to play ball with us and I am not sure the Parliament has as much of a buy-in to the philosophy of better regulation as the other EU institutions have. The trend of direction is very positive, but I think they are some years behind where we have reached in the United Kingdom. We should not be cocky about that, it has taken us a long time in the UK to get there and that culture change has been hard work.

Q5 ***Lord Tomlinson:*** I was there in the days when the CBI did not used to talk to us and that was as recently as 1999. It is great to be talking with you. If you were allocating responsibility for over-regulation, would it be to Brussels you would look for the regulation in the first place or for "gold plating" of the regulation in the United Kingdom? On balance, how would you attribute responsibility? Would you attribute it 50:50, 80 per cent Britain, 20 per cent Europe or the other way round? My second question is specifically for the CBI. Bearing in mind what you have been saying

about how we are making very great progress in the United Kingdom and in London and not quite the same level of progress in Brussels, I was disappointed to read in your note that you noted with regret that the exercise was not undertaken at an earlier point in time, that being in relation to placing this matter on the United Kingdom Presidency agenda for the EU. What steps did you take to try to influence that Presidency agenda which you are now noting with regret here?

Mr Cridland: Those are very fair questions. In relation to the first, I would not want to put a number on it, but I would say that in my judgment the primary responsibility lies with the European institutions. It is maybe not the best use of this evening's time to get into a detailed debate on "gold plating", but I mentioned earlier that business finds some European legislation hard to digest and there are many and various reasons why that is the case. Quite a lot of European employment legislation is written primarily for Roman law, it is written for the Code Napoleon, it is written for an environment of collective bargaining, particularly at national level. So in a number of ways the British Government and the British Civil Service have a job of translating European legislation into a form which is useable to a UK audience. Of course there are examples of gold plating and when that happens it cannot be justified. The CBI is not in any way afraid of stating clearly that gold plating has taken place. If you take something like the Working Time Directive, I would recognise that the UK Government had great difficulty making sense of that Directive in the UK context. Sometimes what people perceive as gold plating is not necessarily gold plating. I think the problems with implementation and the enforcement of regulation have been at the next level down, issues like the fridges mountain because of European legislation, UK officials not getting ahead of the game in building capacity at the practical level for regulations to be implemented in a way in which industry can get on top of rather than gold plating *per se*. On the second issue, I think what we were trying to reflect in that evidence was not a cheap point about responsibility, it was more that we have seen a number of very significant dossiers come through since the Lisbon Agenda was set up which would have benefited so much from the principles that are now being established. If you take something like the financial services liberalisation programme, at the last count I think we had 42 measures. That was a proposal designed to add to GDP growth in Europe, to make the Single Market work more effectively, to provide more options for consumers and more opportunities to business, but it has led to a great deal of regulation, some of which has restricted options for business in terms of market entry and I think will have restricted options for consumers. I think what we were alluding to was that it was unfortunate that the UK Presidency has had to make this a priority at a time when many of the dossiers UK Ministers will have to deal with during the Presidency are dossiers which have gone wrong and which they are having to put right. The best example I could illustrate that with would be the chemicals regulation and the REACH proposals which I think have some potential to be a success for the UK Presidency but which fail many of the tests of these principles. They fail the test of proportionality, they certainly were not targeted and they did not adopt impact assessments.

Q6 ***Chairman:*** Sir David, you mentioned financial services. I understand that one of your conclusions was that the timetable proposed by Lamfalussy was pretty unrealistic.

Sir David Arculus: Yes. I think we felt the timetable was very difficult because there are 42 separate Directives. I think initially none of those Directives had impact assessments applied to them at all. Let me go back to the point about the objectives of our Presidency. I think the biggest point of all is that we want impact assessments done on all new pieces of law coming out of Europe. The second big point is that we want the Council to use those impact assessments when they are making decisions. We need to concentrate on a simplification mechanism for the reasons that I was outlining earlier. We also need to think about this whole issue of alternatives to legislation. One of the things I have been particularly keen on in the UK is that we should think how we can achieve outcomes without specifying the process. One of the studies we are involved with at the Task Force at the moment is on alternatives to European regulation, so it is looking at how you can get there by co-regulation, partnerships, trading agreements, carbon trading, information campaigns, *etcetera*. There are some good examples in place on that. I wanted to go back a little bit on this gold plating question, my Lord Chairman. We have looked at this quite hard and we found it difficult to find evidence of deliberate gold plating, but it was very easy to find evidence of what I call "regulatory creep" and that is regulation that goes beyond the original intention of the law. I think that is often because of a lack of clarity either at Brussels level or at the parliamentary level here and lawyers interpreting the law as they wish to and it becomes considerably more onerous than the original intention. As we move towards Directives coming out of Europe as opposed to regulations, in a way I prefer Directives because it allows more national interpretation, but I think the danger is that there can be over-interpretation. Going back to our legal system which John mentioned, I think it is a particular danger given our system of common law. I think another issue that we do not consider enough is that often in the UK I think we

have got legislation in place that addresses some of the issues coming out of Europe. We tend to think that we need a completely new piece of legislation to accord with each Directive that has come out of Europe. I think often we could adapt what we have got and if we cannot adapt it, we should certainly think about consolidating the old law with the new law and that would help with simplification as well.
Chairman: Maybe we need a definition of gold plating as well as a definition of good regulation.
Lord Tomlinson: Tin plating!

Q7 ***Lord Harrison:*** Could you give us an example of where we might have been able to tweak British legislation so we have satisfied the needs of the Directive without a major shift in British legislation?
Sir David Arculus: Could I give you an example that is coming up in the near future? That is the general duty not to trade unfairly, which is a desirable piece of horizontal legislation that is coming out of Europe. In the UK we find we have got specific product regulation for all kinds of different product areas. So we have got streams of vertical regulation and we are now going to have a horizontal regulation that covers all kinds of trading issues. Do we need both or can we eliminate some of that vertical regulation that we have got? One of the things I have been talking to the Prime Minister and the Chancellor about is what I call "one in, one out", which is this whole idea that when a new piece of regulation comes in you should always look at what you can take away. I think in that particular example it might be one in and 20 out.
Chairman: That would be encouraging. Let us move on to the legislative process.

Q8 ***Lord Brown of Eaton-under-Heywood:*** I come as one very fresh to this whole world of regulation in which you are so deeply immersed. It struck me that perhaps there are two basic aspects of it. First of all, how do we guard against future excessive and indeed obscure regulation? In my other capacity I have seen a fair bit of obscure legislation coming out of Brussels. Secondly, how do we cure or, where appropriate, get rid of or repeal existing such legislation? It is noteworthy that both the CBI and you, Sir David, point to the complexity of a simplification process. The CBI in paragraph 12 of Mr Cridland's memorandum refers to the problems of amending Directives and so forth. It does seem to me that perhaps there should be some way of promoting speedy amending, consolidating or repealing legislation. Is there any concrete proposal for that? Would it not be a good idea?
Sir David Arculus: I think it would be an excellent idea. I think the problem as far as Europe is concerned is that to set up a new body to do this would just not be possible. It would be possible via the co-decision procedure for the Parliament to approve Commission proposals for simplification without amendment, for the Council to agree those and for the proposals to be adopted immediately, but you can see that it is a very problematic process to get all those three bodies to agree simultaneously. I was talking to Mr Verheugen recently in Brussels and he is very enthusiastic about simplification. He has appealed to people for ideas on simplification and I understand he has got something like 250 ideas that can be brought forward, with a very large number from Germany as it happens where the problem is at least as acute as it is here. What I found was he had not really got a method for making those simplification proposals happen. I think this is going to be one of the political issues that we have to address during our Presidency. I think there are two parts to this. The first is that there is a stock of regulation and how you reduce that, which is what I have just been referring to. The other thing is there is a flow of new regulation. In terms of the flow of new regulation, the Regulatory Impact Assessment process which we were talking about earlier is tremendously important because I am a great believer that what gets measured gets done and if you do not measure the cost of it it becomes a "no cost" option for legislators. I think getting the impact assessments done and hopefully having some sort of "one in, one out" process built into them will help on the flow of regulation. The reduction of the stock I think is really a political issue and I have not got the precise solution to that, my Lord, I think the politicians have got to solve that, but it will be a difficult thing to do because of the way the various aspects of the European constitution have been drawn up.

Q9 ***Lord Brown of Eaton-under-Heywood:*** There has got to be some over-arching body between the Commission and the Parliament which has a specific remit to look to consolidation, simplification, appeal, where appropriate, and some process whereby there could be speedy implementation. We have a special parliamentary system in the UK for dealing with legislation which has been declared incompatible with the Strasbourg Convention and there is a fast track means of implementation, but is there no scope that you can see for that sort of approach to Brussels?
Sir David Arculus: I have suggested this, but I have been have advised that it is not possible to establish such a procedure because it is not provided for in the existing treaties. So the only way to do it is to set up an *ad hoc* body of the type I have just described which co-ordinates the activities of the Council, the Commission and the Parliament. That is the problem that the politicians have got to solve. I think it is a real problem because we have got regulations piled on top of regulations. What we found when we did the *Less*

is More study was that a lot of regulations were simply out of date. If we take the Data Protection Directive which had its genesis in the mid-1980s, by the time it was finally introduced in the 1990s mainframe computers were no longer in use and phrases like the "data controller of the organisation shell" were no longer relevant because we have all got distributed computing power, information is being shot about all over the world and people do not know where the information is held. So you get complete Directives which are basically redundant because technology has changed and there is no mechanism at the moment to amend it.

Q10 ***Chairman:*** There has been a little bit of progress on that. I understand that in 2004 the Commission withdrew around about 100 proposals on the grounds that they were no longer topical. I understand that one of the problems has been that Commissioner Prodi set a target of trying to get rid of 25 per cent of the *acquis* between 2005 and 2009, and one of the reasons why not more progress was made was because there was a bottleneck over such a simple matter as the translation of Directives and regulations in the *acquis* into the relevant languages. There seems to be an artificial barrier to making a great deal of progress on this. I think one of the things that we will want to look into in this inquiry is the methodology of removing unnecessary legislation from the existing *acquis*, which clearly is possible, but there are obviously some serious bottlenecks that need to be addressed. Mr Cridland, do you have any view on what those bottlenecks might be in addition to the simple problem of translating into different languages?
Mr Cridland: I would concur with the comments made. The fundamental problem is that the Treaty does not allow for the process we are now looking for unless there is political will to utilise the roles that the institutions play in an effective baton passing, quick solution approach. I think that is where we run up against the disconnects in European policy making. I cannot believe for a moment that the European Parliament would be prepared simply to accept a set of proposals for regulatory simplification without parliamentary scrutiny and if they give them parliamentary scrutiny we are back where we started, the process becomes extremely elongated. I think one of the frustrations for business, very much echoing what Sir David said about European Directives, is that at a time when the business world is becoming ever faster, where the impact of globalisation is that we need to be fleet afoot in making sure that regulation is fit for purpose, the European approach to making regulation does not allow for regular updating and refreshing. E-business would be a classic area. Regulations that they have brought in as recently as the last five years are effectively using old language and talking about old technology, yet it is very difficult to get those removed and updated.

Q11 ***Chairman:*** In other words, at the moment it is the Commission that takes the initiative in the removal from the *acquis*. What you are saying is that the initiative should come from maybe the national parliaments, from governments, are you not? Why is it only the Commission? Is that the problem?
Mr Cridland: I think the Commission needs to be able to ensure that the other European institutions have bought into what it is trying to achieve, such that when Mr Verheugen comes back with his list of simplification measures there is a political willingness for the other European institutions to co-operate to quick effect. You mentioned earlier, my Lord Chairman, the Lamfalussy proposals and I think there is an analogy there. We did reach a point on financial services where the various European institutions accepted that the objectives of financial services liberalisation could not be achieved without a fast tracking which they all had a sense of ownership of. That was quite difficult, particularly for the European Parliament, because it meant a whole set of secondary level regulations have never gone through the European Parliament, but they did accept that. We need an equivalent with the simplification proposals.

Q12 ***Lord Harrison:*** I want to ask about consultation and the role of small businesses. I wonder if you could give some practical examples of how we could improve that consultation because small businesses have fewer resources and, therefore, are unable perhaps to be as fleet-footed in responding to proposals from the Commission. Do you not think that that problem itself generates another, which is the frequently heard criticism that the Single European Market is created for larger and bigger businesses and is inimical to smaller businesses?
Mr Cridland: I do not think the Single Market is by nature inimical to smaller business, but I think there is a degree of unreality about the European institutions engaging directly with small businesses. I just do not think that is going to happen. I think the market share of reaching small businesses at a European level is always going to be very, very small. The reality of the situation is that I think we are back to the national responsibility. Small businesses operate within their communities, they operate within their chambers of commerce and within their trade associations. They might just about pick up signals from local government or Business Links or even national bodies on occasion, but very few of them have the capacity to be active in Brussels in any meaningful way. Where I think our own analysis of the role we all play in the development of European legislation has got us is that we are all too late in the

game. With respect, I think Parliament in the United Kingdom is too late in the game and I think many lobby groups are too late in the game, so we pick up a challenge when it is already too late. A proposal has been drafted in the European Commission and we all find things wrong with it. That is difficult for large companies and impossible with small companies. If we want to address this, the consultative process should be earlier, at the conceptual stage, and when we reach the position where the European Commission is coming to other parties the very necessity of an instrument should be considered. As Sir David mentioned, these might include industry initiatives, commercial initiatives, trading initiatives and codes of practice. I think there is a greater chance, not that European institutions would directly interface with the small business community, but that through the dialogue in Member States small businesses would get into the loop of that debate very much earlier. At the moment that does not happen, it is all too late.

Q13 ***Chairman:*** Sir David, do you wish to add anything?
Sir David Arculus: I think it is interesting that the consultation period we have here in the UK is 12 weeks for new legislation and in Europe it is eight weeks at the present time. Obviously the issue of how do you consult down to the grass-roots is much harder because you have got a much bigger population of organisations to engage with. I think the length of time of the consultation is a relevant factor. I think another issue is that the Commission has put quite a lot of emphasis on Internet consultation and that has excluded some of the smaller organisations. To some extent "consultation fatigue" has set in with some of the European businesses because the feedback has not been particularly good from the Commission. I do not mean feedback in terms of, "We agree with what you say", but feedback in terms of, "We have listened to what you say and this is our response to it". The whole issue of feedback to small business and indeed to large business and explaining why decisions have been made is a very important part of this process and I think without it consultation will be less effective, and I also think Europe will be less democratic without it as well.

Q14 ***Lord Tomlinson:*** On the whole this thing requires a change of mechanism. Did the CBI put any proposals forward to the Convention when it was drafting the new constitutional Treaty?
Mr Cridland: We did, my Lord. We made a number of proposals for embedding some of the principles here, particularly subsidiarity and proportionality, that I think bore directly on the question of regulatory overkill. I think there was great disappointment in the British business community that the Convention did not take up more of those ideas.

Q15 ***Lord Tomlinson:*** I asked the question because I was a member of the Convention and I do not recall having had a direct communication from the CBI about it. I was particularly concerned at one point in relation to financial regulation. I found out that in the end there were in fact two mechanisms of putting forward evidence, one that never came to the members, it just got printed, and one that came to the members. The CBI managed to choose the consultation mechanism that did not actually go to the members of the Convention.
Mr Cridland: We used a variety of routes to interface with the Convention. We interfaced directly with a number of members of the Convention and we also operated, as we should, through UNICE, the European CBI, which had observer status at the Convention. So there were a variety of ways in which those ideas were put across.

Q16 ***Chairman:*** Sir David, one of the messages that we need to send to the Commission is that consultation should be better targeted. You referred to what you called reports of consultation fatigue. Is it to the Commission that we should look to see that that consultation should be better targeted?
Sir David Arculus: I think it should be better targeted, my Lord Chairman. I think there is a bit of feeling that some of the NGOs do a rather better job with consultation than business does. You have got the economic pillar, you have got the social pillar and you have got the environmental pillar. I think often the social and the environmental pillars make their case quite effectively. Indeed some of the institutions that the Commission consults with in fact are at least part-funded by the Commission, which is an interesting quirk, and of course business is not funded by the Commission in that sense. Business and the business organisations need to make their case better and I think the Commission needs to tilt a little bit in their direction, particularly as far as small business is concerned, which we were talking about earlier. If you just think about the mechanism by which UNICE would consult with the CBI and other similar organisations in other Member countries and then they would consult with their members, some of whom would be very small businesses, you can see that it is very difficult to get that process done in eight weeks. I think that is definitely an inhibitor at the present time.

Q17 ***Chairman:*** Would you both sign up to the proposal that the Council and the Parliament should make a real commitment to adopt *ad hoc* structures to expedite simplification proposals? What you have

been saying to us is, that there is simply no other route that you can take given the legal bases?
Sir David Arculus: Yes, I would certainly subscribe to that, my Lord Chairman, and we have called for that in *Less is More*.

Q18 ***Chairman:*** Does the CBI agree with this too?
Mr Cridland: I would agree with that approach. The more logical approach would be to go back to re-writing the Treaty, but I do not think that is a realistic option.
Chairman: That is a subject for another very long debate. I would like to move on to this very important issue of impact assessment.

Q19 ***Lord Woolmer of Leeds:*** Sir David, you made the interesting distinction between not wanting to challenge policy but rather to get the regulation or the laws right. One of the problems in the European situation is that by the time the political compromise has been worked out between Member States and the European Parliament and the Commission and the Council the basic framework of the legislation and even some of the details have already often been worked out or committed and it is very difficult then to untangle those. How would each of you describe the current way in which each of the institutions follow impact assessment procedures? Secondly, is it practical to get in sufficiently early into the process by which draft Directives are emerging to have the simplifying effect that we would all like to see? The very nature of the Draft Services Directive, if any progress is to be made at all, which must be optimistic but difficult, is such that so many compromises may emerge that the draft Directive that could be argued could be extremely complicated and difficult to put into legislative form. I would be grateful if you could give an illustration in relation to the Draft Services Directive.
Sir David Arculus: Shall I just kick off on principles and then Mr Cridland may wish to talk about the Services Directive. In terms of the quality of the various institutions as far as impact assessments are concerned, the Commission have started to experiment with impact assessments in the last couple of years and there is some evidence that they are taking those seriously, and I think rather than criticising it too much we need to nurture them and encourage them. I think in answer to your question, impact assessments should be done right through the process. There should be a partial, initial impact assessment at the beginning before the consultation. After the consultation there should be another one and after the political debate there should be another impact assessment if further amendments are made to the proposals. I think the impact assessments have got to inform the full process that the Commission goes through. I think that message has been taken on board in the Commission and I think the best contribution we can make is to try and really drive that process forward and support it and, if you like, be a critical friend to it. As far as the Parliament is concerned, I have found no evidence that the Parliament is doing impact assessments on any modifications that it makes at all so I think there is quite a long way to go there. In terms of the Council, as you suggest, there are a lot of political compromises involved. I think the more we can get the Council to use the impact assessments to inform their decision-making the better those decisions will be. I am a great believer that what gets measured gets done and I think the whole quality of political debate will be improved if we have gone through this analysis.

Q20 ***Lord Woolmer of Leeds:*** Could you point to any single draft Directive where the Council of Ministers has apparently been influenced by an impact assessment?
Sir David Arculus: Yes, the Chemicals Directive where the initial cost was reckoned to be something like 25 billion and that has been greatly reduced by the various impact assessments that have been involved.
Mr Cridland: I would concur with those views and so as not to repeat them let me just comment with one or two additions. I think the impact assessment that is done is too late in the process already. Typically it follows a decision within an individual Directorate-General that they are going to be proposing a piece of legislation, they have a Directive in mind and they then justify that Directive by seeking to establish that the costs are not disproportionate. That may be laudable but it is not sufficient. They have not done an impact assessment which is comparing a legislative approach with a non-legislative approach or one legislative approach with other legislative approaches. The second addition I would make is that at the moment there is insufficient opportunity for scrutiny of those impact assessments. I agree with Sir David that I think impact assessments came of age with the REACH proposals on chemicals but, my word, it was a painful process. Going back to the Commission and saying, "There is a whole series of questions of assumption about how you have reached these costs and these are really up for challenge," was not initially at all welcomed and at the end of the day some of the impact assessments in relation to chemicals had been funded by the business community which we did not do with any enthusiasm because we did not think it was a thing that we should have to pay, but we came to the view that it was the only way of making sense of the proposals. I also think that within the political process that then ensues impact assessments are completely invisible and both the Parliament and the Council need to get

on board with this. We have the current very live example of the Computer Inventions Directive, which is currently a common position in Council and before Parliament, which is trying to identify—and these are quite intellectually challenging areas—what part of computer design should be patentable. Are there aspects there that are genuinely open source which should be available to all? Is there any intellectual property, particularly in software design? The danger is that a perfectly reasonable common position in the Council will lead to a Directive that is worse than leaving the *status quo* because of this conciliation procedure—a whole series of amendments before the Parliament which are deeply inimical to business interests. It would be our view that if the common position in the Council cannot be sustained, it would be better to have no Directive at all, but of course it is very, very difficult to get a Directive withdrawn, as we discussed earlier, and my point is that in the conciliation process going forward impact assessments, to the best of my knowledge, will play no role whatever. In relation to services, I think services just brings home to me the points that we were making earlier, my Lord, about the fact you can establish the most effective methodologies and the most logical approaches but it is very difficult, with respect, to take the politics out of this. I think the Services proposal was a good proposal. It learned many of the lessons of the problems we had with the completion of the Single Market on the industrial side. I think it has learned some of the lessons we have had with individual proposals like the one Sir David mentioned on unfair commercial practices. It took a framework approach, not a detailed approach, it took a conceptual approach and it took a bold approach of identifying the country of origin proposal as a way of leading to lesser regulation. As a proposal it was very eloquent. What it has fallen foul of is the politics of the European Council and there is very little business can do about it.

Q21 ***Lord Geddes:*** I am very tempted to go on down that route but I will resist the temptation! Sir David, in Annex A of your very helpful evidence of 23 May you set out in those four paragraphs very succinctly the scene, as it were, for impact assessments but, as I read them, you did not really come off the fence, whereas already in your evidence I have heard you beginning to come off the fence so could I tempt you a little further on one side or the other. You say in paragraph 13 that a common criticism of the impact assessment process is that they are not revised. I think I heard you say just now in answer to Lord Woolmer that they ought to be revised at a number of hurdles. Can you expand a bit on that? If I may just go on with a couple more questions. You also state—and this is of course a truism—that impact assessments are prepared by the Commission officials who are responsible for generating legislation. By implication, you are not too keen on that. Is that a fair comment?

Sir David Arculus: I am actually rather keen on that because I believe personally that the impact assessments should inform the making of the legislation. It seems to me that it is sensible that those impact assessments should be done by the officials who are producing the legislation, so I am keen on that and we have exactly the same process here in the UK. The impact assessments are done by individual departments. What we have here in the UK is a mechanism which is embodied in the Better Regulation Task Force where there is the independent body which challenges those impact assessments, and it may be that some mechanism like that might improve things in Europe. I think it is probably premature to suggest that at the present time. I think the job is really to get the impact assessment process working better, and I think as it gets better we may be able to put in that degree of external challenge. However, I think to create a European Better Regulation Task Force at the moment would probably be quite a bold step and I think it would probably complicate the process. In answer to your first question, as far as impact assessments are concerned I think they should get better all the time. They should be done in draft form before the consultation is done. They should be altered after the consultation. They should then be refined as various alternative ways of achieving the outcome are examined by the Commission and then, ideally, at the parliamentary stage there should be further amendments to the impact assessments, but as I mentioned that final stage is certainly not contemplated at the present time.

Q22 ***Chairman:*** I think I see Mr Cridland straining at the leash to challenge Sir David's view on who should conduct the impact assessment.

Mr Cridland: I think there is a real challenge here. The ideal situation is clearly the one where we change the culture to the point where Commission officials instinctively look at a range of policy alternatives and cost those in order to come forward with well-argued proposals, but we are not there at the moment. In fact, we are a million miles away from that although we are heading in that direction. Like Sir David, I am averse to bolt-on solutions because they will not change the culture. What I think I was very encouraged by was the view that one could have external comment and scrutiny of the impact assessment development, which is done by the officials developing the policy proposal. We have suggested that business needs to have a legitimate role in scrutinising and bringing a level of market-based expertise to the proposals that are being

developed. Hopefully in that way we can get the best of both worlds.

Q23 ***Lord Geddes:*** Could I have one short follow-up. I think it was Sir David who mentioned this expression "consultation fatigue". Is part of consultation fatigue, in your opinion, the fact that following consultation—and I will use rather crude language here—nobody pays a blind bit of attention?
Sir David Arculus: I think there is a perception because there are not adequate feedback mechanisms at the moment that that is the case. I think the other issue—and if we go back to the Financial Services Action Plan which was mentioned earlier—is that often too many consultations are happening at the same time and there has not been enough thought about how the consultations build on or interfere with each other. I think there is a timing and a planning issue. There needs to be a holistic look at how consultation is done, particularly in financial services where there has been a huge burden hitting that particular sector. Also the feedback certainly is not as good as it should be at the moment and that is something we are working on in this country and I think it is something the Commission needs to work on as well.

Q24 ***Chairman:*** Could I ask you whether you feel that the introduction of integrated impact assessments means that the Commission may be getting into deep water? This is a very complex matter. Many of us do wonder. From what I read of it, integrated impact assessment could cover a very, very wide range of different Directives in the Commission. How do they pull all this together? In doing so, are they not simply unfortunately delaying the publication of an impact assessment?
Mr Cridland: By integrated impact assessment am I right that you are referring to addressing the economic, social and environmental pillars together?

Q25 ***Chairman:*** Yes, exactly.
Mr Cridland: I think this brings us back to the difficulty of the politics again, that the reality is that virtually every European proposal, whether it is an individual Directive or whether it is a decision of the European Council, appears to have to balance these different concepts and I think the prevailing view in Brussels is that you balance them. Forgive me for being a business representative but the view of the business community is that if you put at risk the wealth creation process then you put at risk the environmental and social benefits that you can achieve, so within our notion of impact assessment we place particularly significant emphasis on cost-benefit analysis and that does not shy away from the fact that there are economic, social and environmental dimensions, but at the end of the day the case for a piece of legislative intervention has to be able to demonstrate that the benefits have outweighed the costs, and that will not always be done by balancing out economic, environmental and social factors.

Q26 ***Chairman:*** You are very insistent that there should be a cost-benefit analysis as a major component of it?
Mr Cridland: Yes.

Q27 ***Chairman:*** Sir David on integrated impact assessments?
Sir David Arculus: Yes, I think that is key, that it should be an integrated cost-benefit analysis. That to me is the bones of the impact assessment procedure. I think it is important to say, though, that the interests of business and the interests of government may not always be the same thing. Business often wants to get an advantage over its competitors. That would be different to the concern of the Commission. The concern of the Commission would be, hopefully, that the economic and productivity environment in Europe should be maximised, so the concerns of business and the concerns of economics are not identical and I think the impact assessment process needs to tease out those things as well. Business is not the only spokesman on the economic agenda. I think there is a bigger game here sometimes.

Q28 ***Chairman:*** Is it then in the nature of a good integrated impact assessment that there should be internal inconsistency in the impact assessment that says it is good from the point of view of one constituency but on the other hand it is not so good from another constituency's point of view?
Sir David Arculus: Yes, I think that is what it is all about. I think you try and sum those up and make sense of them at the end of the day but it is really looking at the impact on all sectors of society.

Q29 ***Chairman:*** All the stakeholders?
Sir David Arculus: Yes.
Chairman: Okay, thank you very much indeed. We have got just under half an hour. Lady Thomas, on impact assessment?
Baroness Thomas of Walliswood: Not on impact assessment, no.
Chairman: On what particular topic?

Q30 ***Baroness Thomas of Walliswood:*** My question was to do with the new European body. We have already discussed that at some length and I would not put that again but there are other process difficulties in the work that we do here in these Committees in attempting to analyse and, as it were, respond to the Government on matters which are going through at a European level. If I take for example the new

proposed legislation for a single credit market in effect, that is a quite a complicated paper anyway and it has had attached to it from the Commission a list of parliamentary amendments. I have been dealing with amendments to bits of paper for 20 or 30 years but if there is just no way that I can put those together, it is just not possible, and the Government has had to rewrite or redraft the EU proposal in order to send it to Sub-Committee G in order that they can look at it, and of course they cannot be absolutely certain of their assessment of how the amendments fit in. This is not the way to conduct business especially when you have to respond within a given time. We are doing a very brief inquiry because we would like to get our ideas to Government before the British Presidency starts (although I suspect this issue will run a bit longer than that as a matter of fact) but still it is an incredibly clumsy way of trying to do business. Is there any way these things can be done a little bit better, in the technical sense almost I mean? It is like trying to wade through treacle. It is just not amenable to reason. We are in the same Committee. We both want to be rational about it but it does not work on a rational basis.

Sir David Arculus: Could I just reply with a question. Do you see this problem arising mainly at the UK level or mainly at the European level?

Q31 ***Baroness Thomas of Walliswood:*** This particular one is definitely at the European level. We have literally received a paper which it is impossible to construe for ordinary folk who are not doing that kind of very specific instruction every day. As I say, I have been amending papers for donkey's years and never found any difficulty with them before.

Mr Cridland: I find it very hard to make any constructive suggestion on how to resolve the matter. The point was made earlier that producing effective, modern legislation in an environment in which there are many interest groups with a legitimate view is more and more complex. When you try and do that at a European level when you already have 25 Member States with different national interests and you have the inherent unresolved tensions between the different European institutions, it does lead to a constant re-fighting of battles. One of the difficulties that the CBI has, and UNICE, has is in trying to make a constructive contribution in debates with the Commission, because we have to allow for how that position will unravel in the Council. In seeking to make a constructive contribution in reaching a common position with the Council, we have to allow for how that will unravel in the European Parliament and where those different bodies are making a legitimate contribution in respect of their role that would not be a problem, but what is a problem is where at each of those stages the same battles are re-fought. So if you take something like the provisions for the Working Time Directive and the inability currently to get out of the log-jam which exists we know very well that certain positions that could be agreed in the Council and might be acceptable to the Houses of this Parliament would actually be rapidly unravelled in the European Parliament where those who are on the losing side of the wicket in Council would re-fight the battles in Parliament. I think that is the position we face so often with amendments and that is very, very difficult to resolve. With respect (and I speak here as an amateur) that does not seem to me to be the parliamentary process that we are used to in this place. Very, very occasionally on a matter of high state perhaps, but normally there is a sequence to the deliberations of the executive, legislative and the different Houses of Parliament that one does not see in the European process.

Baroness Thomas of Walliswood: That was very helpful. Can I just pursue it a little bit. That suggests though all sorts of time constraints on us, and when responding those time constraints do not take into account the process that you are talking about so we are always either three months in advance or six months behind, if you see what I am trying to say, and it is very hard, as you can imagine, to try and make a sensible response on a scrutiny matter. Your submissions are always a model of clarity. I only wish we could get a clear paper down on what the *status quo* currently is at a European level. That is what I am worried about. We will see how we get on with it.

Q32 ***Lord Marlesford:*** My questions are really against the backdrop of the regulatory implications of a Single Farm Payment regime which, as you will know, has caused huge dismay throughout the farming community in this country, and I suspect in some other countries, and I declare my own interest as a victim of it. It seems to me that we really have not made very much progress on the crucial point that Lord Brown was making, which is in a sense if a Commission proposal is obviously going to be an administrative nightmare, how do you prevent it being brought forward without modification or a serious consideration of abandoning it? As a consequence of this, as a possible suggestion, it tends to be left to national governments to make the best of it, which is very unsatisfactory altogether. We have heard about gold-plating. Is there a case for doing case studies to see how different countries have made the best of it, to see whether we can learn lessons even if they are *ex post* between one country and another and how it has been done.

Sir David Arculus: I think some interesting work has been done in Europe on the measurement of administrative costs so that is not the cost of the regulation itself but it is the cost of conforming with it, claiming the money, doing the inspection, whatever it might be, with the administrative burden

element and, broadly, we have done some estimates of this. We think that of the total cost of regulation about two-thirds is the policy-related costs and about one-third is the administration costs. In fact, the Dutch government have put in place a method of measuring the administrative costs of regulation and they believe that comes to about 3.6 per cent of their gross domestic product and they have set a target over four years to reduce that 3.6 per cent by 25 per cent, so on the face of it that would save about 0.9 per cent of their GDP. But after three years into the four-year process, they find there is an economic multiplier as well because you are taking people away from unproductive activities—filling in forms and checking forms or whatever—and releasing them for more productive activities in the economy. So they have found that apart from a direct benefit there is an economic multiplier taking place as well. The Danes have copied that methodology and the Swedes have copied it as well and various other countries are looking at it. Indeed, in the last Budget the Chancellor did undertake that Britain would adopt the same methodology in the United Kingdom, first of all that we would measure these administrative burdens and then we would set a target for reducing them. You will be pleased to hear, my Lord, that Defra are in the vanguard of that particular process and taking a lead in many respects. I think there is some good work but I am sure you would agree there is a long way to go.

Q33 ***Chairman:*** I am afraid we are going to have to hurry on because we are under time pressure. There are three questions still to which we would very much like to have your answers. The first one you could almost answer with a yes or no. Sir David and Mr Cridland, do I take it that you both will agree that as a matter of routine there should be *ex post* assessment of the regulatory impact? I think I heard you say that you felt this impact assessment is something that is a continuing process going right through to the stage where after implementation you can then take a look and see how that squares with the original impact assessment. You are both signed up to that?
Sir David Arculus: Yes.
Mr Cridland: Yes.

Q34 ***Chairman:*** Okay. The next question is the Commission has come forward with these proposals for a couple of groups, one composed of high-level national regulatory experts to look at both the EU and national legislation. Did you welcome this or is this just a group of talking heads who are probably not going to contribute very much?
Mr Cridland: I would go back to my earlier comment which is I think that they are at the beginning of a long journey and it is going to take a while for those things to embed. Clearly, as Sir David said, we might reach a point in the future where a European Better Regulation Task Force has real impact and teeth but I think you have got to build from the bottom upwards and therefore I would not overstate the significance of expert groups at this point.

Q35 ***Chairman:*** Because they are planning to bring one in this year.
Mr Cridland: I do not want to be unhelpful but I think we should not over-estimate how helpful that could be.

Q36 ***Chairman:*** Sir David?
Sir David Arculus: I concur and agree with that.

Q37 ***Chairman:*** Then I come to the last question I want to put to you and that is the extent to which you believe the European institutions are really co-operating to ensure better regulation. We have the inter-institutional agreement but are you confident that the institutions are talking to each other and trying to get their act together?
Mr Cridland: No, I am not confident. I think the big challenge with European institutions is that they are less joined-up than would be the case with parallel institutions at Member State level. That is not just between institutions; it can be within institutions. I think there is less cohesiveness within the Commission than one would expect between departments of state in a national government. In some of the proposals we have alluded to today—for example the REACH proposals, with the previous Commission there was a particular lack of unity between DG Environment and DG Enterprise which I think was distinctly harmful to a commonsense outcome to those proposals. Things are moving in the right direction. I think the new Commission is more unified. I think from a business point of view the fact that there are a number of Commissioners who have a distinct responsibility for competitiveness issues is helpful. I think that within the Council the fact that the Competitiveness Council now has an over-arching remit over some of these issues is another positive development. I am more minded that we are at a very early stage in making these things work and in Brussels terms this has a long way to go. I do not think in European terms one can ever take the politics out of this. We have seen a measure like the Services Directive, which for the business community seems to us a win–win measure and is something that would add to GDP growth, takes a step towards completing the Single Market which we set out to complete many, many years ago yet it has become a source of great political controversy. I cannot help but fear that in the current European political climate better regulation would suffer a similar fate.

Sir David Arculus: I think Europe is unwieldy, as John was saying. I think there is an increasing awareness that various things need to be done and that Europe is not about states trading with each other and that we are a trading bloc within the whole world and I think that the climate for change and improvement in this area now is better than it has ever been in my opinion, but a lot does need to change. As far as the UK's contribution is concerned I believe that the UK should become an exemplar of better regulation because I think if we do that we are going to have more impact on the European agenda than if we do not do it. There is no point us calling for improvements in Europe if we are not doing things extremely well ourselves in this country and there is no doubt that there are various areas that we can improve on here. In particular, I think the whole issue of alternatives to regulation is something that we can do much better here and when we do it better here I think we can encourage the Europeans to do it better as well.

Chairman: Let's hope the Government has read and marked your good advice on that, Sir David. Thank you both very much for your excellent testimony. This is a good start for us and we shall digest it with great care. If we do have any further issues that arise on which we would like to seek further views from you we will write to you and ask you for your valuable contributions again but in the meantime on behalf of the whole Committee I thank you very, very much indeed. You have been very generous with your time.

TUESDAY 28 JUNE 2005

Present
Bowness, L
Brown of Eaton-under-Heywood, L
Dubs, L
Geddes, L
Grenfell, L (Chairman)
Hannay of Chiswick, L
Harrison, L
Maclennan of Rogart, L
Marlesford, L
Thomas of Walliswood, B
Tomlinson, L
Wright of Richmond, L

Examination of Witnesses

Witnesses: MR JOHN HUTTON, a Member of the House of Commons, Chancellor of the Duchy of Lancaster and MR MARK COURTNEY, examined.

Q38 ***Chairman:*** Minister, Mr Courtney, thank you both very much for coming here today. You are aware of the subject of our inquiry. I think you would like to make an opening statement. I wonder whether in the course of your opening statement, either at the beginning or at the end, you can include, in the information you give us, how it is that it is your responsibility to be looking at the question of "better" regulation?

Mr Hutton: Thank you very much, my Lord Chairman. That is a very, very difficult question for me to answer. When I was asked to join the Cabinet, the Prime Minister told me I would be doing this and I think really that is the only explanation I can provide. In a sense, I guess it is part and parcel of the historic role of the Cabinet Office to co-ordinate activity which is essentially cross-departmental, and the Better Regulation agenda is genuine cross-departmental territory. I do not want to make a long opening statement, I just want to say one or two general words because, certainly, from my point of view I think it is important to see all of this in context. As far as the UK's Presidency is concerned, certainly this Better Regulation agenda is going to be a very important part of the work which we want to carry forward for a number of reasons. I think it is probably very obvious to everyone that there are some major benefits both to the United Kingdom and the European Union if we can make progress in this particular area, in particular around developing the Lisbon Agenda: greater emphasis in the European Union on competitiveness, growth, jobs, efficiency and so on. Just by way of a reference point in this debate, when we were doing some of the work prior to the most recent Budget in 2005—I think David Arculus might well have covered this point in his evidence to you—it was his committee's view, the Better Regulation Task Force, that if we could make the sort of progress he wanted us to make here in the UK on reducing administrative burdens to business, it had the potential to save something like one per cent of Gross Domestic Product here in the UK. I know it is a big leap and people say it is impossible to make that leap, but if one was to make that leap and carry forward that sort of assessment into the European Union context, one per cent of European GDP is over 100 billion euros a year. That is a very, very significant prize for European business to aim for. Obviously it is something which we will not achieve in the six months of the UK Presidency; I am a realist. In terms of setting a medium to long-term direction of travel, however I think that is a very, very significant prize to aim for. Secondly, and this is where the Better Regulation agenda becomes more political, there is a very strong and continuing argument, a theme of present concern about the European Union, about its distance from its citizens and its businesses. I think if you talk to businesses, you talk to individual groups and voluntary sector organisations, often it comes down to this concern about the quality of law-making at the European Union level and, in turn, I interpret that to be a concern about distance, a failure to consult, a failure to be clear at the beginning about these proposals and so on. In some cases we end up with pretty poor legislation. That does not help the argument which Europe needs to make at this moment in time: it is at a critical juncture. I think the Better Regulation agenda can help Europe reconnect with its citizens. Certainly it is clear to me too that "better" regulation can benefit businesses and consumers, so we are not against regulation. The Better Regulation agenda is not, by definition, a deregulatory agenda, although there are aspects of that argument too. One needs to just think about the opening up of the telecoms industry, the single market and Common Customs Union even. All of these are very significant benefits for business here in the UK and the European Union and came about through legislation at the European Union level. The breakthrough was predetermined on getting the regulation in place. We are pragmatic about this agenda. We absolutely subscribe to the basic principles which I know others have given evidence to you about in terms of the general

direction of travel, but we are not anti the principle of regulation in the European Union; that would be an absurd position to be in. That is why we welcome the Commission's proposals which they set out in March and, also, the proposals which they set out a couple of weeks ago in relation to improving the Impact Assessment process in the European Union. I think in our Presidency we want to build on both of those. Specifically, in relation to the UK Presidency, we would like the emphasis to be on progress in the use of Impact Assessments, and I think there is a lot of ground we need to make up there. Certainly, we need to see clear proposals coming from the Commission on simplification. I, and I know many others, am waiting to see what happens in September when the Commission come forward with their proposals for not proceeding with legislation that, in the view of the Commission, should not be proceeded with. Clearly that is a tall order, and, certainly, we recognise that is an agenda for more than one presidency. I draw a lot of comfort and strength from the fact that all of the recent presidencies have been willing to take on this debate and to try and advance progress in this area. We are making some small but important steps in the right direction. My overall view is that we have only just started to scratch at this particular itch, and I think there is quite a lot of detailed work to be done both in the UK Presidency and beyond, certainly into the Austrian Presidency and I think further than that.

Q39 ***Chairman:*** Thank you very much. When we had the CBI here before us in our last evidence session, it was very clear to us that what they wanted to see was an effort to establish what "good" regulation was from a business perspective. I sometimes wonder whether there is not a little bit of the tail wagging the dog there. If we are going to define "better" regulation purely in terms of what is good from a business perspective, are we making too narrow a definition?

Mr Hutton: Possibly. This search for the accurate definition here is a bit like trying to define the elephant in the room, you cannot but you know it when you see it. From my own point of view, My Lord Chairman, I am a lawyer by background—I think most of the Committee probably knows this—and this is one of those occasions where I am not too bothered about trying to micro-analyse the definition of "better" regulation. I think, maybe lawyers like to get into that, but I do not want to get into that particular debate. In a sense, it is a bit of a sideshow. What is important is to be clear about the principles which should underpin "better" regulation at the European Union level. I think the principles, for example, which the Better Regulation Task Force have set out, which are absolutely on the button in terms of UK "better" regulation, have a direct read-across to European Union law-making as well. I would accept it is much more complicated at the European Union level because of the size and scale of the terms, particularly around issues about targeting and so on. I think what matters is the approach, the principles and the goal. I think it is probably also likely in the real world of all of this that no-one is ever going to give you three cheers for a piece of European Union law-making, so I am under no illusion about how difficult this task is. It is more than just business. What is important is that the European Union does focus much more as it develops its methodology around Impact Assessment on looking at competitiveness as well as the more traditional focus of the European Union on social protection and environmental standards. I think we have got to look at all of these three big issues together as the central foundation of this new emphasis on refining our approach to Impact Assessment. Business views are very important, of course they are. I hope I made it clear in my opening remarks that this is where I think there is a big gap in the approach which the European Union has taken up until now, and it is a gap we need to close down. Also, it is important to realise, as I am sure the Committee will do, that there are some very wide and important ranges of interest here which we are always trying to balance out. In the European Union there has been a very high importance attached to the issues of social protection and environmental standards, and they are important objectives for us to achieve.

Chairman: If we can move on to legislative processes. As you know, Minister, Lord Brown is one of our distinguished Law Lords, and he chairs our Law and Institutions Sub-Committee. I will invite him to open the batting on simplification and clarification.

Q40 ***Lord Brown of Eaton-under-Heywood:*** I thought, perhaps, before that, Minister, if I can just suggest this: I think we all agree that Brussels produces too much legislation and a great deal of it not very well. Also, once legislation is in being there are really too few corrective mechanisms for changing it, amending it, consolidating it or, preferably, perhaps, repealing it. Just contrasting that with our own, presumably, rather better domestic legislative processes, what would you identify as the key reasons why we do it better and they not as well?

Mr Hutton: I think there are a number of factors here. As the Inter–Institutional Agreement itself made clear, if we are going to make progress on this wider simplification agenda, we need the three key institutions of the European Union to work together: the Council, the Commission and, crucially, the Parliament. I think there is an issue there, particularly for the European Parliament and the Commission. Firstly, in relation to the Parliament, how it cannot operate without the other institutions

of the European Union in developing a clearly designated fast-track procedure for stripping out unnecessary regulation, codifying and simplifying the *acquis*, for example, which is a highly complex area. We do not have fast-track procedures in place in the European Parliament and that is a significant drag anchor on making progress. I do not think we have quite the straightforward hearing in the UK Parliament that many would think and would like. A couple of years ago, for example, we had to take a specific power in NHS legislation to allow the Secretary of State to begin a process of consolidation. I think there are quite a number of areas where there is no specific power, in a sense, to allow that type of codification to take place, and two or three years later there still is not a product around NHS legislation for us to consider; it is a complicated task. I think the problem at the Commission level, until recently, is that there has not been—if I can be blunt—enough of a focus on this as a priority area for the work of the Commission. The Council initiated a lot of the developments in this area a year or so ago and identified a number of proposals for simplification which it invited the Commission to take forward. I think there are 15 or so on the list and to date only about three are being progressed at quite a slow pace. I did say, again, Lord Brown, in my opening remarks, that I think we are making, however, some significant steps forward. The Commission have now recognised that they really want to focus on this themselves. They have invited Member States to identify—we will be doing so in the next few days to the Commission—a number of other specific dossiers which we would like to see progress on simplification with. Again, I think in September we are going to see another set of announcements from the Commission about proposals for further codification and in October on simplification of the *acquis*; all of that will be important. Lord Brown, I am not sure that is a full explanation of your question in terms of why we have not made enough progress, but I think the problem is largely around the complexity of the way the three institutions in the European Union work and a lack of a clear focus on progressing this as an important priority for the Commission. I think we are making steps in solving these problems, but are we where we would like to be yet? I think not.

Q41 ***Lord Brown of Eaton-under-Heywood:*** That is very helpful on the simplification of the problems once the legislation is already in place. In terms of legislating in the first place, I am sure everybody agrees there has got to be more and better consultation, more effective consultation and more and better Impact Assessments. We have now just received 48 pages, no less, of the new guidelines from the Commission on 15th of this month. I think four of them are devoted to consultation. Amongst all that, is there anything which we are troubled by?

Mr Hutton: Yes, I am sure there will be, but I have a horrible feeling, Lord Brown, that the 48 pages from the Commission would probably be a shorter explanation of how you would conduct Impact Assessments than we might have produced in the Cabinet Office. If I can be really blunt, I think there is a mix of myth and mythology here about the European Union as a regulatory body. Certainly, from the figures I have seen I think the real peak in output, as it were, from the European Union in terms of regulatory law-making activity was probably the early to mid 1990s when the European Union was beginning to make very serious progress in opening up markets across the European Union. As I said, again, it required that focus on law-making at that moment in time, otherwise the opportunities would not have been there for business. However, I accept, absolutely, that probably the most cardinal principle of "better" regulation is that you regulate as a last resort and not as a first resort and you do so only after you have excluded other options and you are clear about the cost of the regulatory proposals you are putting forward outweighing the burden and cost to individuals and businesses. My central complaint—if you want to put it in those terms—about European Union law-making is that we have not done that well enough; sometimes we have not done it at all. If one looks at the development of Impact Assessments of the European Union, it has been very slow. I think we have done 60 or 70 in the last two years or so. If I am wrong, certainly I will write to the Committee about that. When one sets that against the thousands of regulatory instruments which the European Union is still responsible for, it is a tiny fraction. We would be in serious trouble as a government, I think any British government would, if it was constantly proposing regulation and new law without telling people what the cost of that regulation was going to be. I believe, very strongly, that we cannot continue to do that at the European Union level. There has to be, and must be, a better way of regulating where we weigh the benefits against the inevitable cost for individuals and businesses. It is that crucial area which I believe, as a Presidency, we should focus on as a principal emphasis at this moment in time and work with other Member States in the European Union who share those concerns and really want to see progress in those areas.

Q42 ***Lord Brown of Eaton-under-Heywood:*** Are there Impact Assessments which lead to the abandonment of the proposed legislation? Are you aware of any such incidents?

Mr Hutton: Sadly I am not aware of any such examples off the top of my head.

Q43 ***Lord Brown of Eaton-under-Heywood:*** One suspects there are few if any, and if that is right, perhaps the legislative process ought to include some independent way of verifying or challenging these assessments which otherwise seem calculated to facilitate the passage of the legislation.
Mr Hutton: I agree very strongly that we need to make sure there is an effective challenge function embedded in the Commission to make sure the Impact Assessments, which the individual directorates-general are producing, are subject to a measure of external scrutiny and audit. That is a feature of our process here in the UK, and I think it has got merit and does and should be explored by the Commission. Certainly, we will be raising this with Commissioner Verheugen during the UK Presidency to see how far we can take that forward. The Chancellor of the Exchequer made a speech at the Mansion House last week where he talked about the importance of making sure there was an effective business voice built into the process of ensuring "better" regulation at the European Union level, and I agree with that too. If one goes underneath the level of the European Union, My Lord Chairman, and looks at the activity which is going on at the Member State level, in virtually all of the Member States, including the new accession countries, you will see activity on the part of the national government to do the sorts of things you have suggested. Step up to the European Union level and it is harder to see a really clear discernible process which looks like that Better Regulation agenda which most Member States of the European Union are undertaking now. The challenge is to make that step up, to translate as much as we can of the evidence bases built up over many, many years about how to try and tackle these problems about the burden, cost and weight of bureaucracy and regulation, with the pursuit of the important social, environmental and business goals which the European Union should set itself.

Q44 ***Chairman:*** On the principle of "What Gordon wants, Gordon gets" as one might say, is he going to rule that a business advisory group be set up? Is that how it is?
Mr Hutton: Certainly we are going to explore that with the Commission over the next few months. The Commission themselves have argued that there should be an external advisory group established. We want to make sure that business has an effective voice in that group. That is where the issue would be.

Q45 ***Lord Maclennan of Rogart***: My Lord Chairman, the complexity and opacity of the regulatory process might be attributed in part to content and in part to procedures. On the content side, I am interested to hear you say that you think there is scope for an independent external check because content is highly political, usually, and one would have thought the complex procedures of comitology of the Union would be the means devised for sifting out inappropriate content. It sounds like a vote of no confidence in the European Parliament, as well, which you are passing. I wonder if an independent external check will not add to the opacity, add to the complexity and, also, be not necessarily devoid of political bias?
Mr Hutton: Certainly I have not passed a vote of no confidence in the European Parliament. I do not think there is a procedure available to me to do that. I am trying to present my honest assessment to this Committee of where I think the European Union, as a law-making body, needs to do a better job. That is a discussion which is quite lively now across the European Union. There are Member States of various different traditions looking very actively at this agenda. Certainly it has been discussed actively in the European Parliament. I think there are concerns right across the European Union about this question of how we can regulate activity in the European Union in a better way. I just want to clarify one thing, I have not argued today that there needs to be a new external independent check or body created to rubber stamp or verify European law. What I have suggested is that in terms of strengthening the Impact Assessment process in the European Union, I believe it would be of benefit if there was, as it were, a challenge function built into the work of the Commission itself to look at the Impact Assessments which policy officials themselves are putting forward. It would not be acceptable in this country, and I do not believe in Parliament, for an Impact Assessment to emerge from government without there being a proper measure of check on the numbers, a proper system of looking at the calculations and making sure they hold water. That is a function which the Cabinet Office does through its Better Regulation Executive, what used to be the Regulatory Impact Unit. People will have arguments and a different view about how effective that scrutiny role is, but I believe it is essential to have that second go at the numbers because there is otherwise the very obvious argument that he who proposes is also going to be he who justifies. I do not think that is acceptable as a general principle.

Q46 ***Lord Maclennan of Rogart:*** Minister, have you considered what might be the personnel consequences of such a proposal if the work of the Commission was to be examined in this way? In another sub-committee we took evidence that one and a half members of the Commission were dealing with weapons of mass destruction. I would like to know how you are going to find people to deal with every single proposal which is under scrutiny without

creating a new bureaucracy to take on the bureaucracy?

Mr Hutton: I have not drafted a personnel plan or done the numbers on who should be employed in this body, I accept that. Just to put it into context, the Better Regulation Executive in the Cabinet Office is seventy five people, and they are working very hard to do a number of different functions, part of which is looking at the Regulatory Impact Assessments which other departments are volunteering to go alongside their legislation. I do not believe it would require the creation of a new tier of bureaucracy in the European Union. All I would say to the Committee is that there are difficult choices but, on the one hand, we cannot argue the case for better EU law-making, and then, I would say, deny the European Commission the tools to do the job properly because the job has to be done. The only people who can do it, because the Commission has the power of initiation, ultimately, are the Commission. We are either going to will them the means to do their job or we are not. If we do not will them the means to do the job, the job will not be done.

Q47 ***Chairman:*** Before I ask Lord Marlesford to ask his question, can I see if I can get this clear in my mind. What you are saying, Minister, is that the degree of independent thinking which might be sacrificed when those who propose the legislation also carry out the associated Impact Assessment is not so great that you think it would be better to have it done entirely separately?

Mr Hutton: I think there is a genuine difficulty in outsourcing the Impact Assessment, generally, and putting it in a place outside of the Commission. I do not think that will be a very sensible thing to do, and I do not think anyone has argued for that particular proposal. I think there is an argument—there should be one—about how strong the Commission arrangements are, and how robust they are, in terms of challenging the various DGs in their proposals. That is an absolutely legitimate role of the Commission; in the same way that it is the legitimate role of the Cabinet Office to do that function here in the context of our own domestic government. It has to be done by someone, that is all I am saying. I do not see anyone doing that at the moment. I believe there is an issue there to be addressed and we will have discussions with the Commission on this point, and we will look to see if there is a sensible way to proceed. I am saying in a long-winded way, and I am sorry if I have to argue this point, I think we need to strengthen the Impact Assessment procedures which apply within the Commission. I am offering this as one way of doing that and I am sure there are others who have a different view.

Q48 ***Lord Marlesford:*** Starting from Lord Brown's questions, I was impressed with Sir David Arculus's five principles of "good" regulation which seem to me quite often themselves filter out a proposed regulation. If, in fact, the Cabinet Office, and of course there are a huge number, obviously subject them to any impact you get from industry and all the rest of it, if you come to a conclusion that a particular regulation proposed is very ill-founded on regulation grounds alone, is there perhaps a case for you, as a Member of the Cabinet, representing HMG to attend the Council meeting concerned—which might be quite a different subject—and say: "We, Britain, think this is a bad regulation because it is a bad regulation. We are not here to discuss the policy content". So it would be a new face at the table and they might be very surprised, but at least it would be a new angle of really attacking, very selectively, certain of the least well conceived regulations which come out of Brussels?

Mr Hutton: The UK Government should always say no if that is the right answer to a proposal from the Commission in relation to the UK national and our view of what it means for the rest of Europe as well. I have been to the European Union Council meetings and I have said that to proposals. I am sure other Ministers have had a similar experience. I think they would be genuinely very surprised if I turned up at any Council formations because I am not a member of any Council formations, and, believe me, I am not bidding to be one.

Q49 ***Lord Marlesford:*** The Government can decide.

Mr Hutton: Yes, certainly, the Government decides who its representation is, but in relation to the Better Regulation agenda there is no obvious Council formation for that other than, for example, the Competitiveness Council and the individual formations of a Council when dealing with specific proposals. That is where most of the "better" regulation business is currently contracted, the Competitiveness Council, for example and ECOFIN and other bodies. Certainly it would be the case that if it is the view of UK Ministers that on the grounds of cost, burden, or any other objections to a proposal from the Commission we should say no, we do say no.

Q50 ***Lord Tomlinson:*** My Lord Chairman, as one who does not take as broadly a critical view of all European regulation as apparently Lord Brown did, can I suggest that the Commission is a fairly easy target to take a hit at, particularly as they are not here. My real question is in terms of the EU doing a better job in terms of regulation, do you not accept that all this allegedly poor regulation, or in reality poor regulation, has formed part of a legislative pattern that has been through the Council of

Ministers, because the Commission do not have a vote in the legislative process and you do? So instead of taking a pop at the Commission, can we just accept the *mea culpa* from Government, commit ourselves to better action inside the Council of Ministers, and perhaps, in order to allow the citizens to take a closer view of this, volunteer to your have your legislative work in public?

Mr Hutton: You are absolutely right; it is the Council, and the Parliament in some cases, who are the law-making bodies of the European Union, not the Commission. If we are complaining, and clearly you have done in the past—and I think this Committee is likely to or has done already—about aspects of European regulation, the buck stops here, of course it does, and I accept that. Therefore, it is not just the Commission that needs to sharpen its focus, it is the Council and the Parliament too. This is a collective responsibility. I think the failure has been a collective one and the things that need to be done to correct the failure are not exclusively the preserve of the Commission. They are equally issues for the Council and the Parliament to address, and I do accept that.

Q51 ***Lord Tomlinson:*** Would it help to meet in public so we can all observe you?

Mr Hutton: I think it probably would. I think that would be a very important and useful step forward. Those issues are currently being discussed and I think the Prime Minister has made it clear that he has no objection to that. Of course, it is not just a decision of the Presidency, it will have to be a decision of the Council as well. As far as the UK is concerned, we do not have any issue of principle.

Q52 ***Lord Hannay of Chiswick:*** Minister, two questions, the first one relating to Impact Assessments. Presumably the Staff College asks the question what happens to Impact Assessments when the consequence is negative is the proposal not made, not that it comes forward with an Impact Assessment that says it is going to be negative. Is there any evidence that this does happen in the Commission? If it does, is not part of the problem that there is a lack of transparency and publicity given to the way the systems work within the Commission, there is an inadequate understanding of the fact that quite a lot of things, I believe from my own experience, do get filtered out but that nobody hears about it other than via arcane means of press leaks and so on? One part of it might be if the Commission made its procedures a bit more transparent and were to publicise occasions on which they conclude that on the basis of Impact Assessment they are not going to proceed. My second question is our old friend "gold-plating". Have you got to the bottom of this problem which seems to bedevil all British/EU debate? That is to say, the Commission says that we gold-plate things and many of the problems are our own fault, and we say but it is because they draw things up so sloppily that we have to do it a bit more meticulously and so on. It does seem to me that somehow we have to get to the bottom of that particular argument because at the moment it is actually deeply damaging to both parties. It is one of these lose-lose situations because we end up putting through legislation and shrugging our shoulders saying, "It is all the Commission's fault", but then we discover that has a very negative impact on the view of business here and British public opinion. They, on the other hand, genuinely seem to think sometimes that we have brought our own problems upon ourselves by being over-detailed. Have you reached any conclusion yourself on that?

Mr Hutton: I think the view of the UK Government is that there is no widespread evidence of gold-plating EU legislation in transposing those laws into a domestic context. Certainly businesses have expressed a lot of concern about this and that is why, the Better Regulation Executive—Mark Courtney will correct me if I am wrong—produced some guidance for government departments very recently, in March of this year, on this whole issue about how to transpose European Union Directives into the UK which tries to nail this problem down. The concern is on occasion we have stepped further and wider than the terms of the Directives themselves and the single thread of the guidance was for UK law-makers to stick as closely to the wording of the Directives as we possibly can. If it would be helpful, Lord Chairman, I will certainly make available to the Committee the guidance that has gone round so that people can see how, in a sense, we are trying to address these concerns.

Q53 ***Chairman:*** That would be very helpful, Minister.

Mr Hutton: I am quite happy to do that. I think the answer to that second question, Lord Hannay, is there is no evidence I am aware of that there is a widespread problem of gold-plating. We do try very hard to get it right and we have seen no evidence of it. In relation to your first point about transparency, again, Mark Courtney might have some more specific examples. I, almost by definition, would not be aware of the proposals that are dropped having never seen the light of day because the view is that they would not be sensible to proceed. They would not reach ministers at that point. There may be examples of where the Commission has looked at issues and dropped them but genuinely I am not aware of those. I am not aware of any formal proposal that has got to the stage, for example, of being discussed in the Council where the Council and/or the Commission have taken the view that it is not sensible to proceed because the costs outweigh the benefits. I have never

been party to any such decision of the Council where we have come to that view, I think partly because we have been handicapped by a lack of effective Impact Assessment. I do not know whether Mr Courtney has an example, I cannot think of one, where a proposal has got to that point and then been dropped on the grounds you have indicated.

Q54 ***Lord Hannay of Chiswick:*** The Chemical Directive in a way is a case like that.
Mr Hutton: It has not been dropped. The REACH Directive is the best example I would give to the Committee of where you have an Impact Assessment that is beginning to make a difference in the Council. The benefits to the UK and the European Union chemical industry will be significant because of the improvements an Impact Assessment will make. That is a sense of the sort of progress that we would like to see. The proposal has not been dropped. There has not been any agreement on it yet and we hope to get one during the Presidency. We are waiting to hear from the Commission in September, I think, about the proposals that they are now not going to proceed with because they do not think it is worthwhile proceeding with them for a variety of different reasons. Certainly we are looking forward to seeing what they have got to say in September. I do not know whether, Lord Chairman, it would be appropriate for me to ask Mr Courtney to—

Q55 ***Chairman:*** Entirely appropriate.
Mr Courtney: There is one clear example from last year where the Commission did an Impact Assessment on a proposal to harmonise standards for interactive digital television and on the basis of the Impact Assessment they decided they would not do that, they felt that market developments would take care of that. That is the only one that I am aware of since the Commission has been doing Impact Assessments where it has got that far. It may be the case that proposals just have not got as far as Impact Assessment because they realised they were not going to meet that sort of test.

Q56 ***Chairman:*** Thank you very much, that is helpful. Before we go on to the next question from Lord Geddes, can I just interpose one here. Forgive me if you may have touched on this, but I am not sure that you have. Do you feel that the Impact Assessment is a process that is one that should be a continuing process going right through to the post-implementation stage, in other words that you need to look also to see how a post-implementation Impact Assessment squares up with the original Impact Assessment?
Mr Hutton: Yes, I think we should always do that.
Lord Geddes: I fear, my Lord Chairman, I must duck the privilege of asking a question otherwise I shall be extremely unpopular with my predecessor on the Woolsack. If I am allowed to be excused, I hope the Minister will understand.

Q57 ***Chairman:*** You are indeed. He has probably missed the most searching question of all. We shall see what your neighbour, Lord Harrison, says next.

Q58 ***Lord Harrison:*** Minister, I wonder if you share with me the view that sometimes we miss the obvious, that is the establishment of the Single Market is itself the greatest act of simplification and clarification, especially for business, that we could possibly undertake. In the light of that, I wonder whether you would reflect on another of David Arculus's good ideas, which is that from time to time when we are in the act of transposition of Directives or Regulations, Directives in particular, into UK law we should use existing UK law which can sometimes be adapted rather than actually making fresh law which seems to be the kind of gold-plating which people object to. My second question is that we have not mentioned at all the position of small businesses, SMEs, and it is frequently heard that when we talk about regulation, bad regulation falls disproportionately on small businesses. We have had a submission from the FP, the FSB, the PCC and the CBI which has a number of bright ideas, one of which is that the Commission should take on board within the Commission from time to time secondments from small businesses. I do not know whether we do that in the DTI. Could you reflect on the important role of small businesses and how sometimes they appear to be disproportionately disadvantaged?
Mr Hutton: We certainly do that. That has been our approach in relation to better regulation at home. I think it applies with knobs on in relation to the European Union as well. The vast majority of businesses in the European Union are small and medium-sized enterprises and it is from them that the lion's share of the creativity and innovation comes and, therefore, Europe's hopes for a stronger, brighter, economic future. I think it was David Arculus who in relation to the UK estimated the burden of regulation is probably experienced four to five times more greatly amongst smaller businesses than amongst larger businesses that have the basic business infrastructure to cope with regulation more efficiently and effectively. We have got to be mindful of that. Certainly as we take forward the Better Regulation agenda in the European Union we must have a very clear focus on the needs of small businesses and I think the work that David has done here in the UK gives us a very strong platform which we can take forward. I agree very strongly with you,

Lord Harrison, about the European Single Market. It came about through the regulatory law-making route, there was no other way to do it, and business has benefited enormously from that approach in the UK. It has added very significantly to the GDP of the European Union, hundreds of millions of pounds, and it is a great triumph of European Union law-making, if you like. As we know, triumphs like that tend to get pocketed and people move on, and with them all the problems that they see around them. We have got to have a balance in this debate and that is why I did emphasise at the very beginning of my remarks the importance of getting regulation right. This is not about saying that we should never regulate because then I really do not think the European Union can proceed with all of the objectives that we want it to succeed with. We have got to get this balance right between burdens and cost of compliance and the need to regulate in the first place. I agree with that point too. Your final point about should we try to use, wherever possible, existing UK legislation to secure these objectives, I agree we should if we can but this is a fiendishly complicated area of law and we have got to make sure that the instrument we choose to use is the one that can most benefit British business in this regard and obviously secure all the objectives set for that policy in the European Union. I think it is likely that we will need European Union law-making to secure the benefits that we want to see. Wherever possible, of course, we should go for the least burdensome regulatory form that we can choose.

Q59 ***Baroness Thomas of Walliswood:*** What you have just been saying reminded me of the fact that certainly here in the UK, and no doubt in other Member States, a good deal is taken on board by business in terms of self-regulation in one form or another, or codes of practice or codes of conduct, they are given various forms of names. Is this something which is done at European level and does it offer a way of bridging this gap between imposing regulation which is expensive to conform to and at the same time protecting, let us say, consumer interests on the one hand or the environment on the other?
Mr Hutton: I think the European Union does take advantage of those sorts of options. Mark might have more detail on that than I can provide this afternoon. I think I can probably only add to what I said earlier. The European Union has got to accept the discipline, as we do here—we try to—that we regulate as a last resort, not a first resort. That has got to be the starting point in this debate. If there are other options available to us, of course we should fully explore them. Quite clearly, if we decide not to regulate, not to create new legal obligations, then we are proceeding in a very different direction. I do not know whether, Mark, you have any examples of where the approach of the European Union has been to adopt guidance or codes rather than law-making?
Mr Courtney: Some of the examples may well be known to this Committee. The agreement on teleworking, for example, and social partners was an example of self-regulation. There is an example going through right at the moment on energy using products where the overall standards have been set by legislation but it has been left to self-regulation to determine the means of meeting that. The Commission say they are certainly going to give a renewed look at this and try to come up with more examples where that can be used.

Q60 ***Chairman:*** Thank you very much indeed. Does anybody have any further questions they would like to ask on methodology? We seem to have covered those questions fairly well. In which case, I think I would just move on to the last one in that section which we have not covered, which is whether you have any views on some lessons that might have been learnt from the Lamfalussy process in the area of financial services. We had a certain amount of discussion with Sir David Arculus and Mr Cridland from the CBI last time. We would be interested to know what your thoughts might be on that, Minister.
Mr Hutton: I think the view of the UK Government is that the Lamfalussy process works very well in relation to the securities market and we would be very pleased to discuss with the Commission and other Member States how we could apply some of the lessons from that more broadly across the European Union. We are very positive about the Lamfalussy process, we think it has produced significant advantages and we would like to explore its wider application.

Q61 ***Chairman:*** In the context of the discussion we had about Lamfalussy with Sir David and Mr Cridland the question arose about just how complex consultation can get. Sir David was saying that often too many consultations are happening at the same time and there simply has not been enough thought given to how the consultations may tread on or interfere with each other. There is a real problem of timing and planning. Have you ever come across that problem before?
Mr Hutton: I have not myself but I am aware of the point that you have raised. It might be helpful for the Committee if I were to write with further and fuller particulars about the Lamfalussy process. It is an area where Her Majesty's Treasury obviously has the lead in relation to the financial markets. I would be very happy to communicate with the Committee.

Q62 ***Chairman:*** That is perfectly acceptable, thank you very much indeed. Could we move on to the issues of governance? I think here it would be good if we could focus a little on what the UK Presidency really expects out of its six months' focus on this, what you are hoping to achieve. You have already said in your opening remarks that this is a large and complex issue and of course it goes beyond a single Presidency, but what is your minimum shopping list, so to speak?
Mr Hutton: I think there are three things on my shopping list. Firstly, we would like to see improvements to the quality of new EU legislation through better consultation and Impact Assessment. We will do a number of things in this area. We want to see the Commission stand by its agreement to produce Impact Assessments for all of its new proposals for legislation this year. As I said earlier, improved guidelines on Commission Impact Assessment were published on 15 June and we broadly welcome that. We lobbied very hard for that. We would like to see significant process on the REACH Package during our Presidency as well. During our Presidency the Commission has also pledged to withdraw unnecessary pending legislative proposals, especially if they have not been accompanied by proper Impact Assessments. We really would like to see progress in that department as well. I understand there was an initial screening exercise that identified about 202 proposals adopted prior to 1 January 2004 that are currently pending and the Commission, as I said, is going to announce which it is not going to proceed with in September. It is clearly a very important piece of work going on within the Commission and we will be supporting Commissioner Verheugen and his colleagues in bringing that work to fruition. The second thing on my shopping list is simplifying and reducing the quantity of existing EU legislation, which is something that Lord Brown referred to earlier. We would like to make progress through the UK Presidency on the simplification of proposals resulting from the Commission's rolling simplification programme that they launched in 2003, 17 of which are pending before the institutions of the Union: for example, the Driving Licences Directive and the recast of the Framework Directive for vehicle type approval. We would like to see progress in that area. I referred earlier to these 15 proposals that the Council identified some time ago and we wanted to see progress but there is very little progress, I am afraid, with those 15. Three of those have been included in the Commission's current work programme on medical devices, plant protection products and the processing of waste oils. The Commission's draft data for the informal Competitiveness Council in July has promised further progress on the other 12 priorities, for example including reporting requirements for the incineration of waste and food labelling. We would like to see that whole list being progressed. Finally, we would like to see the strengthening of the regulatory framework as well as one of the outcomes of the UK Presidency. The Commission has agreed to deliver a methodology for measuring administrative burdens in Impact Assessments by the end of 2005. That would correspond to the UK Presidency and we would like that work to be done. The Commission has started a number of pilots and the UK is working with other interested Member States to help the Commission with its methodology and in the measurement exercise. Largely as a result of pressure that we have applied, the Commission does have a target for delivering an interim report in October which will then go on to be endorsed at ECOFIN in November. It is not just the generalities that we want to make progress with. Notwithstanding the limitations that are built into a six month Presidency, we do want to make progress and be seen to be making progress on this agenda. It is something that people have been talking about in the European Union for a very long time and, as far as I am aware, the last four or five Presidencies have taken on the Better Regulation agenda and, as I said at the beginning, we are making progress now. I think now is the time to touch on the gas a little bit.

Q63 ***Chairman:*** That is quite a large chunk of the objectives that appear in the famous Six Presidencies' Paper.
Mr Hutton: I think it is all of them.
Chairman: We wish you luck in that case. Has anybody got anything else on that particular issue?

Q64 ***Lord Wright of Richmond:*** My Lord Chairman, I wonder if I could ask the Minister, to what extent do you think the Commission genuinely appreciate and sympathise with our approach or do they regard it as a rather tiresome inconvenience? I am not suggesting that it might be either of those extremes but do you think that the Commission are really wedded to this process of better regulation?
Mr Hutton: Yes.

Q65 ***Lord Wright of Richmond:*** You do?
Mr Hutton: I do believe very strongly that certainly Commissioner Verheugen is and he is very well placed to develop this agenda, as indeed President Barroso himself is. I do genuinely believe that this is beginning to be a shared agenda across the European Union and in the Commission. It is not just an Anglo-Saxon obsession: that is very clear to me, and I think we should proceed on that basis. We need to have allies for this approach, we need to build up alliances in the European Union, and we are determined to do

so because we are doing it very much from a pro-European perspective. To be honest, if we approach it from any other perspective at all it will disappear.

Q66 ***Lord Tomlinson:*** It has been said to us, particularly by the CBI, that better regulation often means less regulation. I think it would be of enormous symbolic significance if during the British Presidency, besides improving the quality of the new regulation and weeding out proposals that are there in the pipeline, we could actually cull some of the dead regulation. I was greatly encouraged by Lord Triesman before he became a Foreign Office Minister, when he was merely speaking for them, when he promised me during a debate that I would not be disappointed. Can you encourage my optimism to believe that cull is still going to take place? I hesitate to ask him now he is a Foreign Office Minister.
Mr Hutton: I think he is going to be a very, very good Foreign Office Minister. I think David Triesman is quite right, we do need to see progress in this area. In this debate, because it has been such a perennial debate, it is important for there to be some symbolic acts of progress. I believe if there is one way to puncture the cynicism that often surrounds this debate, it is to see a concrete result. I have tried to make it clear to the Committee today that we are not going to operate the UK Presidency at the level of a generality, we must ground it in some specifics. I would be absolutely delighted if we could have a symbolic totemic result along the lines you have described. We need to work with the Council and the Commission to secure that result, but it is what we want to see.

Q67 ***Chairman:*** Thank you very much indeed. We are coming fairly close to the end of our time with you, Minister. There is one question which I would like to put to you about the connectivity of EU institutions, the three of them. You have already said in answering Lord Wright that in your opinion the Commission is really signed up to the idea of improved regulation and is looking at sensible ways of achieving that. From your perspective, do you see any signs that the three institutions of the European Union actually talk to each other and have a shared agenda amongst themselves? You said that, yes, the Commission and Commissioner Verheugen and President Barroso are signed up to this, but are they talking to the Parliament, is the Parliament talking to the Council and is the Council talking to the Commission? Is it joined-up?
Mr Hutton: They are talking to each other. How joined-up it is, I would probably be able to really tell you in a few months from now. I think there are differences and that is clear. Within the European Parliament there are concerns about what this agenda means and we have to deal with those concerns. I think that is why, as I said in answer to Lord Wright, our view of this is that we should approach this from a very strong pro-European perspective, and we are going to do that. I think that is the way to engage our colleagues in the Council, the Commission and the Parliament. It is not about dismantling the *acquis*, it is not about a full-on onslaught about what it means to be European, but the language is changing and the dynamic is changing. I think we have gone from the perspective of maybe a couple of years ago when there were not many people talking this sort of language in the European Union to now where I think it is probably the common language in the European Union. We should seize that opportunity and make as much progress as we can. There are discussions taking place but we will have to wait and see how effective those are.

Q68 ***Lord Hannay of Chiswick:*** Why is it that the Economic and Social Committee, which in theory ought to be a useful body for pushing forward this agenda, is neither seen nor heard from, nor considered to be useful by anyone at all?
Mr Hutton: I am not sure I know the answer to that question. It is not a Council formation, is it?

Q69 ***Lord Hannay of Chiswick:*** But it has business representation on it.
Mr Hutton: It does.

Q70 ***Lord Hannay of Chiswick:*** And it has the professions representation on it in theory. Now it has a lot of new Member States who are believed to be in favour of lighter regulation, so in theory it ought to be capable of being a pressure group immodestly in the right direction but it does not seem to actually function in that way.
Mr Hutton: I must say, Lord Hannay, I do not really have the answer to that question; I wish I did. It is clear that is something we will need to think about. Because I do not know the answer to that question I am not sure I want to continue to draw attention to my ignorance!
Chairman: I think the Economic and Social Committee live dangerously. I do not know what their future is at all.
Lord Hannay of Chiswick: You try and abolish it!
Chairman: I know.
Lord Dubs: As part of better regulation!

Q71 ***Chairman:*** It certainly will not be up to me to try to abolish them but there are many people who think that is what should happen.
Mr Hutton: I think abolishing it is probably above my pay grade, my Lord.

Q72 ***Chairman:*** Does anybody else have any questions they would like to put before we let the Minister go? If not, thank you very, very much indeed for your very full answers to our questions, it has been an extraordinarily helpful session. We will send you the transcript to look through and make sure that your views have been properly reflected. Thank you, Mr Courtney, for your help. Thank you very much indeed, Minister. We do sincerely wish you good luck with your agenda during the Presidency and while you are beavering away at that we will be ready with some choice comments about how we see the whole regulation issue and we hope it might be helpful to you during the Presidency.
Mr Hutton: We look forward to your report.
Chairman: We shall be publishing our report before the summer recess. Thank you very much indeed.

MONDAY 4 JULY 2005

Present	Bowness, L	Harrison, L
	Dubs, L	Maclennan of Rogart, L
	Geddes, L	Marlesford, L
	Grenfell, L (Chairman)	Thomas of Walliswood, B

Examination of Witness

Witness: GÜNTER VERHEUGEN, Commissioner for Enterprise and Industry, examined.

Q73 ***Chairman:*** Commissioner, as Chairman of the House of the Lords Committee may I say how very nice it is to see you here, and may I thank you very much for giving us of your valuable time. I think the last time we sat across the table from each other was when we were discussing enlargement, but that was some time ago.
Commissioner Verheugen: And a different issue!

Q74 ***Chairman:*** And a rather different issue, yes! As you know, we are conducting this inquiry in the House of Lords into the whole question of better EU regulation, more effective regulation, and obviously you are absolutely the key person for us to talk to on this because we know that you have it very much at the top of your agenda. We have had the benefit of reading the recent Commission communication, which is extremely valuable, plus your own note to us in response to our asking you to be with us. Commissioner, would you like to make an opening statement?
Commissioner Verheugen: Yes, please.

Q75 ***Chairman:*** Please go ahead. We are on the record.
Commissioner Verheugen: Lord Grenfell, honourable Members of the Lords Select Committee, I am delighted to welcome you to Brussels on behalf of the European Commission. I am very pleased that the subject which has brought you here is an aspect of our policies that is extremely important for the Barroso Commission, and a top priority. It is also a top priority for me as the Vice President, responsible for Enterprise and Industry, in particular Better Regulation. Only a few days ago I was in London to discuss the priorities for the UK Presidency with your Government, and it will be interesting to tell you that it was one of the main topics during our discussion in London last Friday, and perhaps the only clear result of our meeting, that the Presidency and Commission are fully in line and share the same commitment here. Over the last years we have cooperated very closely with the United Kingdom Government to stimulate new initiatives to improve the regulatory environment for European businesses and for citizens in general. This spring the Commission has launched a new set of actions to strengthen regulatory reform as a key contribution to the Lisbon Objectives in order to create higher growth and high quality jobs. On that occasion President Barroso and I have emphasised that we can only succeed if we unite our efforts to achieve Better Regulation both at the EU level and in the Member States. It is also in that context that I very much appreciate the opportunity to discuss Better EU Regulation with you, and I will be pleased to answer your questions. Let me at once say, that when we started the Better Regulation policy in the Barroso Commission I made the point that this is one of the most important elements for the implementation of the Lisbon Strategy, the strategy for growth and employment. That was based on my experience as a politician for more than 30 years, and I can tell you that if you discuss with every citizen, but in particular with entrepreneurs and companies, "How do you see the European Union, and what is in your view the biggest problem that you have with the European Union?" you normally get the answer, "The European Union is over-regulating and over-regulated." Whether that is true or not I do not comment, but it is a perception; it is a Europe-wide perception. I believe that that perception has a very strong damaging effect, in two respects. It has a damaging effect for investment and consumer confidence and it has a damaging effect, let me say, for the public image of the European Union itself. Since the recent events in the last couple of months, the importance of the issue is not less; on the contrary, it is now even higher on the political agenda, because we must understand that that is something that we can deliver relatively early. We can show that we respond to the concerns and the recommendations of the citizens and that we really want to make a difference. For instance before you came I had a meeting with my higher officials responsible for the Better Regulation process to make sure that we can present progress soon. It is difficult. Everybody in principle agrees on better regulation, and when we discuss it with my fellow Commissioners nobody would say, "Yes, yes, but my part of this must not be touched," but in practice the services are reluctant to agree. I also want a convincing list of pending proposals which will be strengthened or simplified or modernised—and I hope it will be possible. The pending proposals we

have in the European Parliament and the Council are 215. I can clarify here that you might have different figures, but this is the problem with the computer software which our Secretary General is using, that if there is only a small corrigendum in a proposal, you just change a slash, or something like that, then it is a new proposal. So firstly I got the figure of 900 proposals, then I got a lower figure and in the end it turned out to be 215. So these are the proposals that are part of the process of screening pending legislation. However what should be clear is that Better Regulation is an issue of the highest political importance, and not only economically important but also politically important, and that is the reason why I put it at the top of my political agenda and have given it the highest possible priority.

Q76 ***Chairman:*** Thank you very much indeed, Commissioner. We will obviously come to the simplification issue in the course of our discussion with you. In the written evidence that you have provided to the Committee for the inquiry you answered questions about definitions, and I do not think we need to go through that again, what the definition of Better Regulations is. A rather general question to start with. We have read the six Presidencies' Report with great interest, and then of course subsequent to that your own communication. I wonder whether you found that the six Presidencies' recommendations mostly fitted in with what you were aiming to do, or whether there were some areas in which you think that Member States are either asking too much or they are going up the wrong track? We are very interested to know, from the point of view of the British Presidency, whether there really is a very strong measure of agreement between what you have been recommending and what the six Presidencies said they wanted to see the Commission do.

Commissioner Verheugen: Let me say that the Joint Statement "Advancing Regulatory Reform in Europe" has been an important contribution and stimulus to discussions in the EU Institutions and the other Member States. Important themes from this statement were reflected in the Communication on Better Regulation for Growth and Jobs in the European Union that President Barroso and I presented on 16 March 2005. My personal impression is that there is a different level of awareness among the Member States. Some Member States have a very strong commitment and a well-developed policy, like the United Kingdom, like the Netherlands, like Sweden. Some other Member States, like Germany, have good intentions but so far no results; and the majority show, let me say, only limited interest. But nobody is against. I must say that political pressure from the Council is not very strong—not yet. I expect it to become stronger. Pressure from the Parliament is growing, and that is interesting because the Parliament is not normally against Better Regulation—on the contrary, Parliament likes it. But, yes, there is growing pressure from at least the bigger groups in the European Parliament for Better Regulation in the sense of less regulation, which is not completely the same, of course, and that it should be taken very seriously. What I will try to do during the British semester is build a strong alliance, to join the forces of the Commission, Council and Parliament to create the strongest possible momentum.

Q77 ***Chairman:*** You mentioned the role of the European Parliament. One of the matters that has been of concern to us, and it has clearly been of concern to you as well, is the fact that when under the co-decision procedure Council and Parliament start amending draft Regulations and Directives, historically there has been no real Impact Assessment on those amendments, and you clearly feel that this is something that has to be corrected. Are you confident that the European Parliament is going to play ball with that one and do its best to meet those requirements of Impact Assessments on amendments?

Commissioner Verheugen: As I have said, the picture is mixed. The Council is conducting pilot projects with regard to Impact Assessment, and based on the results of these pilot projects a policy will be developed. The European Parliament is still in a preparatory phase. Under the Inter-institutional Agreement on Better Regulation the three institutions are committed to develop working practices that are compatible, transparent and effective. It is very important that this process be concluded rapidly. The Commission's Impact Assessment system will undoubtedly provide the key elements of the future common methodology. So we are in close contact, we are discussing it, and I will do my best to create a sense of urgency in the European Parliament. Politically my position is very clear. If in the co-decision process Parliament and/or Council produce amendments, changes which are not only just minor but real changes, then there should be an Impact Assessment. If it is not there the Commission will make it very clear that the Commission does not feel that there is a sound basis for a proper decision.

Q78 ***Chairman:*** Thank you. Before asking my colleague, Lord Harrison, to ask you a question, may I follow up very quickly from your mention of common methodology? Is it your intention and your expectation that there will be a common methodology for measuring administrative burdens agreed by the end of 2005? Is that one of your objectives?

Commissioner Verheugen: I would like to, but this is something that is very, very difficult. We are in the process of developing that, we are in contact with scientists and other institutions. I know that some Member States are interested, in particular the Netherlands, and have good experience. I have already discussed it with them and, perhaps based on that, we can develop a kind of standard methodology. My political objective is clear: I want to have a system that is as objective as possible and will allow us to tell Parliament, Council and all the public in clear details what the bureaucratic effect of the new initiative will be, and in the process of Better Regulation what the positive effects of the regulation will be. The Commission is presently running pilot projects on a standard methodology for measuring administrative burdens and I expect results before the end of the year.

Chairman: Thank you very much indeed. Lord Harrison and then Lord Geddes.

Q79 ***Lord Harrison:*** Good morning, Commissioner Verheugen. We have just heard from the European Policy Centre that there has been a welcome change in the culture of the Commission in response to regulation and deregulation, but he also raised the problem of industries themselves, the trade associations, always being defensive. So that the Commission produces a piece of legislation and then it is reacted to by industry. They want to change the culture of industries so that they came forward to you and say, "This is the kind of regulatory framework that would be helpful and positive for our particular sectoral industries," how do you respond to that? Secondly, on small businesses there is a disproportionate effect on small businesses of bad regulation. What do you do about that and is anyone on your staff a person who has run a small business? *Commissioner Verheugen:* Unfortunately, Lord Harrison, this is a question that could give me the opportunity to give you a lecture for at least two hours, but I will try to do it very shortly! First of all, the process of regulation and the role of the industries, there are different views. Some people say that we have a system here in Brussels that is producing legislation on demand, a demand from the industries. So they come and say, "We have a problem, we need regulation for reasons of competition and competitiveness," because they do not trust each other. They normally prefer Directives or Regulations rather than what I would prefer, voluntary agreement. I always say, "This is a matter for self-regulation," and industries normally say, "Self-regulation is a little bit complicated, we cannot control it, we cannot guarantee it." But the same people who are criticising the European institutions for over-regulation during their Sunday meetings will show up on the Monday morning here, in my office, and will say, "We need to bring in other legislation," and they want to change it, and I make it clear to them that legislation on demand is not going to happen. So I would say no. Obviously it is important to take into account the experiences and the views of the industries, and here we have two approaches. The first is a very new one and kind of revolutionary and it is not yet on the table, we are working on it. We will present it in September. It is a major policy document discussing European strategy for industrial policy in the 21st century. I know that industrial policy, from the British Press, is a little bit questionable, but it does not mean old-fashioned industrial policy. What we want to do is to define principles for the European industries, horizontal principles like competitiveness, excellence, innovation and so on, and open markets, but then we want to analyse the situation sector by sector. We will define and identify the weaknesses and the strengths. We will identify possible challenges coming from other competitors, coming from market changes, and so on. We will discuss the facts of the existing regulatory framework, if it is over-regulated or not, if regulation is efficient or not; and we will establish instruments for each sector to make sure that from now on we will have a permanent in-depth dialogue with the sector, and ideally the result would be that we can create a kind of roadmap for the legal and political framework conditions which will be developed because it is important that our industries have legal certainty about what is going to happen and what is not. To give you an example, we have already started to do that for the automotive industry in the so-called Cars 21 group, where we sit together as policy makers, car makers and others and we discuss the political and legal framework conditions for that extremely important sector of European industry for the next ten to 15 years. So that can lead to legislation. So that is already running. I think for SMEs the Better Regulation project is even more important than for large companies. It is obvious that the smaller the company is the higher the administrative burden as a result of legislation. Administrative costs are in relative terms higher for small companies than for large companies. I really wonder whether we need the same rules for very small companies and for huge companies. So that must be taken into account in future legislation. As far as SMEs are concerned, we have a full directorate here in my service responsible for SMEs. I have an SME envoy, a kind of watchdog, and that envoy shall guarantee that the interests of SMEs are taken into account everywhere in the Commission, for instance in legislation, in projects, in programmes, in the way we spend money, and in public procurement. Because what I found when I started here was that everybody was speaking about the SMEs and how important they are, the backbone of the European economy, but in fact it was—I shall

be kind—close to lip service. Very close to lip service. There are 25 million SMEs and they are the strongest potential in Europe for growth and employment. I must tell you that the new jobs will not be created in manufacturing. The reservoir where jobs can be created, that is exactly that—the very small start-ups. So we will come with another major policy document again—I think that will be the beginning of October—with a new strategy to support European SMEs. I will not hide the fact that I have a very, very serious problem here as a result of the non-agreement on the next Financial National Perspective because the financial instruments which I need are not yet in place. As a result of this non-agreement, and the financial structure of the EU, the instruments which we will have to effectively improve the situation over SMEs will be rather limited. Obviously that does not affect the idea of Better Regulation; that is an area where we are in close contact with all the organisations which we have, and we discuss it with them very, very carefully. The instruction that I have given is very clear. The Commission have to take into account the particular problems and the special needs of the SMEs. I am sorry, it was a very long answer but your question was so innocent, and it is a major policy. But I was happy to explain that the role of the Commission makes a difference, and we are really starting to change things here.

Q80 ***Chairman:*** On the question of the financial difficulty there is at least one senior Frenchman who agrees with your analysis, and that is Ernest-Antoine Seillère, which is very encouraging.

Commissioner Verheugen: Not only him. I can tell you that last week I was in Paris and I met the 30 representatives of the biggest French companies. I think the 30 people in the room employ close to four million people, and there was broad agreement on the problems faced.

Lord Geddes: Commissioner, in our earlier discussion with the European Policy Centre they said that in their opinion the climate amongst top officials in the Commission for Better and Reduced Regulation was now very good, but he had his doubts lower down the scale. Would you agree with that and, if you do, how long do you think it will take, with your strong drive, to turn that around? And connected with that question, you implied I think, in your opening comments, that you were looking for a reduction of one-third in the proposed new regulations.

Commissioner Verheugen: No, the pending. I will explain.

Q81 ***Lord Geddes:*** I may have got the figure slightly wrong, but if I could just make my point? That is exactly so, the pending legislation. Two questions on that: one, if that is your drive what is your realistic goal? Secondly, what are your proposals for the existing *Acqui*?

Commissioner Verheugen: On the first question, I have to say that it is a top-down approach. When we started last October, November, the analysis was very clear. The Lisbon Strategy had to a large extent failed. The weaknesses, at least of some major economies in Europe were very clear, and something had to be done and very urgently. I have already told you in my opening statement that I think the perception that European is over-regulated and over-regulatory is a very damaging one, and we have decided to change that. So it is really a top-down approach. But of course all the Commissioners are supporting it and President Barroso only a couple of days ago had a meeting with all the Director Generals and again made it extremely clear to them that this is a top priority of the President of the Commission and that he expects them to cooperate fully. I must say that I have no personal opinion on how that might now develop in units, directorates. From my own services I can say that I am absolutely sure that everybody is strongly in favour and strongly committed, but I do not have enough information, certainly not sufficient information to give you an answer what the attitude of the normal Commission officials is. But my experience in the six years of managing the Commission, if a Commissioner and a Director General agree then normally it is done, and normally there should be no problem. So this time I think we make it. Now the difference: we have three major projects. We have already briefly mentioned the Impact Assessment process for the future, and now we have two projects covering the past. The first part is screening the legislation pending in the Council and the European Parliament, the 215 legislative proposals tabled before 1 July 2004. So we do not screen more recent legislation During the screening we check to see whether or not a proper Impact Assessment was made, but that was very often not the case. We also check to see whether we really need the regulation, as that question was normally not raised. And that is very simple. What does a baker do? He bakes. What does a regulator do? He regulates. So that is clear; that was the view here. I can tell you a very interesting remark from one Director General who belongs to the old school here, the Jacques Delors school. When President Barroso told him and his colleagues that "less can be more" his argument against that was that that is not possible because we have to keep the machinery of the Council running. I think he used the term, in French, the *chauffage*, the engine. This screening process is more or less finalised and we are currently identifying proposals which we can withdraw or modify. Some of them are rather technical but legislation is often very, very technical. But a lot of cases are, let me say, unclear. If there is no agreement with the

Commissioner in charge then at the end of the day I would present it to the Commission and the Commission, as a political body, must decide. Of course that is not the preferred, the preferred option is to do it based on agreement; but if the figures, which I can get, based on agreement are politically not efficient I would bring it to the attention of the Commission as such, the whole Commission. Then there is the second element, which of course is huge, and that is the simplification of the existing *Acqui*. That has already started. We do it sector by sector and so we examine the existing legislation, whether we still need it or whether it is obsolete, which is sometimes the case, whether it can be simplified or whether it must first be modernised. I think that we will present the result of that exercise sector by sector, so we are not going to wait until we have examined the whole existing *Acquis*, but rather present sectoral results and we start obviously with those sectors where we can suspect over-regulation and where it affects European competitiveness. If you have a sector and you have several hundred pieces of legislation, which is the case in some areas of construction and cars, you might have the right to suspect that it could be over-regulated.

Q82 ***Lord Marlesford:*** Commissioner, I was very struck by what you said about the need to improve the image of the Commission in this whole area. When Prime Minister Blair set up his own Better Regulation Taskforce they came up with five principles of regulation, which are rather easy to understand and quite sensible, and actually you have mentioned most of them in your earlier remarks. But the great value of them, it seems to me, is that it enables the people being regulated, whether they are big companies or individuals almost, to challenge, if necessary, the regulations. Do you think there is any chance of getting an agreed EU statement of principles which could then be widely published, so people would feel they had a weapon with which to challenge, and perhaps therefore feel more involved than they have done up to now?
Commissioner Verheugen: What I can tell you is that the basis for the Better Regulation Action Plan of 2002 was related to the discussion of the so-called Mandelkern Group, a group of expert advisers, and the discussions between Member States and the Commission in this high level advisory group, and indeed all parties, involved to identify the following shared principles of Better Regulation in a European context. So this is a shared view; the Member States and the Commission have the same view. The principles are the following: necessity, proportionality, subsidiarity, transparency, accountability, accessibility and simplicity. So I do not believe that there is a need to start the discussion on changing these principles. What we need to do is to see that the seven principles agreed are respected. And as far as citizens' rights are concerned citizens or stakeholders are very much involved here, and we have certainly improved the public consultation process. For instance, we consult the public on new legislative proposals using the internet and other modern ways of communication. I can tell you that in some areas of legislation we have thousands of comments which of course are carefully examined and, as far as possible, taken into account. So I think the principles are there, and if people feel that principles are not respected they can politically intervene; they can approach the responsible MEP, they can approach the Commission and finally they can go to the court.

Q83 ***Chairman:*** On the question of Internet consulting, it is one thing to get thousands and thousands of comments but the key question is what sort of feedback are you able to give people? Is it just a "Thanks, we have read it"? It is a huge task to be able to satisfy the stakeholders that their concerns have really been taken into account.
Commissioner Verheugen: Lord Grenfell, I must tell you that personally I am a little bit reluctant to overpraise the new consultation mechanisms. The result of an internet consultation must be assessed thoroughly. The fact that you get 10,000 similar responses might not mean that this is the view of the public at large; it can, for instance, be the result of an effective lobbying campaign from one particular stake holder. The Commission must never hide behind the results of such consultations. In the end the Commission must take its political responsibility.
Lord Maclennan of Rogart: Commissioner, with respect to the Impact Assessment part of the work on Better Regulation, can you say if it is your hope and belief that simply building upon what has already been initiated by the Commission in its leading role in this sphere you will better satisfy both the client groups and elicit greater institutional cooperation, cross-institutional cooperation, or are you at this time looking for some new way of instrumentally optimising the process which would give a clear signal of new directions? Do you see any opportunity of, as it were, having a planned point of decision that brings people up to a higher level of understanding and of cooperation?
Commissioner Verheugen: I am 100 per cent sure that that will be the case. Impact Assessment is not completely new, as a method; it was done in the past but in a very general way. So now we have introduced two additional elements. The first is the so-called competitiveness test, which is effectively the question what does an initiative mean for the cost structure and the administrative burden of a company on the

ground, which is difficult to achieve but in my view important. The second element is how much bureaucracy will be created in Member States at national level, regional or local level as a result of this situation? If the Impact Assessment demonstrates that you will have additional costs for the industries or for services, the economy as such, even if the Impact Assessment would lead to the conclusion that the competitiveness of our economy is negatively and badly affected it does not necessarily mean that you will not do it. At the end of the day it is always a question of political priorities, and there are always matters which are more important than the cost structure or the administrative burden or the competitiveness, for instance, if there clear evidence that public health or public safety is at risk. But the difference here is if you deliver clear Impact Assessment figures the lawmakers at least know what they are doing. I was not always a Commissioner, I was 17 years a member of Parliament in the biggest Member State, so I know what I am speaking about, and I tell you that I normally did not know what the result of the legislation was that was discussed in the German Parliament. Later I wondered, how do these people know what they are doing? And I came to the conclusion that here in Brussels, where we have a different system, where only the Commission has a right of initiative—that is a very important element here—but that requires that the Commission acts with a lot of care and that the Commission accepts responsibility to give the decision makers in Parliament and Council the opportunity to choose the right path.

Q84 ***Lord Maclennan of Rogart:*** I have a supplementary on that. Are there serious resource implications for the Commission doing this more extensively?
Commissioner Verheugen: Financial?

Q85 ***Lord Maclennan of Rogart:*** Resource implications—personnel, manpower, money?
Commissioner Verheugen: Yes, of course. I think the immediate result is a certain slowness and, yes, it is very obvious. The Commission, compared with the old bakery that we used to have, it is not producing a lot of rolls—small rolls and not many. And why? Because our services are considering very carefully whether to launch a new project or not because now we know that Impact Assessment is needed, it is a lot of work, absolutely no doubt. Money, not so much at stake, I would say; I think we have the money to do the scientific work that is needed. But, certainly yes, the challenge for our services is much, much higher, we have to work harder. So far I cannot see that we have a problem with human or financial resources as a result of the new methodology—if that were the case we would take action. But I have no information that we have those difficulties. But certainly that is something that we will see on a permanent basis now, that the Commission will need more time to produce new initiatives, but I cannot say that I am very, very worried about that.

Q86 ***Lord Bowness:*** Commissioner, not all regulation comes from Brussels and your communication of April has a section on national legislation, and it refers particularly to Directive 98/34 in the power for the Commission and Member States and others to intervene in respect of national regulations in the non-harmonised sector. But it also refers to the Commission possibly expanding the use of that Directive in newly regulated sectors linked to scientific and technological developments to influence the development of national rules. Are you able to tell me how much that Directive is actually used and what the proposals are for the expanded use of it?
Commissioner Verheugen: The Directive in question is used regularly. There are hundreds of notifications from Member States every year. The extension of that exercise that is for the time being only for the general market for goods, the extension to services in my view is an option.
Chairman: Thank you very much indeed. Commissioner, could I, before closing, ask you two quick questions? One is that you have stated in your communication that you will be setting up in the course of 2005 a group of high level national regulatory experts, one of the objectives being that in the end you hope that they will produce some kind of a benchmarking system of good practice. Again, you have spoken of how things have been slowed down because of certain constraints. Are you expecting to establish this group during this calendar year?
Commissioner Verheugen: Absolutely. This is an internal matter for the Commission; it is an advisory group for the Commission. I can do it next week if I wish. So that will be done in good time, and after the summer break we can start to work on it. I see no difficulties. It is an internal matter; it is an advisory group in the Commission so fully in our responsibility.

Q87 ***Chairman:*** The other group, the network of experts, which is mainly focused on scientific input, that too?
Commissioner Verheugen: We are also under way establishing this network or experts. You should not compare the advisory group that we want to establish with the regulatory institution, the British . . .

Q88 ***Chairman:*** The Better Regulation Taskforce.
Commissioner Verheugen: The Better Regulation Taskforce. It has a different approach.

Chairman: Very early on in our discussion this morning you said that what you wanted very much to see coming out of the British Presidency was the creation of an across Europe alliance of governments that would take seriously and carry forward with enthusiasm the Better Regulation objectives. Obviously that is a wish that we would share as well. Without breaking any confidences about your recent meeting in London, apart from that what else would you hope to see the British Presidency do to help you carry forward your objectives?
Commissioner Verheugen: I think that the British Presidency will have to deal with the National Action Plans for implementation of the Lisbon Strategy. I mentioned that the whole thing started not from an economic point of view. We will have those action plans in place by the middle of October and then we will have to evaluate that and I think that the European Council in December, in its conclusions, should especially evaluate the contribution of Member States and make a first assessment. So I think that we should wait until December and we should see it in the conclusions of the European Council in December, based on the National Action Plans, based on the Community Action Plan, and I think the British Presidency should be able to get a somewhat stronger commitment from the Member States to continue with it. But I have to repeat—and it is extremely important—the European legislation is just the tip of the iceberg. The much, much bigger part of regulations is national. I do not know the figures but I think it is one to 10, or even more, and you know certainly that some countries have a tendency to develop European legislation when they transpose it a little bit further.

Q89 ***Chairman:*** Gold plating.
Commissioner Verheugen: Yes, gold plating; that is a nice British word. In the other languages we do not have that!
Chairman: Does anyone have one last question they wish to put to the Commissioner?

Q90 ***Lord Geddes:*** I would ask the Commissioner whether he favours a body to oversee regulation or the deregulation within Europe, or do you think that that will merely compound the regulatory problem?
Commissioner Verheugen: No new bureaucracy and no new body, please!

Q91 ***Lord Geddes:*** I hoped that was going to be your answer.
Commissioner Verheugen: I think that the present institutions simply have to change the policy of bureaucracy. When I started the whole thing of course I have studied the history of reducing red tape and getting rid of excessive bureaucracy, and the history goes back many, many—a thousand years even. I think that the first kingdom to start to reorganise bureaucracy was one of the old kingdoms in Mesopotamia, where they had the huge stone archives. But then it was the Emperor Augustus and everybody failed, all the attempts failed, and why did they fail? I have studied it. They failed because they gave a political impetus and then they created a bureaucracy to reduce bureaucracy, and then of course that has never worked. It is a process that needs permanent political guidance and political control, otherwise the result will be not less bureaucracy but more.
Chairman: Thank you very much indeed, Commissioner; it has been a great pleasure.

Written Evidence

Memorandum from Tim Ambler and Francis Chittenden, Senior Fellow, London Business School, Professor, Manchester Business School

Most observers will be glad that the EU is now following member states in standing back to evaluate the processes of regulation and that assessment processes are converging on a model expected to be similar to the regulatory impact assessment (RIA) system in the UK. A single market should, by definition, have common business regulation, ideally just one set of EU-level regulations which have emerged through EU-wide agreement. Additional or different regulations at state level reduce the commonality of the market, eg professional services. In this respect, the current attempts to appease French voters for the new constitution appear to be increasing, or at least maintaining, national differences within the EU.

Idealistic as the single market is, it is the lode star to which improvements in regulation should be directed. We return to this later in the submission but first one should draw attention to some assumptions made by the briefing paper which need rather more consideration. After a section challenging the unstated assumptions, responses are provided to certain of the questions asked in the briefing paper.

Unstated Assumptions

The briefing paper assumes that the goal is "better" and sometimes "more effective" regulation, which may or may not be the same thing. Although the top of page two does refer to the possibility of withdrawing legislation, the general drift of the brief is that the legislation is both necessary and inevitable. We should only consider how it should come about.

When we say that regulation should be "better", what do we mean? Better for whom and how would we know if it was better? Do we mean more efficient expressed as a ratio of the benefits (measured how?) to the costs (to whom?), for example? Or more effective in the sense that the goals are achieved never mind the costs. If my neighbour's cat messes in my garden, shooting it would be an effective solution but not a proportionate one. And an effective solution to one problem, like shooting the cat, is almost certain to give rise to others, like deteriorating relations with my neighbours. No system of impact assessments currently in force considers knock-on effects.

It seems odd that a whole industry, eg better regulation task forces, has been built on a concept that seems to have no meaning. Perhaps, the regulation industry has become self-serving and has forgotten why it was created.

We do not wish to be polemic about this but the point is important. Somehow regulation is now being presented as a good in its own right instead of a necessary restraint on free markets. From the point of view of maximising GDP and public welfare, the objective should be better business rather than better regulation—by "better business" we means more competitive, profitable and successful business trading without damage to society. In this light, regulation should be seen as an antibiotic. It may be necessary to cure certain ills although sometimes it is better to allow nature, ie the free market, to apply its own treatment. Excessive and unnecessary use of antibiotics, however, is bad for health, reduces the effectiveness of the antibiotics and natural resistance to disease. Similarly regulation should only be used where it is needed and should be withdrawn as soon as possible. In other words, "better" should mean "just enough".

Lawmaking machinery works much like any other factory. The owners like the factory to be fully occupied and productive. The House of Commons passes about the same number of bills each year because the process does not allow more and other regulations are always waiting in the wings for any gaps. The bills have tended to get longer, notably Finance Bills, which inhibits intelligent discussion of the bills, not that such inhibition bothers those proposing the regulations.

So regulation-making has grown in the UK according to production space available. In this regard, reducing the time Parliament sits might be beneficial. Once the UK joined the EEC, now EU, a whole new tier of lawmaking was added. Furthermore a range of agencies have been created within the EU each of whom can create new regulations with little or no supervision or challenge. A recent House of Lords select committee inquiry into regulators[1] concluded—paradoxically—they were regulated by everyone and no one. They suggested that the governance of UK agencies be rationalized and we make the same recommendation for the

[1] Professor The Lord Norton of Louth's (Chairman of the House of Lords Constitution Committee on Regulators) term, CRI Occasional Lecture, 8 September 2004.

EU. The new productive capacity inevitably adds to the stock of new regulation. Withdraw one regulation and another will quickly fill its place.

When politicians say, as most do, that they plan to tackle over-regulation but in the meantime here is another regulation we must have, they are not being cynical: they just have no means of measuring or tackling the problem at the aggregate level. Stopping 10 new regulations in their tracks is pointless if 12 more burdensome and less valuable ones fill their place.

Aggregate methods of control are available (but not "one in, one out" which a moment's reflection reveals to be rather silly) but as the briefing question has not asked that question, we shall not answer it. We would be happy to do so on another occasion. Meanwhile, we should turn to the questions that have been asked in the order they were asked. The numerical system below matches the bullet points in the brief.

We need to replace the idea that regulation is intrinsically good with the reality that it is intrinsically damaging to competitiveness. Regulation is certainly necessary when free markets give unacceptable results but it is a necessary evil, not a necessary good. For example, long-term research indicates that regulation is associated with, and probably leads to, corruption.[2]

Definitions

1. As noted above, in my view "better" and "more effective" regulation are false goals because we should be using regulation to achieve better (ie more profitable subject to meeting EU-shared social standards) business performance. Regulation is a means, not an end. So it does not really matter what "better regulation" means, even if it could be agreed, since it should not be the goal.

2. In the UK, the RIA system probably has ironed out snags in the proposals before they become law albeit at some business cost in terms of consultation and evidence gathering. National Audit Office and our British Chambers of Commerce studies raise the possibility, however, that RIAs have not met their goal of challenging [the need for] regulation but act rather to facilitate its passage.[3]

3. Contrary to widespread belief, it would be better for a larger proportion of regulation affecting business, agriculture etc to arise from the EU and less from nation states. That would facilitate a more truly common market and, provided other activities were found for the national law-factories, fewer laws would be produced in aggregate but with wider applicability. "EU sourced regulations in the year to July 2004 actually declined from 34 to 29 per cent in terms of the number of [UK] RIAs. In value terms, the EU is responsible for 20 per cent of gross cost to business and 34 per cent of net."[4] These figures are compiled from UK RIAs and, as such, represent the UK government's own calculations of the burden from relevant regulations. We have been puzzled by other UK government estimates of the EU share ranging from seven to 50 per cent. These may arise from inappropriate selection of regulations for comparison.

4. The objective should be a radical review of regulation in the aggregate, as outlined above, and not a formulaic but meaningless demand for "better regulation". The "aggregate" means the total system for additions, the current stock of regulation and compliance. The UK RIA system is probably the best model to review individual additions currently in use but it is also ineffective for three reasons: it only deals with additions at the micro level; it may be facilitating rather than blocking unnecessary regulation; and business is concerned with compliance and the existing total stock of regulation even more than particular new regulations. We have something to learn from the Dutch experience of costing and audit but a more radical approach to new regulations, the existing stock of regulation and compliance is needed at the aggregate level.

For example, a time must come, if it has not already occurred, when the need to make sense of the stock of regulations exceeds the need to add to this stock. That would not mean a complete cessation of all new regulation, merely a conversion of some of those resources from addition to review. The UK government's ideas for de-regulation have switched to regulatory reform. In other words, a sector should be considered as a whole to see what can be eliminated or simplified without significant risk. The process is slow but the principle is sound. The EU law-making factory needs to be kept active and RROs (Regulatory Reform Orders) could be a better use of their time than further regulations. The existing 16,000 pages or so of EU law should

[2] Federico Varese "corruption" *The Concise Oxford Dictionary of Politics.* Ed. Iain McLean and Alistair McMillan. Oxford University Press, 2003. *Oxford Reference Online.* Oxford University Press. London Business School. 6 May 2005 <http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t86.e292>

[3] *Evaluation of Regulatory Impact Assessments Compendium Report 2003–04,* Report by the Comptroller and Auditor General, HC 358 Session 2003–04, 4 March 2004.
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Tim Ambler, Francis Chittenden and Mikhail Obodovski (2004), *Are Regulators Raising Their Game?* British Chambers of Commerce

[4] Tim Ambler, Francis Chittenden and Chanyeon Hwang (2005), ibid., p.3.

be reviewed Directorate by Directorate to see what laws can now be eliminated (possibly because business practice has changed), where the EU can withdraw and leave regulation to member states (subsidiarity) and where common law is required consistently across the single market (thereby converting Directives into Regulations).

At the micro level, we have established that EU legislation, EIAs and UK RIAs which should neatly link together, do not in fact do so.[5] In the year to June 2004, only 12 UK RIAs (5 per cent) related to EU Regulations but only two of those 12 were published before the Regulations came into effect. Thus the entire purpose of the RIAs was negated. 99.5 per cent of EU Regulations were not matched by UK RIAs and we were also unable to find linking EIAs. We recommend that a linking database be established as soon as possible.

A comparison of RIAs in 10 EU countries showed that ministers could pick and choose from a menu of analysis techniques to justify their regulations.[6] We acknowledge that one methodology may not fit all circumstances but recommend that a single core format be used consistently across all EIAs and RIAs. This would facilitate intra-EU comparison and the compilation of EIAs.

Legislative Processes

1. The Commission's current proposals are well-intentioned but too tentative. In the real-politick of Brussels they are unlikely to be effective.

2. Speeding up law making is not necessarily a good thing. Germany has a slower process than the UK, partly due to the Lande system, and arguably has better laws as a result. The UK has passed a Criminal Justice Bill almost every year for the past 20 years. Criminal justice is hardly a novel problem but a succession of quick fixes clearly do not fix. A major contributor to national differences within the EU is the concept of directives (or "framework laws" in the draft constitution). These were conceived to get quick agreement to most of the new law, leaving national lawmakers to play in their own sandpits. Whether they really need to transpose these laws separately is not seriously debated. Nation states want to keep their law-factories busy and this is a pleasing way to achieve apparent autonomy whilst at the same time striking down the very commonality that the common market is supposed to be about. It would be much better to throw out directives and framework laws and insist on common regulations even if they take a little longer to negotiate. They would be the better for that in the sense that they would be better understood and more widely applicable.

3. The draft new constitution re-labels the legislation taxonomy but does not simplify it. This opportunity may not be wasted if the draft is rejected. The great majority of what are now termed EU "regulations" are not regulations at all in the sense of RIAs or regulations in the general sense of the word. Less than 5 per cent of UK RIAs apply to EU regulations not because the UK system is falling down but because they are not regulations. In UK parlance they are "Statutory Instruments" and deal with tariffs and prices of agricultural products. The new draft constitution is helpful in seeking to distinguish actual regulations, to be called "laws", from "administrative orders". Directives are to become "framework laws" and we will have both administrative orders and decisions. We need one set of EU laws which apply as written across the EU, Commission decisions for all other technical issues such as tariffs and no directives or framework laws.

Methodology

1. EU governments and associated bodies such as the Better Regulation Task Force are working together to try to evolve shared RIA systems. That is clearly a good thing. The worry is that they will agree, since that will be easy to do, a plausible system similar to the UK RIA but it will be widely acceptable only because serious players know it to be ineffective.

2. EU assessments are mostly conducted according to the guidelines from the Regulatory Impact Unit (RIU—UK) and Commission. See their guidelines for the details. The guidelines are sensible documents and the problems in this area relate to practice, not theory. The main question is whether UK departments, and by inference EU directorates, use the guidelines to tick the boxes and go through the motions to facilitate the passage of the regulation or follow the spirit of the guidelines and seriously consider not regulating, achieving the goals by other means, doing so more simply etc. There are only one or two examples of UK regulations being withdrawn as a result of the RIA system. The EU system is too young to have this track record and therefore one has to rely on UK experience and research by Frank Vibert[7] for a reply. The subsidiarity

[5] Tim Ambler, Francis Chittenden and Chanyeon Hwang (2005), *Is EU regulation good for us?* A Study of EU Regulations in 2003–04, British Chambers of Commerce, forthcoming (June).

[6] A Comparative Analysis of Regulatory Impact Assessment in Ten EU Countries, A Report prepared for the EU Directors of Better Regulation Group, Dublin, May 2004.

[7] Frank Vibert (2004), *The EU's New System of Regulatory Impact Assessment—A Scorecard,* March, European Policy Forum.

question here is misplaced. An EU regulation, or directive, should not even be considered, still less begin the RIA process, if it is not an EU matter.

3. Key features of impact assessments:

(a) Cost benefit analyses are fashionably considered the stuff of RIAs[8] but auditing UK RIAs prompts the question of how useful they really are. Three stakeholders are usually involved: business (farmers, charities etc), taxpayers/consumers and the government department. Typically business is worse off, the department has taken some of the gain for its own costs and taxpayers may be better off in some hard to define way. Costs are easier to identify than benefits. That is why we have come to wonder whether some regulation is really covert taxation: government taking money from business to achieve some social objective. Social engineering is a valid activity for government but it should be financed by taxing the beneficiaries not creating artificial regulations.[9]

(b) The impact of a regulation on competitiveness is hard to assess. One reason why large companies quite like regulation, though they would hardly admit it, is that regulation creates a barrier to competition and especially from smaller firms. As a previous CEO of Asda (Archie Norman) told a meeting in the House of Commons on 31 March 2004, large supermarkets like Asda or Tesco can afford compliance departments which smaller grocers can not. This is an important area for consideration as the nature of regulation is to make business more rigid and change more difficult. This is not good for consumers and taxpayers.

(c) If competition is difficult, social, economic and environmental issues are next to impossible in most cases. Clearly some regulation, such as on emissions, have direct environmental considerations. It would be better to leave the relevance of these wider considerations to be determined case by case according to the regulation.

(d) Risk analysis is another fashionable activity with limited value in most cases. The teacher in charge of golf at a local secondary school tells me he may not take the children out on the course without first conducting a formal written risk assessment. In the minority of cases, risk assessment can be an important part of the cost benefits analysis or, see below, cost effectiveness analysis and in those cases (only) it should be employed.

(e) Cost effectiveness analysis has been omitted but it should not have been. The key question is whether the regulation will, in practice, achieve what has to be achieved at least burden on business. Clearly there is a trade-off: effectiveness can be increased (like killing my neighbour's cat) at higher cost.

GOVERNANCE

(a) The questions on consultation seem to have anticipated the concern that consultation places more of a burden on business than the benefits justify. Clearly this varies from RIA to RIA. One can extrapolate from UK experience to respond to the Select Committee's EU question. The problem is exacerbated for small businesses who do not have time to engage themselves and whose representatives may not understand the issues. The Small Business Service is a well-intentioned initiative but, like consultation, has added to the difficulty, partly due to the inexperience of its staff. Large businesses are therefore able in theory if not in practice to tilt the process in their direction. Recommendation 8 (p4) of the Ambler, Chittenden and Hwang report suggested that reliance on consultation be reduced: "The main safeguard should shift to the appointment of a professional assessor for each regulation who can challenge the need for the new rule, point out failures in meeting guidelines while it is still in draft and prepare, in agreement with the department, a balanced one page summary of the RIA to be sent to all MPs. That will make clear whether the external assessor considers the new regulation justified or not."

(b) UK MPs give RIAs minimal attention when regulations pass through parliament, indeed discussions indicate that few MPs are aware of the RIAs at all. That is why the recommendation noted just above was to send each MP a one page summary. UK MPs are likely to give EU legislation even less attention and one cannot expect the EU parliament to be much more attentive except when special interests arise. Even so, sending one page summaries of impact assessments to MEPs would seem a desirable practice.

(c) One wonders if an EU Commission that can blithely ignore adverse reports from the EU Court of Auditors will be much moved by an EU regulatory oversight body. Even so, we support making the attempt. Such a body should be entirely separate from the Commission and required to report

[8] Graham Mather and Frank Vibert (2005), *Rebalancing UK and European Regulation,* April, European Policy Forum and #5, City Research Series.

[9] Tim Ambler, Francis Chittenden and Chanyeon Hwang (2005), ibid.

directly to the EU Parliament, to avoid capture by the officials and elected representatives engaged in promoting regulation. In the UK, the NAO does, once a year, take an independent look at the RIA process. Compelling the hawks to bring their views constructively together would be no bad thing and, yes, the EU can learn from the UK and US in this regard.

(d) "Commitment to effective regulation" may be a matter of interpretation or semantics. The Netherlands has taken some effective action and the UK makes positive statements of intent; the question is whether reality matches the rhetoric. A fat man may claim to be "committed" to losing weight but not do so. As noted above, we first need to agree the purpose of regulation and how quality, quantity and effectiveness can be measured at both micro and aggregate levels.

(e) Post audit would be good practice and should be conducted, in the first place, by the directorate concerned. The purpose is to learn and improve. Just in case some directorates might be too generous to themselves, their draft post-audits should be checked and verified by the original external assessor and the EU oversight body discussed in (c) above. All regulations should have sunset dates indicating when they should be reviewed or lapse. Dates should typically be five years. In theory, once a regulation has brought about a change of habit, it should no longer be needed. The post-audit should be part of the sunset data review of the need to extend the regulation or allow it to lapse.

May 2005

Memorandum from Sir David Arculus, Chairman, Better Regulation Task Force

Annex A

DEFINITIONS

1. The Task Force believes that its five Principles of Good Regulation are equally applicable to the EU:

— Proportionality—regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.

— Accountability—regulators must be able to justify decisions, and be subject to public scrutiny.

— Consistency—government rules and standards must be joined up and implemented fairly.

— Transparency—regulators should be open, and keep regulations simple and user friendly.

— Targeting—regulation should be focused on the problem, and minimise side effects.

2. The impact assessment procedure is a valuable tool in ensuring these principles are addressed. Done properly, an impact assessment will ensure officials make a balanced, informed choice about whether to intervene and how to do so. Overlapping legislation can prove to be complicated and difficult to follow, therefore simplification and codification can add consistency and transparency and are an important part of delivering better regulation.

3. You ask whether it is possible to assess how much regulation in the UK originates in EU legislation and the relevance of this. There seems to be several contrasting estimates of how much legislation stems from the EU in circulation, which makes it difficult to decipher which figure is accurate. We believe that an impartial assessment is possible, and an analysis which breaks down the figures on a sectoral basis would indeed be useful. A clear understanding of where the bulk of regulation originates would help those of us involved in better regulation target our initiatives.

LEGISLATIVE PROCESS

4. Due to the amount of legislation and proposals currently at EU level an effective simplification and withdrawal process is important. We understand the Commission has recently asked Member States and key business organisations to come forward with proposals for simplification and withdrawal, and DGs are taking steps to consult stakeholders on this. We approve of these steps as it is vital that stakeholders are involved in the process—those affected by legislation are best positioned to identify overly-complicated or unnecessary provisions.

5. We feel that the Commission has done a lot of worthy work in identifying proposals for simplification but more needs to be done to actually deliver these proposed reforms. The current simplification process is complex and can be lengthy, and it is of little benefit to have a backlog of proposals identified for simplification without having the apparatus in place to be able to take action. For example, in June 2004 the Dutch and Irish Presidencies wrote to members of the Competitiveness Council, asking them to submit a list of simplification proposals and 330 proposals were received. Of these, only 15 were endorsed by the Competitiveness Council

and only three of these have actually been included in this year's annual work programme. What will happen to the other proposals and how can they be taken forward?

6. Our report on simplifying EU legislation states the need for an institutional mechanism to give effect to changes. We stand by our recommendation that the Council and the Parliament should meet their commitment under the Inter-Institutional Agreement on Better Lawmaking to adopt "ad hoc" structures to expedite simplification proposals.

7. Although we have identified the need for the simplification process to be speeded up this should not come at the expense of the Principles of Good Regulation. If managed correctly, there is no reason why legislation could not be simplified without sacrificing scrutiny, transparency and accountability.

8. Care should also be taken when looking to implement EU provisions into UK law. Efforts should always be made to tweak existing UK legislation before consideration is given to drafting brand new UK legislation.

9. Our current study on EU consultation has looked specifically at the Lamfalussy process to see if there are generally applicable lessons that can be learned. A conclusive evaluation of this relatively young process is difficult at this stage. It is certainly an innovative way of streamlining the legislative process. Stakeholders reported that the process was generally sound but was undermined by cultural differences, political pressures and national interests. However, a general criticism (although not aimed at the Lamfalussy procedure itself) was that the implementation dates in the Financial Services Action Plan are unrealistic.

Methodology

10. Our understanding is that Impact Assessments (IAs) are prepared by those Commission officials who are responsible for generating the legislation in the first place. The Commission has stated in its recent Communication titled "Better Regulation for Jobs and Growth" (March 2005) that all proposals published in its annual Work Programme will be accompanied by a "Road Map" and all will be subject to an IA—we welcome this. The Work Programme contains legislative commitments so it is vital that a thorough assessment and consideration of all methods of delivery has been undertaken before such a commitment is made. Officials must be sure that intervention is absolutely necessary and that an alternative regulatory tool is inappropriate before they decide to legislate.

11. The Commission now has inter-service groups to work on IAs. We approve of this arrangement as it gives other DGs the chance to challenge the lead officials' assumptions, to offer a wider perspective and to share best practice. It is also important for stakeholders to contribute to the process. An IA should always be included as part of a public consultation to facilitate this.

12. The Commission has been updating its guidelines on producing IAs and we expect to see this guidance published in May. It is therefore difficult to comment on the IA process in too much detail until we see this document. However, we are aware that the number and quality of IAs that the Commission has produced is improving.

13. A common criticism of the IA process is that IAs are not revised following amendments to proposals by the Parliament and Council. This is a concern as substantial changes can be made and it is poor practice to implement legislation without analysing its potential impact. All three institutions have signed up to the institutional agreement in which they support the use of IAs. The actual buy-in to this differs between the institutions and it is important that all three main bodies who are responsible for the legislation coming out of the EU take their commitments seriously.

Governance

14. In our view, proper consultation plays a key role in developing better regulation by helping to ensure that proposals are technically viable, practically workable and command public support. In other words, good consultation serves a dual purpose by improving the quality of the policy outcome and, at the same time, enhancing the involvement of interested parties and the public at large.

15. We have heard reports of "consultation fatigue". Clearly, consultation is not an infinite process and a time comes when a decision must be reached. However, we feel that the problem of "consultation fatigue" could be mitigated if consultation exercises were better targeted in the first place and stakeholders could see that their responses had been listened to and had made a difference.

16. We would be wary of recommending a new body to oversee regulation in the EU. There may be a case for extending the powers of an existing body—possibly the Secretariat General—but there is a danger that creating a brand new body would simply create another level of bureaucracy. In any event, the EU institutions work under fairly independent autonomous remits, managing differences thorough consultation and dialogue. Introducing an overseer onto this structure would be counter-cultural and may be counter-productive.

17. Regarding commitments to effective regulation in Member States, the Commission's recent "Better Regulation" Communication contains a table listing better regulation measures taken by each Member State. It paints an interesting picture and clearly some Member States have a long way to go.

18. We believe that EU legislation should be routinely reviewed after implementation to assess its impact. It is important to assess whether the policy objectives have been met, whether there have been any unforeseen consequences or if any further action is necessary. A review is also needed to check the validity of initial IAs and ensure the on-going viability of the IA process. It would seem sensible that the lead department has responsibility for this, with input from other DGs and stakeholders as required.

May 2005

Memorandum from the British Chamber of Commerce (BCC)

Introduction

The British Chambers of Commerce (BCC) comprise nationally a network of quality accredited Chamber of Commerce, all uniquely positioned at the heart of every business community. Currently over 135,000 businesses benefit from membership of 61 chambers in our Accredited network from growth orientated start-ups to local and regional subsidiaries of multinational companies in all commercial and industrial sectors and from all over the UK.

The BCC believes that complicated and costly regulations are one of the main barriers to business growth, especially for smaller companies. Indeed the total cost of regulations introduced on British business since 1998 is £38.9 billion,[10] of which 29 per cent[11] originate in the European Union.

In theory the benefits of regulation should be greater than the costs. Yet it often seems to businesses that the cumulative burden is discounted, the dynamic effects on their competitiveness are ill understood and the benefits that are claimed to justify the regulation are inadequately quantified.

Figures from the International Monetary Fund demonstrate the potential boost to the economy that a genuine reform of the regulatory regime could bring in Europe, in terms of both GDP and productivity gains.[12]

Regulatory reform is a pre-requisite to achieving necessary levels of policy-making efficiency. And a policy environment that contributes to the Lisbon objectives of growth and employment can only be created if each of the three main EU institutions is sincere and resolute in its pursuit of regulatory reform.

The BCC therefore welcomes the opportunity to contribute to the European Union Select Committee's inquiry into regulation in the EU. In the following paragraphs we aim to answer the questions posed (although not always in the order that they are posed).

Definitions

1. The BCC believes the following actions should be undertaken as a matter of routine if we are to have more effective policy-making at European level:

Initiation: competitiveness must be the primary consideration for Commission officials when drawing up the annual work programme, devising framework programmes and drafting specific policy proposals.

Alternatives to regulation: regulators should do the unthinkable and question the need for regulation. Self regulation; co-regulation; information; education; awards and other incentives can be just as or more effective. The European Commission has opted for alternative forms of regulation in a few instances (food and cars) and this has proved to be extremely successful.

Consultation: an ongoing dialogue throughout the drafting (and implementation) process with key stakeholders, not least the SME community, will increase the likelihood of policies achieving their aims. Further measures are required to ensure that SMEs are adequately represented and consulted at EU level and, when developing rules and regulations on employment laws, small businesses should have a bigger say. It is imperative that SMEs are central to the Commission's proposed new European Partnership for growth and employment if it is to deliver the necessary reforms. Only by engaging with more innovators and entrepreneurs will policy makers discover new ideas and solutions.

[10] British Chambers of Commerce Burdens Barometer 2005.

[11] "Regulation: another form of taxation?" UK Regulatory Impact Assessments 2003–04, Tim Ambler, Francis Chittenden, Chanyeon Hwang, British Chambers of Commerce 2005.

[12] "When leaner isn't meaner—Measuring Benefits and Spillovers of Greater Competition in Europe," IMF, 2003.

Cost benefit analysis: the benefits of regulation should justify the costs. A rigorous system of impact assessment must quantify the costs of Commission proposals and Parliament and Council amendments in a consistent and transparent manner. Impact assessment is key to more effective policy-making.

Simplification: policy objectives may be attained more efficiently through the simplification of existing legislation.

Review: review clauses should be built into EU legislation by the Commission. The Parliament must thereafter play a greatly enhanced role: re-examining the original aims of the legislation, assessing its effectiveness in meeting those aims and analysing any unintended consequences for SMEs and, indeed, other stakeholders. Competitiveness must be the primary consideration when reviewing existing policy initiatives.

Implementation and enforcement: the transposition deficit continues to distort the internal market. It is imperative that individual member states implement EU legislation promptly if SMEs, in particular, are to be able to buy and sell goods and services across borders. The Commission must ensure even transposition across the EU and consistently take measures against member states that fail to comply with their obligations.

2. There are various estimates of the percentage of UK regulation originating in Brussels, ranging from under 10 per cent to 70 per cent. We believe the most accurate is by Tim Ambler and Francis Chittenden in the BCC's RIA report of March 2005 who set it at 29 per cent (down from 34 per cent the previous year). What is important however, is that any regulation, whether it originates in Brussels or Whitehall, is as simple and as light touch as possible and that it is consistently and fairly applied across the UK or the EU as a whole.

3. The BCC believes that the UK should focus on embedding competitiveness testing in the regulatory impact assessment process; pushing for a more systematic use of impact assessment in the Council and the European Parliament; and continuing work on simplification.

Legislative Processes

1. Commissioner Verheugen wrote to EU member states on 28 April launching a new simplification exercise (as promised in the Commission's communication on Better Regulation of March 2005). Whilst we support simplification in principle, we are concerned that the Commission has not yet taken adequate measures to fast-track the implementation of the Council's simplification recommendations of December 2004. Not only that but the deadline for proposals is too short and the Commission has given no guidance whatsoever as to how to compile suggestions for simplification. Happily for businesses and their representative organisations in the UK, the DTI has sought to do just that. Nevertheless it is likely that the Commission shall receive candidates for simplification that were already identified by the Dutch presidency initiative but did not make it into the top 10'. This seems to be a political exercise that could detract from the implementation of the Presidency initiative. We hope that the UK presidency will press the Commission to finish the first job before embarking on another. Businesses are keen to see the fruits of a simplification exercise make a difference on the ground.

2. The BCC believes that it is possible to simplify law-making without sacrificing scrutiny, transparency or accountability. The draft constitutional treaty builds on the simplification of the co-decision process first embarked on in the Nice treaty whilst improving scrutiny, transparency and accountability. To speed up the law- making process, one of the objectives of the Lamfalussy process, can however have a negative impact on scrutiny. Indeed some of the criticisms levelled at the Lamfalussy process are that it makes the impact assessment process more difficult and that the European Parliament is not been sufficiently involved. The BCC believes that the principles underpinning the process however are sound: regulators must have access to and are regularly advised by people who have an intimate knowledge of the market they are regulating; these people must also be involved in the implementation and the cooperation between national administrations should be vastly improved.

3. The draft constitutional treaty rationalizes and renames the types of legislation from 15 to six. That said, the six different procedures have not in themselves been simplified.

Methodology

1. The European Commission has a adopted a system of impact assessment based on international best practice. Current guidelines date from October 2004 (although we have been promised a revised version since the beginning of the year that is now expected towards the end of May). These are an improvement on the earliest methodology and we particularly welcome the introduction of impact assessment road maps' to the Commission's 2005 annual work programme and the clarification they provide of officials' preliminary consideration of legislative or non-legislative policy options. The BCC would nevertheless like to see the following action to strengthen the process:

Competitiveness proofing must similarly be integral to the whole policy process and, within this, policy makers should not lose sight of the particular sensitivities of small businesses, which require specific consideration during the impact assessment procedure. Initial impact assessments should answer the following small business specific questions:

What is the benefit of compliance to SMEs (apart from avoiding the penalties)?

Conversely, will it (the policy initiative) hinder business growth or reduce owner-managers' willingness to pursue growth?

Will it disadvantage EU small businesses relative to global competitors?

Will it contribute to an environment that encourages innovation?

Could any new requirements be integrated into existing ones, rather than creating additional compliance costs and burdens?

Will it lead to disproportionate administrative burdens for SMEs?

If these questions are not asked systematically, it could perhaps be the role of the SME envoy to ensure that they are being asked by the relevant Director General on a case-by-case basis. We would suggest that social and environmental impacts also be addressed on a case-by-case basis.

Although the system is in its infancy, it is clear that some DGs are following the guidelines more assiduously and systematically than others. There still needs to be a cultural shift in many DGs and for that to happen further resources should be devoted to training.

2. There is little indication that the Council or the Parliament is yet systematically referring to Commission impact assessments, or that they are developing procedures for evaluating their amendments to legislative proposals, as foreseen in the 2003 Inter-Institutional Agreement on Better Lawmaking. Some MEPs have stated quite clearly that they do not believe that impact assessment of their amendments would be feasible, despite what the Secretary General and the President of the Parliament have to say on the matter.

Governance

3. As stated earlier, the BCC believes that regulators must have access to and be regularly advised by people who have an intimate knowledge of the market they are regulating; and that these people must also be involved in the implementation of the law in question.

4. National parliaments and the UK in particular could and should improve scrutiny procedures for proposed European legislation, and the impact assessments of the proposed legislation. However we do not believe that EU institutions should be accountable to national parliaments for the effects of regulation. First the European Parliament needs to put in place a system whereby it can assess the impact and effectiveness of regulation and next there needs to be an independent body monitory the system across the three main institutions.

5. While decisions taken thereafter in the Parliament and Council will of course remain political, amendments are more likely to be constructive if politicians are able to refer to an optimum amount of information concerning the issue in question. This requires extended impact assessment. The creation of a central, co-ordinating body to oversee and support impact assessments for all institutions will help to ensure that analysis contained in the assessments is objective and has a strong influence on decision-making. We would argue that this body should be independent from, but available to, each of the three main EU institutions. One possibility would be to explore the advantages and practicalities of linking it to the European Court of Auditors. We believe that, if it has a streamlined structure and remains focused on a remit of overseeing and facilitating impact assessment, the costs of creating this agency would be more than recouped through the greater legislative efficiency it would yield.

6. According to the European Commission, only Portugal and Cyprus do not have any regulatory reform commitments. That said it is difficult to assess how effective each member state is in its commitment. The BCC therefore supports any efforts to streamline the impact assessment process across the European Union and to develop a single methodology.

7. The BCC agrees that post audit would be good practice and in line with recommendations made by Tim Ambler, London Business School and Francis Chittenden, Manchester Business School, that they should be conducted, in the first place, by the directorate concerned. Their draft post-audits should be checked and verified by the original external assessor and the EU oversight body discussed above. All regulations should have sunset dates indicating when they should be reviewed or lapse. Dates should typically be five years.

25 May 2005

Memorandum from the Confederation of British Industry (CBI)

Introduction

1. The Confederation of British Industry (CBI) is the national body representing the UK business community. It is an independent, non-party political organisation funded entirely by its members in industry and commerce and speaks for some 240,000 businesses that together employ around a third of the UK private sector workforce.

2. The CBI is a strong advocate of the benefits of fair competition and open markets and it is the CBI's view that an appropriate regulatory environment is a key factor in ensuring both fair competition and the efficient operation of open markets. An appropriate regulatory environment provides certainty in the functioning of the market, underpins investor confidence in an economy and is crucial for preventing rogue companies flouting the law and thus undermining the market position of compliant companies. Businesses accept the need to meet a certain level of regulatory requirement, combined with a commitment to best practice in company operation, often via self-regulated standards.

3. However, the increasing level of regulation has become one of the main issues of concern for business, with firms now reporting that they must spend an increasing amount of time and money complying with government-imposed requirement, rather than on actually "doing business". A recent CBI/MORI survey showed that the nature and level of regulation affecting business is the second most important factor—of 11 listed factors—influencing a company's international location investment decisions.[13]

Definitions

4. These facts, combined with the increasing overlap in the areas regulated by different regulatory agencies and government bodies, have put the need for regulatory reform at the top of many companies' agenda. However, such reform must, by virtue of the complex web that the myriad of regulations and regulators have created, achieve a number of different things at once, without destroying the essential balance of force that is necessary to allow the economy to flourish.

5. To that end, the prime undertaking should not be to define what constitutes "better" regulation, which implies a comparative exercise, but instead to establish what, from a business perspective, good regulation is, ie separately analysing what works and what does not. This would provide those involved in regulatory reform with be benchmarks for assessing whether progress has been made in improving the regulatory environment.

6. The CBI agrees with the principles for good regulation set out by the UK Better Regulation Task Force that prescribe proportionality; accountability; consistency; transparency, and targeting. We believe that these principles, in order to ensure consistency across the wider EU market in which UK companies are major players, must be adhered to not only in the UK but also at EU level.

What Should the UK Have as Its Priorities in Pushing Forward Better Regulation during Its Presidency of the EU?

7. The CBI notes with regret that this exercise was not undertaken at an earlier point in time, in order that the results could be incorporated into the UK's plans for action and priorities during its Presidency of the EU.

8. That said, the document issues by the Four Presidencies[14] at the beginning of 2004 outlined a number of key areas for achieving regulatory reform. In that the UK has been a prime mover in that exercise, the most useful achievement the UK Government can realise during its presidency, is the continued placement of the better regulation programme at the top of the EU's political agenda. Further, at the end of its tenure, it should bequeath to the succeeding Austrian Presidency both a programme of work to follow and a list of the areas in which success has been achieved, to act as a blue-print and a best practice guide respectively.

Legislative Process

9. The private sector is, above all, looking for stability and consistency in the regulatory environment as this allows companies to plan effectively and with certainty. In the EU context, the complexity of the legislative system causes concerns for many companies, in many sectors, regarding the nature and standard of legislation emanating from the tripartite EU legislative structure. In addition, too often, EU legislation is complex and lacks transparency and thus creates uncertainty as to the policy aims of legislation and what is to be achieved. Both these issues frequently necessitate both government and business having to spend vast amounts of time

[13] CBI/MOR1(2003), *Economic Outlook Survey 2003—is the UK a Good Place to do Business?* MORI, London.

[14] Finance Ministers of Ireland, Nederlands, United Kingdom & Luxembourg (January 2004) *Four Presidencies Joint Initiative on Regulatory Reform.*

and money on first understanding the impact of legislation, and secondly, on achieving satisfactory compliance.

10. It is the CBI's view that this complexity and lack of transparency—or simplification and clarification of legislation—must be dealt with at the level of the EU, along the lines of the existing SLIM programme.[15] At the national level, action should be focused on the ways and means of enforcing legislation.

11. Simplification and clarification of EU legislation should be undertaken as a two-stage process. Firstly, the programme of simplifying and improving the existing body of EU legislation, the *Acquis Communautaire,* should be continued, but with greater commitment to achieving success in key areas of business concern, rather than, as to date, in those areas where political agreement is easy, but ramifications are poor. Secondly, and with thought to future legislation (both in terms of areas to be regulated and instruments to be created) where overlap is a constant and there is growing business concern, work should be undertaken to improve the way in which EU law is made.

12. In its report "Make it Simple, Make it Better",[16] the Better Regulation Taskforce recommends that there should be an institutional mechanism to give effect to proposals for simplification of EU legislation in individual areas. The Taskforce argues that the current process for simplifying legislation is complex and often lengthy, since proposals for revision have to be put forward as an amending Directive of Legislation and then pass through the full process of negotiation and inter-institutional agreement.

13. Further to this, a key part of analysing and solving a problem is identifying its source, dealing with it and thus preventing similar, or related, problems arising again. It is always going to be the appropriateness of any legislation, allied to the way in which it is enforced, that will determine its success. Fundamental to this will be the correct choice of legislative instrument and its "appropriateness" for the issue and/or area to be regulated.

14. The CBI would therefore suggest that there should be consultation on the instrument(s) to be used at the start of any legislative proposal. The consultation should include the possibility of alternatives to traditional regulation, such as information campaigns, the open method of co-ordination, co-regulation, social partner agreements (including voluntary and non-binding agreements focused on good practice promotion) and sectoral agreements.

15. Those officials within the relevant EU Commission Directorate General responsible for the formulation of the details of a particular legislative proposal, should consult, both formally and informally, with all interested parties, and consultation on the choice of legislative instrument should be included in this process. There must be an unambiguous commitment by the Commission to using the lightest touch instrument possible and regulation as a "last resort", and the "do nothing" option should always be available.

What Lessons have been Learned from the Lamfalussy Process in the area of Financial Services, and are such Lessons more widely Applicable?

16. Adoption of the "Lamfalussy process" to achieve implementation of securities (and now banking, insurance and investment fund) legislation was perceived by industry as a positive step towards achieving implementation. However, to succeed, the Lamfalussy committees require clear objectives and sound operational management.

17. To this end, the process specified that politicians should decide issues of principle and that regulators should deal with technical details. In practice, however, the dividing line has been blurred. Some technical details do appear in the Level 1 directive and some political issues deemed "too difficult" for the Commission have been left for the Committee of European Securities Regulators (CESR) to resolve. Furthermore, although Level 1 legislation was supposed to be principles based, it would appear that lack of trust between regulators and a desire to keep national systems unchanged leads to "regulation by multiplication". The perceived result is that each regulator increases the volume of regulation by amalgamating national rules at EU level rather than taking an overarching view.

18. The Lamfalussy process was designed to streamline EU legislation, and was not envisaged by the financial services industry to be achieved at the expense of the quality of the "end product". This has, however, not always been the case. There have been unrealistic deadlines at all stages of the process, from the Member States to the Commission and CESR. This results in unrealistic consultation periods for industry, which leads to sub-optimal regulation, too much emphasis on procedural deadlines and not enough on quality of outcomes. Better regulation principles are ignored and assumptions are made that lack of comment equates to agreement

[15] SLIM stands for Simpler Legislation for the Internal Market: it is a programme designed for the simplification of EU law, managed by the Directorate-General for Internal Market.

[16] Better Regulation Taskforce (December 2004), *Make it Simple, Make it Better.*

with proposals, rather than the reality, which is firms either lacking information or being overwhelmed by volume.

Methodology

19. The CBI's position is that Regulatory Impact Assessments (RIAs), including, where possible Cost Benefits Analysis (CBA), must be undertaken at an early stage. This is critical if the proportionality of legislative measures and their effect on business is to be effectively ascertained. Draft policy cannot, and should not, mean a prior commitment to legislate and RIAs should accompany all options set out in a consultation prior to progressing to any policy recommendation. The "do nothing" option should also be included in a proposal's RIA.

20. The CBI would also argue that the same bodies responsible for proposing a new regulatory initiative should not conduct the associated RIA. Irrespective of whether the individuals proposing an initiative are able to take an impartial view or not, allowing the body proposing to also undertake the analysis does little to add to the transparency of the legislative system. Keeping the "proposers" and "analysers" separate would give an assurance of independence that would both lend credibility to the system and also ensure support for a proposal once investigated and demonstrated to be necessary.

21. In respect of RIAs, however, one caution is necessary. Many RIAs often include, by virtue of their generation and reliance on the participation of numerous actors, arbitrary information (sometimes because data is unavailable or cannot be generated). This will necessarily impact on the accuracy and reliability of RIAs. The CBI and UNICE have proposed that an expert group should be established to conduct RIAs for business. At the very least, a core component of any RIA should be the inclusion of a "business supervisor" in the group charged with conducting the exercise, to make sure that the implications and costs for business are given due weight and consideration.

22. RIAs should take into account the diversity that exists in the European business community, including the possible variations between sectors and sizes of companies. For example, anything that impacts on employment flexibility impacts disproportionately on small and medium-sized enterprises. Similarly, the impact on, for example, the textile sector may be greater than on the IT sector.

23. RIAs (and their integral CBAs) should act as early warning systems, highlighting at an early stage where difficulties may arise, as well as measuring the likely costs of a range of actions. They should be seen as the vital means by which to better see and thus comprehend the economic, political and social consequences of a new legislative proposal. In support of these aims, it is important that there is sufficient capability and infrastructure in place to carry them out and to validate their findings and recommendations.

Governance

24. Effective consultation is the prerequisite to effective action by the European institutions. To be meaningful, however, genuine consultation should cover the need for action in a particular area, the rationale for action being taken at EU level, and the basis for the choice of a particular legislative instrument. Business should not just be presented with a *fait accompli.* The minimum standards should be amended to make these requirements explicit, with each consultation being conducted as a meaningful process, not merely a "tick box" exercise.

25. Effective consultation must be viewed as a prerequisite to achieving effective regulatory action at EU level. Success in creating a sound structure for its undertaking will furthermore ensure that the progenitors of any new proposal have access to sound expert knowledge and ability to gain detailed understanding of the practical implications of their proposal.

26. Effective consultation will help to ensure achievement of a regulatory framework that supports, rather than undermines, competitiveness; with the concomitant effects of reducing costs and offering legal certainty. Finally, the CBI believes that effective consultation will also help to facilitate greater involvement, understanding and trust in the EU and its institutions.

CBI Corporate Affairs Group

May 2005

Memorandum from the Environment Agency

SUMMARY

European Union regulation should be outcome-focused and risk-based. The most effective instrument, or mix of instruments, should be used, be they legislative, financial, voluntary or advisory, to achieve the most efficient use of resources and protection of the environment.

Legislation only works well if it can be applied properly. In drawing up a new piece of legislation, the EU Institutions should give greater consideration to how the measure will be implemented. In Section 2.2 we provide a series of practical measures on how the EU Institutions can do this.

The European Union should consider a common regulatory code to provide a framework for legislation within a particular policy area (such as environment). This would reduce regulatory burdens for government and business.

1. INTRODUCTION

EU legislation has brought about great progress in environmental protection in the last 30 years. The Environment Agency is responsible for implementing much of this legislation and therefore has a keen interest in ensuring that the legislation is enforceable, practical and leads to improved environmental outcomes.

Over the last three years, the Environment Agency has been working with the European Union institutions to support the development of better legislation. Some of this work has been undertaken through European networks, namely the IMPEL[17] Better Legislation Cluster and the Better Regulation Interest Group of the Network of Heads of European Protection Agencies. These networks have also offered an opportunity for national regulators to exchange best practice on better legislation.

2. RECOMMENDATIONS FOR BETTER EU LEGISLATION

2.1 *Principles of Better EU Regulation*

We believe European regulation should:

- Be outcome focussed. It should be based on best practice and scientific understanding and be sufficiently flexible to take into account specific sector and geographical circumstances.
- Be risk-based. For example, there should be wider use of "*de minimus*" thresholds below which legislative requirements would not apply. This would allow us to focus regulatory efforts on higher risk activities and reduce the burden on low risk activities.
- Use the appropriate instrument. A choice of instruments should be considered, be they legislative, financial or voluntary, to allow for the most effective approach and the most efficient use of resources. The most effective response may combine a number of instruments.

We attach with this submission, our publication "*Delivering for the Environment: a 21st Century approach to regulation*". This document provides our detailed thinking on the principles of better regulation. These principles have been applied to implementing EU, as well as domestic legislation, and have already borne a number of efficiencies. For example, in implementing new EU waste legislation, we have excluded the need for at least 500,000 new low-risk hazardous waste producers and approximately 10,000 waste electronic and electrical producers from the need to register with us.

2.2 *Practical recommendations for better legislation*

The recommendations listed below are the findings of an in-depth European study, led by the Environment Agency. The project was undertaken through IMPEL, which examined the challenges faced in the implementation of EU legislation, and how they could be overcome. A copy of the report,"*Effective Enforcement Needs a Good Legal Base*" is also attached.

- More individuals with practical experience should be involved in the law making process.
- Before drafting a new law it should be standard practice to review all other related EU legislation, international Conventions and ECJ cases, including that from other policy fields.

[17] IMPEL is the European Union Network for the Implementation and Enforcement of Environmental Law. It is an informal network of environmental authorities of EU Member States, candidate countries and Norway. The European Commission is also a member of the network.

— Issues such as coherence of legislation should be assessed during the Commission's extended impact assessment. The Council and European Parliament should also assess the consequences of their amendments, by comparing them to the Commission's original proposal and impact assessment.

— There is a need for an overall, strategic approach to broad sectors of policy, such as through the use of framework Directives.

— Recitals in Directives should be used as a method to explain the rationale behind the legislative act and links between different acts. Recitals should be consistent with the Articles of the Directive.

— Definitions must be clear and unambiguous, especially in framework Directives, and particularly when they determine some key aspect of the scope of a measure or define the regulatory requirements. Technical definitions in different laws should be, as far as possible, identical in terms of units and scientific meaning.

— Time frames for the implementation of legal requirements should be clear and developed with care, so as to avoid difficulties in subsequent implementation and compliance.

— There is a need for a simplified process for the review and amendment of legislation. Increased provision should be made, where the Treaties allow for this, for more technical aspects of EU legislation, which are often set out in annexes, to be reviewed by a Committee Procedure.

— For current legislation, networks of regulators, such as IMPEL, may provide a route to compare and analyse implementation problems and make recommendations for improvements.

— With new legislation, bodies such as IMPEL could be involved in examining drafts and commenting from the point of view of enforceability and practicality. The Commission may wish to organise discussion sessions, during the expert stage of legislative development.

2.3 *Regulatory Code*

The European Union should consider a regulatory code covering such issues as definitions, permitting, consultation periods, and monitoring arrangement. It would apply to all legislation for a certain policy area, for example, environment policy. This would simplify procedures for both the regulators and the regulated community. At national level, we are working with Defra to modernise environmental permitting. This could progressively put different regulatory streams (from different EU directives) onto a common footing and lead to quantifiable efficiencies.

We believe that the adoption of a common regulatory code for the environment would reduce the administrative and financial burdens on the public and business, since the legislation would be clearer and easier to understand. It would also make transposition easier for Member States.

Memorandum from the European Commission

Introduction

In March of this year, the European Commission issued a Communication to the Council and the European Parliament setting out its thinking on "Better Regulation for Growth and Jobs in the European Union". This aims at ensuring a shared and more developed approach to regulation so as to ensure that the public interest is defended without hindering the development of economic activity.

The Communication proposed three key lines of action: promoting the design and application of better regulation tools at EU level, notably impact assessments and simplification; working more closely with Member States to ensure better regulation at all levels; and reinforcing the constructive dialogue between all regulators at the EU and national levels and with stakeholders.

The Commission attaches great importance to this work and looks forward to continuing to cooperate closely with partners, including the UK Presidency, in driving it forward. A partnership approach is vital.

There is no doubt that the application of common rules throughout the European Union makes doing business easier and often cheaper. Furthermore, where the promotion of the principle of mutual recognition applies, trade takes place on the basis of national regulatory systems which obviates the need for EU regulation. Nevertheless, in order to produce a regulatory environment that is conducive to competitiveness, innovation and growth, it is essential that EU law, including both new legislative proposals and the body of existing legislation known as the "acquis", is closely examined to ensure that the approach taken to a particular problem is the most appropriate one and that the instrument giving effect to that approach is clear and coherent with other EU rules.

DEFINITIONS

— At EU level, "better regulation" may be defined as a policy which aims to ensure that (existing and future) EU legislation is as concise and straightforward as its subject matter permits and is as light, as is commensurate with the proper protection of the various public interests at stake and the burden it imposes on economic operators. In practice this means that the impacts of any new legislative proposal must have been fully and properly assessed, and that legislation already adopted remains appropriate, for example in the light of market developments or technological change, and is achieving its objectives. In the latter case, simplification and codification remain key tools.

— The Commission's Impact Assessment system was adopted at the same time as the Better Regulation Action Plan. Its aim is to ensure that before the Commission proposes an initiative to tackle a particular problem, all possible policy options have been assessed *ex-ante*. Legislative measures are only proposed when there is clear evidence that they will be the most effective in achieving the desired outcomes. Simplification and codification apply to existing legislation.

— Under this system, any initiatives, including possible proposals for new EU legislation, will be assessed for the likely impact on the sector concerned particularly in relation to the economic, environmental and social effects. In relation to the existing "acquis", when there is evidence that EU legislation is over-complicated or unnecessarily burdensome, it will be simplified. The term "simplification" encompasses not only the consolidation, codification and withdrawal of legislation but also the new integrated sectoral approach outlined in the Commission's March Communication on Jobs and Growth in the EU (described in more detail below).

— The UK Better Regulation Task Force states in its 2004 report "Make it Simple—Make it Better" that "about half of all major legislation in the UK originates in Europe". Other surveys, for example by the UK Chamber of Commerce, suggest that more than 60 per cent of rules are home-made. In any event, the intensity of EU rule making varies from sector to sector and depends on the legislation at issue. For example, in the area of product safety, the EU has produced a considerable number of measures. Even where the EU has legislated, Member States often need to implement the agreed measures into national law. In some cases, it is Member States themselves who add provisions going beyond the requirements of the EU directive. Such "gold plating" can cause business considerable problems. In other fields such as social security and taxation, the EU share of overall legislation is fairly limited as most legislation derives from national rules. That is why the Commission is urging those Member States that have not already done so to put in place structures and mechanisms to improve the quality of national rule making and address the problem of over-regulation. The same principles should be applied in promoting better regulation at EU and national level.

— During its Presidency, the UK will no doubt continue to point out how, in a fiercely competitive global market, better regulation can benefit growth and jobs in the EU, while explaining that more effective regulation does not imply the setting aside or weakening of legitimate public interests such as health and safety, the environment and consumer protection. The Commission is keen to do its part, but it cannot achieve success by acting alone. The Council of Ministers and the European Parliament, for example, should also consider the impacts of amendments to Commission proposals during the negotiations. The message that action at EU level will not be enough needs to be driven home. Much work remains to be done in persuading some Member States to tackle problems at national level.

LEGISLATIVE PROCESSES

— The Commission's simplification programme will enter a new phase with the introduction of a new integrated sectoral approach. This will be the subject of a communication to be issued in October and will be presented in the November Competitiveness Council. Under the integrated sectoral approach, rather than trying to target for simplification individual pieces of EU legislation in isolation, the Commission will examine entire sectors of industry with a view to pinpointing the most oppressive categories of regulatory burden borne by economic operators in those sectors and where relevant quantifying the negative impact on competitiveness of the EU legislation imposing these burdens. Where we conclude that the streamlining of EU legislation would produce concrete gains for economic growth and job creation without jeopardising the essential elements of Community policy, we will repeal or amend it or replace it by alternatives such as co-regulation or self-regulation (the voluntary adherence to established standards).

— The positive effects of the impact assessment procedure for scrutiny, transparency and accountability are obvious, and will—if the assessment has been carried out properly—in many cases contribute to a smoother and faster passage of the proposal through subsequent stages of the legislative process. Whilst Impact Assessment may initially add time to the preparation of new initiatives, including legislative proposals, it is hoped that by building a stronger case for action the legislative process will not be extended, and in some cases, may actually be shortened.

— In the past, directives and regulations have often contained a great deal of detail. Obviously, when these details need to be amended it involves a lengthy and cumbersome legislative procedure. However, the Community can also apply different approaches by providing for, in the basic instrument, a framework within which executive functions can be delegated to the Commission assisted by Member State experts, creating a more flexible and lighter means of keeping the legislation up to date. This is also a feature of "new approach" directives which lay down essential requirements for products and set up appropriate conformity assessment procedures. European standards bodies draw up technical specifications, the observance of which is one way of complying with the mandatory essential requirements laid down.

Methodology

— The Commission methodology for Impact Assessment has been developed by the Commission itself, but on the basis of examples of good practice in other public administrations and taking account of general guidance on good practice developed by academics, practitioners and international bodies such as the OECD. This has been tested in practice since the beginning of 2003. In the light of experience to date, the Commission will shortly adopt a revised set of Impact Assessment Guidelines to assist the work of its services in this area.

The Council is conducting pilot projects with regard to the impact assessment of significant amendments. The European Parliament is still in a preparatory phase. Under the Inter-Institutional Agreement on Better Regulation the three Institutions are committed to develop working practices that are compatible, transparent and effective. It is very important that this process will be concluded rapidly. The Commission's Impact Assessment system will undoubtedly provide the key elements of the future common methodology.

— In the Commission, impact assessments are carried out by the services responsible for the proposed legislation. For major proposals, an inter-service steering group has to be formed to ensure that relevant economic, social and environmental aspects are considered as part of the impact assessment process. The lead service will indicate to the other services what scope and depth it envisages. This is done in the Roadmap, which is published at the time of the Commission's Legislative and Work Programme, and which sets out the work already undertaken to prepare the impact assessment and sets out a timeline and proposals to complete the process. The other interested services will have the opportunity from the earliest stages to suggest, propose or contribute further analysis. Quality control is based on a number of "checks and balances" within the overall approach, with initial quality control undertaken by the lead service itself. The Secretariat General of the Commission also has a role to play in the quality control of individual impact assessments, both by being represented on the inter-service steering groups and in the formal inter-service consultation exercise for any subsequent proposal. Systematic consultation with outside stakeholders and interested parties also acts as a means of ensuring quality of the impact assessment. The decision whether or not to send a proposal to Council and EP is taken by the College of Commissioners. Different kinds of external input may be necessary in the Impact Assessment process: data for the necessary analysis, opinions and evidence in consultation and in some cases methodological advice. The Commission will assess subsidiarity issues as part of its Impact Assessment.

— The key feature of the Commission's Impact Assessment is the integrated approach in assessing economic, social and environmental impacts. Proposals are thoroughly screened for "competitiveness" impacts in this context. Risk analysis is applied for the initial problem description for proposals that are developed in a particularly uncertain policy environment. Cost-benefit analysis is one of the techniques that may be used to select the best policy option available.

— In its Communication, the Commission committed itself to exploring how to better integrate the measurement of administrative costs in integrated impact assessment. To this end, the Commission has launched a pilot phase aimed at testing methods for the quantitative assessment of such burdens. Initial results will be available in the autumn of 2005.

— The Commission has also committed itself to reinforcing the external validation of the methodology of its impact assessments and will draw on external expertise in the context of its evaluation of the system as it has evolved since adoption in 2002.

GOVERNANCE

— While it is possible for public administrations to identify obviously unclear or incoherent legislative texts and to improve them, it is less easy to establish which pieces of legislation are causing disproportionate problems in their application without actually consulting those affected by them. To find out where compliance with rules is biting hardest into the competitiveness of a sector, there is no substitute for asking those operating within that sector. However, in processing responses to consultation exercises, administrations must of course be aware that these responses are not entirely objective and must be tempered by various considerations ignored by those responding.

  Stakeholder fatigue should nevertheless be avoided. Whilst business and industry are generally very cooperative, particularly in relation to better regulation issues, there is a risk that too much consultation or badly organised consultation could breed apathy and cynicism. However, these unwanted side effects are substantially avoided if stakeholders responding to consultations can see that concrete, positive results emerge out of their contributions.

— The role of the national parliaments depends today on the measures taken by the national institutional systems. The draft Constitutional Treaty would improve this situation by conferring on national parliaments a strengthened role in relation to the application of the subsidiarity principle (Article I-11).

May 2005

Memorandum from the Forum of Private Business (FPB)

WHAT IS THE FPB?

The FPB (Forum of Private Business) was formed in 1977 and is a pressure group fighting on behalf of private businesses. The FPB represents approximately 25,000 UK-based businesses employing in excess of 600,000 people, and is a powerful lobbying voice in both the UK and the European Union.

The FPB, as the only full UK member of UEAPME—the organisation which represents small and medium-sized enterprises (SMEs) in Europe—is the most prominent advocate of UK SMEs in Brussels and has a track record of positively affecting legislation prior to its introduction in the UK.

The FPB also provides a range of business services aimed at increasing member efficiency and profitability.

FPB RESEARCH

All of the FPB's campaigns are based on the views of members. Members vote in a quarterly Referendum, using ballot forms to add the comments which they want us to forward on to their elected representatives. Referendum is a tool that business owners have been using since 1977 to make their voices heard.

FPB has more than 20 years' worth of experience of accredited research into the small business community. We have been using the Quarterly Survey since 1980 to track business growth and the rise and fall of key issues. The Quarterly Survey has recently been made even stronger by merging with the Small Business Research Trust Quarterly Survey.

We survey business by mail, over the telephone and face-to-face. In recent years, we have also started collecting data electronically, which enables us to source opinions from hundreds of businesses within a matter of hours.

LESS REGULATION

The FPB welcomes the consultation of the EU Select Committee.

In response to the Portuguese Presidency's 10 year strategic Lisbon agenda in 2000, British Prime Minister Tony Blair made a joint statement with Belgian Prime Minister Guy Verhofstadt in February of that year:

"Governments should develop the right regulatory and policy framework and avoid unnecessary burdens. Help for small firms, a focus on increasing entrepreneurship and better availability of venture capital are nowadays an essential part of a policy for creating jobs and thereby securing greater social justice. We must ensure that over-burdensome regulation does not inhibit job creation."

By targeting achievable and specific agenda items, the FPB urges the UK Government to grasp the opportunity offered by its forthcoming Presidency of the European Union to set the agenda for less regulation. The UK Government should demonstrate that it does indeed "think small first" by committing ministerial focus to this at the highest level.

An improvement in the performance of the European economy as a whole will only be possible if action is taken to strengthen the craft and SME sector, which not only accounts for two-thirds of Europe's employment and almost 60 per cent of economic output, but has been and will continue to be the most dynamic sector in terms of job creation and innovation. Regulations hit this part of the economy especially hard. Compliance costs are a higher percentage of turnover than for big businesses. This makes it harder for smaller firms to compete. New regulations and standards are generally drafted with little regard for the smaller firm. Businesses are not always well-represented at discussions of proposals, for example, unlike other EU Member States, the UK is represented at discussions on European food regulations by, the Food Standards Agency, which has no brief to speak for producers.

Towards Less Regulation and Regulatory Reform

The FPB supports the rotating initiative of the past four Presidencies to promote better regulation and simplification but insists that specific emphasis is put on less regulation and ensuring that regulation is appropriate for smaller firms. Undertaking a comprehensive study on the different compliance costs for SMEs could help to identify the sectors in which simplification is needed. FPB regrets that the UK did not avail itself of the opportunity to pilot the Reduced VAT on labour intensive services initiative for example. By supporting reduced VAT on labour intensive services, the UK Presidency could help to stimulate business and preserve existing jobs.

Regulatory reform is a pre-requisite to achieving necessary levels of EU policy making efficiency. A policy environment that contributes to economic growth and thus employment can only be created if each of the three main EU institutions is sincere and resolute in its pursuit of regulatory reform. We highlight the following priorities for ongoing regulatory improvement at various stages in the policy making process:

- *Initiation:* competitiveness must be the primary consideration for Commission officials when drawing up the annual work programme, devising framework programmes and drafting specific policy proposals.
- *Consultation:* ensure an ongoing dialogue throughout the drafting process with the key representative membership organisations to engage business owners and their business associations across the European Union. This way policy makers discover new ideas and solutions.
- *Review:* competitiveness must be the primary consideration when reviewing existing policy initiatives. Review clauses should be built into EU legislation by the Commission. The Parliament must thereafter play a greatly enhanced role: re-examining the original aims of the legislation, assessing its effectiveness in meeting those aims and analysing any unintended consequences for SMEs.

We also draw attention to two procedures that must be integral to every stage of the regulatory process:

- *Rigorous impact assessments:* we welcome the introduction of impact assessment "road maps" to the Commission's 2005 annual work programme and the clarification they provide of officials' preliminary consideration of legislative or non-legislative policy options.
- *Competitiveness proofing* must similarly be integral to the whole policy process and, within this, policy makers should not lose sight of the particular sensitivities of small businesses, which require specific consideration during the impact assessment procedure. Initial impact assessments should answer the following small business specific questions:
  - What is the benefit of compliance for SMEs (apart from avoiding the penalties)? Conversely, will it (the policy initiative) hinder businesses' ability to grow, or reduce their owner-managers' willingness to grow?
  - Will it disadvantage EU small businesses relative to global competitors?
  - Will it contribute to an environment that encourages innovation?
  - Could any new requirements be integrated with existing ones, rather creating additional compliance costs and burdens?
  - Will it lead to disproportionate administrative burdens for SMEs?

The Competitiveness Council must exercise influence across all relevant Council formations and perform its competitiveness proofing remit with rigour. The Commission road maps will help the Council to identify proposals that have implications for competitiveness and play its horizontal role more effectively.

Key Policy Concerns

Flexible Employment Policy

The UK Presidency needs to address the problem of the simplification of employment regulations and support the importance of voluntary agreements in preference to regulation. Policy proposals should be brought more in line with the needs of flexible and dynamic enterprises. SMEs require flexible labour markets to enhance their adaptability and boost their competitiveness. The Government must maintain its support for the opt-out in the upcoming Council negotiations.

Standards

The UK Presidency should offer support for SME involvement in the setting and monitoring of standards in Europe. This support should safeguard continued support for NORMAPME (the European SME standards organisation), including funding for training SME technical experts. The level of support should mirror that provided for consumer organisations. In addition, it must be recognised that more and more standards come from the International Standards Organisation which offers even less small business representation.

Small Firms Charter

The UK Presidency should seek to enhance the implementation of the Small Firms Charter through increased clarity on the benefits attributed to the small business community and the cross section of businesses that have been assisted by implementing the Charter objectives.

Internal Market

Improve the access to the Internal market for services by cutting red tape and supporting the opening of an internal market for services under.

Research and Innovation

Introducing flexible and bottom-up approaches in the 7th Framework Programme for R&D with an increased amount of manageable small scale projects.

Food Regulations

During 2005 we have been able to influence potentially damaging regulations and standards in the food sector. Two examples include successfully opposing the proposed restriction on supplements of known safety, and the abandoning of a proposal for an EU standard on cleaning of drink dispensers. Food regulations must be kept at a realistic level whilst ensuring consumer safety.

May 2005

Memorandum from the Institute of Directors

1. The Institute of Directors

1.1 The Institute of Directors welcomes the opportunity to contribute to the European Union Select Committee's inquiry into "Ensuring Effective Regulation in the EU".

1.2 The IoD is a non-party-political organisation with some 68,000 members world-wide, including 55,000 in the UK, whose aim is to help directors to fulfil their leadership responsibilities in creating wealth for the benefit of business and society as a whole.

1.3 This short paper does not permit a detailed examination of each of the many policy points outlined in the Better Regulation plans published by the European Commission, the "Six Presidencies" group and by the UK and Luxembourg Presidencies. Rather, this note highlights points of particular importance to business.

2. Delivery is the Key

2.1 The IoD strongly supports the Better Regulation agendas set out by the European Commission and by the "Six Presidencies" group of Member States. The new Commission's support for more enterprise-friendly policies marks a distinct—and very welcome—change of direction from the approach taken by its predecessors.

2.2 While good intentions are welcome, the business community is now looking for delivery. We cannot stress strongly enough that maximum political energy must be put into turning the existing plans into action. This is far more important than drawing up further policy documents or action programmes.

3. The Importance of Culture Change Across the EU Institutions

3.1 The Better Regulation proposals published by the European Commission and by the Member States participating in the "Six Presidencies initiative" are very welcome. If implemented, they would make a real difference. However, bolting new processes or methodologies onto the existing EU machine will not be enough. These policy developments must be underpinned by a fundamental change in the EU's culture.

3.2 We need to see a decisive shift away from the EU's traditional pro-regulation approach in favour of an enterprise-friendly culture that sees regulation as the last resort, to be pursued only when all other alternatives have been exhausted.

3.3 Culture change requires political leadership from the very highest level. In this respect, the strong messages now being issued by the President of the European Commission, José Manuel Barroso, and by the Commissioner for Enterprise and Industry, Gunther Verheugen, are very welcome. They must, however, be backed up by the other EU institutions—the Council and the Parliament.

3.4 Recent instances, such as the Parliament's First Reading vote to scrap the opt-out from the Working Time Directive and the French Government's opposition to a genuine Internal Market in services, suggest that the Commission may be fighting a lone battle. Culture change will be impossible to achieve unless the leaders of all the EU institutions start to pull in the same direction.

3.5 The process of culture change could be strengthened by an extensive programme of secondments between the European Commission and business. Such a programme should extend across all Directorates-General—not just those with a direct interest in business matters.

4. Better Regulation Must Suffuse all EU Policy-making

4.1 It is important to recognise that the Commission's Better Regulation Action Plan cannot be allowed to stand alone. There is little point in certain parts of the EU institutions enthusiastically pursuing Better Regulation if, at the same time, colleagues in other Directorates-General or in other EU institutions are bringing forward burdensome new measures.

4.2 This is why the current disputes over the Working Time Directive and the proposed Directive on the Internal Market in Services are so important. If the good intentions on Better Regulation are to carry weight, these totemic battles must be won by those arguing for lighter regulation and more open markets.

5. More Independence in the Impact Assessment Process

5.1 In the UK, the Better Regulation Task Force's power to refer unsatisfactory Regulatory Impact Assessments (RIAs) to the National Audit Office has sent strong signals about the quality expected of RIAs.

5.2 The EU should look to create a similar mechanism, perhaps by allowing referral to an office within the Court of Auditors. It will be important, of course, to guard against creating more bureaucracy.

5.3 Furthermore, persuading MEPs to demand and use impact assessments as an everyday debating tool would further raise the profile of the impact assessment process.

6. Ex-post Reviews of Impact Assessments

6.1 No matter how thorough the impact assessment process is, it inevitably involves an element of guesswork. The EU should make extensive use of ex-post reviews of impact assessments. These reviews, which would be carried out perhaps one or two years after the implementation of a new regulation, would permit a check on whether the costs have proved more (or less) burdensome than forecast. It should be possible to adjust the regulation in the light of this experience.

6.2 It should be clear that these reviews are intended to identify and remove unnecessary or unforeseen burdens—not to add extra requirements or broaden the scope of the regulation.

7. All Member States Should Reduce Administrative Burdens

7.1 The Commission's recommendation that all Member States should adopt impact assessment and simplification policies is welcome and long overdue. It is deeply regrettable that countries such as the Netherlands and the UK are still seen as exceptions to the rule simply because they have put some effort into developing more robust systems for impact assessment.

7.2 An annex to the Commission's Communication of 16 March 2005 sets out plans for a pilot study on another important front—the reduction of administrative burdens. Starting with construction products and statistics, the Commission plans to investigate how a common methodology for measuring administrative burdens might be designed. Given that the Netherlands has already developed an effective model for use at national level, the pilot phase at EU level should not be allowed to take long. It should be swiftly developed into targets and action.

7.3 A key strength of the Dutch policy is that it measures the administrative burdens of the existing stock of regulation. The EU proposal appears to be narrower, being directed solely at the flow of new regulatory proposals. The Commission should broaden its remit to include existing regulations.

8. Westminster Scrutiny of EU Legislation

8.1 Although tackling EU regulation principally requires action at EU level, there is also a role for national parliaments. In the UK, there is a strong case for strengthening Westminster's procedures for the scrutiny of EU legislation.

8.2 Although a large and growing proportion of UK legislation now originates in Brussels, the Westminster Parliament devotes only a minor slice of its time and effort to the scrutiny of this material. In the House of Commons, the EU Scrutiny Committee, despite its admirable efforts, is still regarded as one of the less attractive committees on which to serve.

8.3 Much of the EU Scrutiny Committee's work focuses on draft Directives and Regulations. However, once proposals have reached this stage they have already acquired unstoppable momentum. There may be a case for finding a way in which Westminster could intervene at an earlier stage.

9. IoD Work on Regulatory Burdens

9.1 The IoD is closely engaged in gathering evidence of EU regulatory burdens on our members' organisations.

9.2 Our dossier *In Their Own Words: red tape case studies from IoD members* (February 2004) detailed a number of regulatory issues arising from badly designed or poorly implemented EU legislation.

9.3 The IoD is currently gathering members' proposals for simplification of EU regulations.

9.4 The IoD would be pleased to supply the Committee with further details of these projects.

May 2005

Memorandum from the Law Society

Introduction

1. The Law Society is the regulatory body for more than 116,000 solicitors in England and Wales. It also represents the views and interests of solicitors in commenting on proposals for better law and law making procedures in both the domestic and European arenas. The EU Committee of the Law Society of England and Wales ("the Society") welcomes this opportunity to respond to the inquiry by the House of Lords European Union Select Committee into "Ensuring Effective Regulation in the EU".

2. The Society is conducting its own inquiry into "Better Law Making", both at domestic and European level. The Society would like to see improvements in the way the law is made, written and reviewed—from preliminary and consultation stages to publication and implementation of a new measure. We are also concerned that law making should be made more accessible in order to reduce the need for ex-post litigation to clarify or expand upon inadequate legislation. Good law making, domestically and at the EU level, is an essential part of the democratic process but, perhaps surprisingly, little attention seems to have been given to assessing systematically the quality of legislation and whether it does what it should or whether a policy objective would be better served by other means.

3. One of the Society's goals is to make the law more accessible, understandable and easier to use. This is particularly pertinent when dealing with European Union law and the specific types of instruments and modes of application that are involved. We consider that there is a direct relationship between justice and good law making. Where laws are clear in the problem they are trying to address, equitable, well-drafted and enforceable, then justice is not only more easily done, it can be done more effectively and at lower cost.

4. European Union law now affects all aspects of our lives and liberties. Individuals and organisations must therefore be able to find out about, understand, apply, defend, challenge and enforce the rights and obligations it creates without avoidable difficulty. Given the cost and complexities of cross-border litigation and of achieving remedies under EU law, this is of the utmost importance. We believe that without effective access to justice in the European Union, European citizens will continue to feel alienated from European processes and institutions.

5. *"Access to justice" must mean effective access to justice for all.* Mechanisms to facilitate access to justice should be a central concern for the European institutions. The need for the speed, simplicity and cost-effectiveness of justice must be amongst the primary concerns of EU lawmakers. This is essential if the nominal rights given to citizens though the European Treaties are to have any value in reality.

6. The Law Society's EU Committee is preparing to launch an EU Better Law Making Charter under the UK Presidency. We consider this a high priority issue on the EU agenda in light of the six Presidency better regulation agenda and proposals for change put forward under the Constitutional Treaty.[18]

7. In terms of better regulation and effective law making, the Society continues to support the main principles of European decision-making that have long been elaborated: *subsidiarity and proportionality.* These two concepts are difficult to judge objectively. Obviously those coming from different perspectives will have different views on what should necessarily be done at the EU level. Nevertheless, it is important for robust reasoning and a clear justification to be given for EU action. The EU should not be used as a means of addressing a national problem by circumventing appropriate national decision-making procedures. Where the European Union is best placed to legislate and determine strategy it should do so with efficacy and use all possible mechanisms available to it. Deciding not to legislate should not, however, be an afterthought in this process but a primary consideration. Often soft law or the co-ordination of national policies may be equally effective as EU legislation and would allow the specificities of national legal systems to be respected. Where there is no clear justification for EU level action or it would impinge unjustifiably on the domestic legal system of a Member State then EU level action is not appropriate.[19] Maintaining this approach ought to be a key priority for the UK Presidency.

8. In our view, better law making should infuse all of the stages of legislative development: *consultation, drafting, scrutiny, implementation and enforcement.* We consider that these themes form the key features of better and more effective regulation and should guide the process of legislating. The relationship between better regulation, impact assessment and legislative simplification is discussed below.

Comment and Recommendation

9. *Consultation.* Prior to the drafting of legislative proposals, we believe there should be extensive consultation with interested parties and "stakeholders". Legal practitioners have a great deal to offer at this stage because of their involvement in litigation arising from unclear or badly drafted legislation. Whilst there has been significant improvement in the way the European Commission consults, and the frequency with which they do so, much of the stakeholder representation is still conducted on an *ad hoc* informal "lobbying basis".

10. We consider that the purpose of a consultation is two-fold:—explanation and consultation. It should explain what the proposal is intended to achieve and how it purports to achieves its aim and set out why the proposal is thought desirable/necessary, explaining any areas of uncertainty and problems identified. Secondly, it should seek views on the proposal, calling for information on problems, including those not yet identified, and allow for an analysis of the costs of proposals and potential benefits.

11. In addition, we consider that there should be a stronger focus on scientific advice and the taking into account of empirical research in properly developing policies and in adopting legislation. Guidance should be laid down for Commission Directorates General on the use of scientific expertise. Consideration should be given to appointing a Chief Scientific Adviser to the Commission to advise on scientific matters and to co-ordinate the use of science in policy making within the EU.

[18] Whilst better regulation may relate specifically to the internal market aspects of the European Union remit we equate the drive for better regulation with a broader better law making agenda and use these terms interchangeably here.

[19] Note the "emergency break" mechanism introduced in the Constitutional Treaty in relation to judicial co-operation in criminal matters (Article III-271(3)) where a Member State can stall the progress of a legislative proposal in relation to article III-270 on judicial co-operation and on III-271 on approximation and raise the concern that measures proposed would affect the fundamental aspects of its criminal justice system.

12. We propose that the European Commission publish a new *code of best practice* for consultations which should be followed by all Commission Directorate Generals. Following on from current practice of setting minimum time limits for consultation we propose that in addition guidance be given on how to ensure the widest possible dissemination. Following consultation, a summary of responses should be published by the Commission that includes reasons for accepting or rejecting specific proposals or concerns. The Commission should only be able to rely on the results of a consultation if it can show that a sufficiently wide and diverse range of responses were received. It should also be careful not to exploit the statistical results of its consultations. While a high proportion of respondents to a consultation may support a particular idea, it may be that the minority of those opposed are actually representative of a far wider constituency. Analysis of consultation responses should be qualitative as well as purely quantitative.

13. In terms of the format of consultations, we welcome the fact that these are usually posted on the Commission web-site and are the subject of a press release. We do not, however, consider that this is always sufficient to elicit responses from all those who may be affected by a new proposal. By carrying extended impact assessments, the Commission should be able to identify with more precision those who will be affected by a proposal. In such instances, it would be desirable for the Commission to take positive steps to consult these actors, in so far as this is practicable. Consultation will never be an exact science. There will always be competing interests or only large pan-European organisations able to represent their views. Nevertheless, we consider that more effective consultation should lead to more effective drafting and better implementation. There are more dangers in not consulting enough than consulting too often.

14. Likewise, we appreciate that proposals should rightly by scrutinised and adopted by the appropriate legislative institutions (Parliament and Council). That said, we consider there is still a large degree of merit in consulting on the proposed draft of a legislative measure, before the Commission adopts it formally.

15. *Drafting and preparation.* When new proposals are brought forward steps must be taken to ensure that those legislative initiatives produced are well-drafted, clear and concise documents. We believe there is a need for better law making in terms of clarity and, moreover, consistency and co-ordination between the relevant Directorates General concerned. We would draw attention here to the initiative on Rome I on the law applicable to contractual obligations and the current draft Regulation on the law applicable to non-contractual obligations—Rome II. This work to convert international public law instruments into European Community Regulations should not be carried out in isolation and due regard must be paid to parallel work, such as the Action Plan on contract law, the draft Services Directive and other pieces of consumer legislation. Some provisions of the draft Services Directive directly impinge and appear to conflict with the measures foreseen in Rome I and Rome II. This is unsatisfactory.

16. One of the key problems with European law in terms of application and understanding is the number of different legislative and non-legislative instruments available. We note that significant improvements have been proposed under the Constitutional Treaty in terms of six standard legislative and non-legislative instruments.

17. In order to increase legal certainty and to reduce the costs of legal research, there should be regular consolidation of legislation. Consolidated legislation should be binding and published in a clear and accessible form in the Official Journal.

18. The Select Committee asks: what methods of *regulatory impact assessment* do the law-making institutions of the EU use. Are they compatible, effective and rigorous? The 2003 inter-institutional agreement on better law-making does touch on the issue of impact assessment. The Commission undertakes to continue to implement the integrated advance impact assessment process for major legislative proposals. In respect of the 2005 work programme, the Commission has committed to doing so in relation to all key legislative proposals. The Commission does carry out and publish impact assessments with each proposal and is extending the use of "extended impact assessments". This should be encouraged.

19. At the moment, however, it is still felt that impact assessments are carried out in a very cursory manner, seen as another necessary step in the process, rather than as a key step in ensuring proposed legislation is fit for purpose. The announcement by the Commission to "screen" proposals that are already on the table (but not adopted) should be welcomed but the emphasis of this exercise is on the proposal's impact on competitiveness and other effects. We believe that this exercise should also focus on the quality of the proposed measures from the perspective of better law making—is it well drafted, clear and unambiguous as to its objectives and how these are to be achieved?

20. As far as it is understood, the European Parliament does not undertake impact assessments, but relies on briefings and lobbying from interested industries/stakeholders or indeed holds public hearings to elicit information. This is neither systematic nor undertaken across the board. Under the inter-institutional agreement, the Parliament and Council also may have impact assessments carried out on substantive amendments they propose during the adoption process. It would appear that work to put this latter possibility into practice has been slow. The development of a common methodology of impact assessment is a key factor in ensuring that the three institutions feel capable of relying on each other's assessments, particularly those of the Commission.

21. The Society has long considered that the European Commission should consider conducting impact assessments before making any proposal or amended proposal. New rights and obligations may create a need for legal advice and possibly court and judicial time, training and enforcement measures, for example. These requirements mean more calls on the public purse and on private resources. There will of course have to be a proportionality or necessity test to this, but we propose that where an impact assessment is not to be carried out on a particular proposal this should be justified in a statement as to why this decision was taken and an impact assessment was not deemed to be necessary. This should develop, at least, a first instance consideration of whether an impact assessment should be carried out or not and if not, why not?

22. The Society has discussed the need for the European Commission to prepare and submit an *Access to Justice Impact Assessment (AJIA)* together with any draft legislation that relates to the *economic or social rights of individuals.* We therefore welcome the fact that the European Commission has recently adopted a new mechanism to ensure all Commission legislative proposals are systematically and rigorously checked for compatibility with the Charter of Fundamental Rights. The mechanism will take a two pronged approach of considering fundamental rights in the impact assessments and an explanation of why the Commission considers the Charter of Fundamental Rights to be met in the explanatory memorandum to a proposal.[20] The Commission also vows to work with the Council and Parliament to ensure compliance with the Charter of Fundamental Rights is maintained throughout the legislative process. This is most welcome and to be whole-heartedly endorsed, however how this commitment to developing a culture of fundamental rights will translate into the drafting of legislation remains to be seen.

23. We consider an *access to justice checklist* of questions should be answered by those responsible for a particular dossier prior to the introduction of new legislation—directing attention to the possible impact of the measure on the legal system, on the administration of justice and in particular on the ability of individuals and organisations to enforce the rights to be created or to challenge obligations imposed. Such an assessment would need to consider whether the mechanisms exist at both the *European and national level* in order to provide "access" to the rights conferred by the proposed legislation.

24. This latter consideration would be a way in which national parliaments could play a role in scrutinising and monitoring impact assessment. If EU institutions were to be accountable to 25+ parliaments within the Member States for the effects of regulation, this may mean the process would grind to a halt. However the relationship between the two and the role of the national parliaments in engaging those affected by the legislation into the democratic process should not be undermined. Regard should be had to the role of national parliaments as foreseen in the Constitutional Treaty and to the way in which they could play a "subsidiarity screening" role in terms of impact.

25. We do not consider that there is a case to be made for a new EU body to oversee regulation. The duplication of budget, resource and remit that this would entail is unnecessary. What is needed is: effective consultation, wider engagement and greater coherence—both within the EU inter-institutional relationship and with national parliaments.

26. In line with our views on consultation we consider that there should be external input into impact assessments. Whilst we have focused our comments on impact assessments where legislation confers economic or fundamental rights we can also conceive of impact assessments being used in terms of cost-benefit analysis particularly in terms of regulatory burdens on industry or specific sectors and the impact on competitiveness. Above, we spoke of the way in which impact assessment can help to identify those who should be consulted. Equally an ongoing process of impact assessment should mean that those same actors can be asked to provide empirical data and research before the consultation stage, which will again inform the thinking of the institutions. Better law making includes the concept of achieving a goal by the most effective means, both legally and practically speaking. When new legislative imposes heavy financial and administrative burdens on business, this is seen primarily as a question of cost-benefit. When burdens are disproportionate to the aim sought, it can become a question of the legal validity of a measure.

[20] http://www.europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/494&format=HTML&aged=0&language=EN&guiLanguage=en

27. *Enforcement.* At the domestic level, it is important that the proper courts and procedures (such as legal aid) are in place in order to give effect to European-conferred rights. This ought to have a positive effect in terms of effective and better regulation as it will demonstrate at an early stage the consequences of a proposal and the mechanisms necessary to allow the rights and obligations therein to be effective and actionable. We also welcome the willingness of the Commission to look at the barriers that exist to individuals being able to enforce their rights that are derived from EU law—the forthcoming Green Paper on private enforcement of competition rules is such an example. We are concerned, however, that such initiatives should not impinge on the prerogative of Member States to organise their own domestic legal systems. This may be an area in which soft law and the exchange of information and best practice should be considered.

28. *Implementation.* Enforcement relates directly to effective implementation, which is another layer of better regulation. Problems often arise in practice because of poorly drafted legislation or its inconsistent or late implementation in different Member States. More rigour needs to be introduced into the timetables for implementation of legislation in order to avoid uneven access to justice around the European Union and uncertainty. The delay in implementation of the European Arrest Warrant is a case in point. We note the Commission's strategy is to ensure effective implementation but it is the primary responsibility of the Member States to abide by their obligations. One concern is that the political will to push through a measure in the EU arena, particularly in the anti-terrorism arena, in order to claim that action has been taken, causes more problems in the long run. Speed is of the essence in implementation but this must not be allowed to undermine efficacy—there must be a mechanism devised at EU level to deal with this.

29. We are equally encouraged by efforts in other fields to ensure greater consistency of implementation and enforcement between Member States. This can be seen in forums, such as the Committee of European Securities Regulators (part of the Lamfalussy process) and the European Competition Network. Bringing together regulators from the European and national spheres to discuss issues of implementation and enforcement (rather than simple policy-making) should serve to improve consistency, exert peer pressure on laggard [?] administrations and allow best practice to be exchanged. Such forums could be developed equally in other policy fields.

30. "Goldplating" when implementing is also cited frequently as a problem related to the implementation of EU law. There are also a number of causes cited. In this respect, we note with great interest the recently revised Cabinet Office "Transposition Guide: how to implement European directives effectively". In this document, the "copy-out" approach of transposition is given preference over that of trying to "elaborate" on directives. While we think this is an interesting approach, we would reserve judgment until the effects of this new guidance become more apparent.

31. We consider that the Select Committees suggestion that EU legislation could be examined as a matter of routine after implementation to asses its regulatory impact is a helpful one. Indeed we consider that legislation should be reviewed for its effectiveness and the extent to which the legislators have achieved what was intended before any new further legislation in this field can be adopted.[21] EU legislators should not shy away from admitting that legislation is not working and that it needs to be either amended or repealed. The Commission's Green Paper on financial services, published in May 2005, is a welcome example of this attitude.

32. In the area of justice and home affairs this is increasingly being done by the European Commission, as an own-initiative, or on the basis that the original legislation set out a review clause. This is a welcome move this but could be carried out in a more systematic fashion. Again the question of where the evidence comes from in order to draw conclusions as to the impact is a pertinent one and this ties in with our comments on effective consultation as set out above.

33. We welcome this opportunity to comment and are happy to engage in further discussion on this topic in the future.

May 2005

Memorandum by Union of Industrial and Employers' Confederations of Europe (UNICE)

1. Definitions: Better regulation implies that legislation must be drafted and enacted at the appropriate level—national or European—and be proportionate to the problem that is to be solved. It must always be based on sound scientific facts. Better regulation also implies encouraging initiatives in favour of self-regulation or co-regulation. Better regulation also implies the proper and swift implementation of internal market directives into national law. Better regulation in addition means that impact assessments and consultation of stakeholder organisations is mandatory for all proposed legislation in order to examine their impact on competitiveness.

[21] The proposal of a third money laundering directive before the report on the second directive as foreseen in the second directive itself is a case in point.

They should be carried out from the very early drafting to the final adoption of legislation. In the context of better regulation, also concrete action plans to simplify existing red tape and reduce compliance costs must be put in place with ambitious targets and deadlines, incentives and controls. Lastly, in view of the fact that the expanding volume of the existing "*acquis communautaire*" is all the more harmful as the new Member States are struggling to implement it quickly and thoroughly, new legislative proposals need to be absolutely essential to qualify for adoption in the coming years.

2. Legislative process: UNICE is pleased about the increasing emphasis which the Commission over the past few years have put on better regulation as a crucial tool for promotion competitiveness. UNICE supports the Commission screening proposals that are pending before the Council and Parliament with regard to their impact on competitiveness. Proposals adopted before 2004 whose impacts have an adverse effect on competitiveness should be modified, replaced or withdrawn in line with the objective to achieve better regulation in the EU. UNICE also supports the Commission launching a framework of action to reduce the volume of the Community "*acquis*" to improve the accessibility of legislation and to simplify existing legislation. It is important that initiatives in this area are taken to ensure faster progress regarding the adoption of simplification measures and that simplification measures do not become burdens in themselves. Stakeholders should be consulted throughout the process of developing and determining simplification measures.

3. Methodology: UNICE supports strengthening the assessment of economic impacts. This is vital for better understanding the consequences of new rules for factors which are widely considered to be important for competitiveness. Assessing positive and negative effects on markets, trade and investment flows, direct and indirect costs for businesses, impact on innovation, are all important for achieving better regulation. However, it is important that the timely provision of essential information to decision-makers is not frustrated by exaggerated scientific demands being made regarding the accuracy of the assessment's findings. As a first step the administrative costs of proposals should be estimated in accordance with a proper and widely accepted method that, as much as possible, presents results in monetary terms (in this context, UNICE favours introduction of the so-called Standard Cost Model). For more important proposals, entailing significant burdens for business, other impacts, such as those on trade and innovation, should gradually be taken into account as well (application of a principle of proportionate analysis). The credibility of impact assessments would gain if they were entrusted to or verified by an independent body which would check whether an impact assessment carried out by the Commission services responsible for the proposal has properly assessed the impact on competitiveness. A proposal should only be tabled for adoption if the benefits of a proposal exceed the costs in line with the Lisbon objective. A yearly report by an independent body whether impact assessment principles and procedures have been applied correctly would also help achieving better regulation. In addition, the Council and European Parliament should develop a mechanism to evaluate the impacts of major amendments in accordance with the "Interinstitutional Agreement on Better Lawmaking".

4. Governance: Consultation of stakeholder organisations regarding all legislative proposals should be mandatory and carried out from the very early drafting to the final adoption of legislation. All impact assessments, preparatory and background documents should be published to allow for effective and early involvement of stakeholders. It should be clear to all stakeholders how the Commission assesses the expected impacts of its proposals and they should be consulted throughout the process. It is crucial that the impact assessment method is widely accepted and that the results are credible for all concerned parties, such as the European Parliament, the Member States, and the businesses that are the object of the proposed legislation. In UNICE's view, the credibility of impact assessments would gain if they were entrusted to or verified by an independent body. UNICE supports the Member States exchanging best practices to promote better regulation at national level.

May 2005

Better Regulation for Growth and Jobs in the European Union Commission Communication (Com(2005)97final)

1. Introduction

The Commission firmly acknowledges the importance of better regulation to help make the European Union a more attractive place to invest and to work in. The Commission declares itself strongly committed to better regulation principles. The way in which better regulation contributes to achieving growth and jobs is to be reinforced, and improving European and national legislation in order to promote European competitiveness is a high priority. UNICE supports this process and the increasing emphasis which the Commission and European leaders over the past few years have put on better regulation as a crucial tool for promoting

competitiveness. It is important that this approach is borne in my mind when future policy initiatives are developed.

It is thus with great interest that UNICE has taken note of the recommendations and plans of the Commission to reinforce the means of achieving better regulation as set out in its Communication on better regulation for growth and jobs in the EU. UNICE welcomes taking part in discussions on how best to shape future policy in this area and its views and recommendations regarding the Commission's proposals and intentions are set out below.

2. Impact Assessment

Economic impacts

UNICE supports strengthening the assessment of economic impacts. This is vital for better understanding the consequences of new rules for factors which are widely considered to be important to productivity and thus competitiveness. Assessing positive and negative effects on markets, trade and investment flows, direct and indirect costs for businesses, impact on innovation, are all important for achieving better regulation.

In this context, UNICE would like to underline what it has already said regarding the need for a pragmatic approach. It is important that the timely provision of essential information to decision-makers is not frustrated by exaggerated scientific demands being made regarding the accuracy of the assessment's findings. As a first step the administrative costs of proposals should be estimated in accordance with a proper and widely accepted method that, as much as possible, presents results in monetary terms (see further below). For more important proposals, entailing significant burdens for business, other impacts, such as those on trade and innovation, should gradually be taken into account as well. In this context, UNICE supports the application of a principle of proportionate analysis to ascertain that the depth of the analysis matches the significance of the impacts.

Scope and transparency

UNICE supports impact assessments being conducted on all major policy-defining documents and all legislative proposals listed in the Commission's legislative programme. Furthermore, UNICE welcomes the strengthened role of the group of five Commissioners responsible for competitiveness. This group should play a major role in the drive towards an approach to impact assessments which properly focuses on the competitiveness aspect. In this context, UNICE also wishes to highlight the role of the other Institutions. The Competitiveness Council should take the lead to strengthen the competitiveness aspects and the Council and European Parliament should develop a mechanism to evaluate the impacts of major amendments as well. Only if all three Institutions actively pursue impact assessments as a key element of better regulation, will the aim of the Lisbon agenda be achieved. Therefore, UNICE wishes to stress the importance of developing a common methodology as foreseen in the Interinstitutional Agreement on Better Lawmaking.

Transparency is vital for sound decision-making in the EU and UNICE therefore welcomes measures which will enhance this, such as publication of roadmaps at the early stages of a proposal, which set out policy options, assessments and consultations to be undertaken. UNICE insists that all impact assessments, preparatory and background documents are always published to allow for effective and early involvement of stakeholders. It should be clear to all stakeholders how the Commission assesses the expected impacts of its legislation and they should be consulted throughout the process. It is crucial that the impact assessment method is widely accepted and that the results are credible for all concerned parties, such as the European Parliament, the Council and the businesses that are the object of the proposed regulation.

Measuring administrative costs

A commonly accepted methodology for measuring administrative burdens should be introduced in the impact assessments as soon as possible. UNICE favours introduction of the so-called *Standard Cost Model* currently used by more than 10 Member States, with more countries considering doing so soon, such as the UK and Finland. This method provides for a clear and transparent evaluation of business costs and is relatively easy to apply. There is significant know-how available as regards application of the *Standard Cost Model* allowing for transparent benchmarking and cross-country comparisons. The method gives a clear picture of the costs of reporting and information obligations in a transparent, objective and straightforward manner, on the basis of which policy-makers can make well-informed decisions for growth and jobs.

UNICE does not share the Commission's reluctance to focus on introduction of the *Standard Cost Model* by striving for an alternative method which is overly flexible and which seeks to also take account of benefits such as cost savings or costs that would have been made anyway in the absence of the proposed legislation. These

costs will greatly differ amongst the different Member States and involve speculative assumptions regarding entities' behaviour which would render a common methodology unnecessarily complicated and would significantly increase the error margin of its findings. Measuring administrative costs is an essential and crucial part of the impact assessment which can be carried out in a relatively simple and transparent way as the *Standard Cost Model* has proved. This aspect of impact assessments should not be made overly complicated and UNICE therefore urges the Commission to focus on the feasibility of the *Standard Cost Model*.

Quality control and independence

UNICE welcomes the Commission's intention to launch a comprehensive independent evaluation of the impact assessment system as it has evolved and been implemented. UNICE also particularly welcomes the Commission's intention to draw on external expertise to advise it on the methodology of its assessments and technical issues and, in this context, to set up a special network composed of experts in better regulation issues, including academics and practitioners, which may be invited on a case-by-case basis to advise on the scientific rigour of the methodology chosen for specific assessments. Parallel to this, the Commission intends to reinforce quality control by Commission departments.

UNICE strongly supports the idea to enhance quality control of impact assessments. Drawing on independent external expertise could be an important step towards achieving better regulation for growth and jobs and reducing the risk of bias. The credibility of impact assessments would unquestionably gain if they were entrusted to or verified by an independent body. UNICE would for example be pleased to see an expert body within the Commission verify whether an impact assessment of the lead DG has properly assessed the impact on competitiveness and attest to the five Commissioners responsible for competitiveness that the benefits of a proposal exceed the costs in line with the Lisbon objective, which should be a prerequisite for the proposal to be tabled for adoption. UNICE would also support an independent body reporting on a yearly basis whether impact assessment principles and procedures have been applied correctly. The introduction of such additional checks would greatly help in achieving better regulation for growth and jobs in the EU.

Screening of pending legislative proposals

UNICE supports the Commission screening proposals that are pending before the Council and Parliament with regard to their impact on competitiveness. Proposals adopted before 2004, whose impacts have an adverse effect on competitiveness, should be modified, replaced or withdrawn in line with the objective to achieve better regulation in the EU.

3. Simplification

UNICE supports the Commission launching a framework of actions to reduce the volume of the Community *acquis* to improve the accessibility of legislation and to simplify existing legislation. UNICE welcomed the Council's contribution to this by establishing Council priorities for simplification and especially appreciated the Council selecting priorities for simplification by looking whether a simplification would directly relieve burdens for business and not merely mean consolidation or codification of existing legislation. UNICE hopes that the Commission will soon react to all the suggestions. It is important that initiatives in this area are taken to ensure faster progress regarding the adoption of simplification measures and to encourage participation of stakeholders.

UNICE agrees that Member States should set up simplification programmes and supporting structures adapted to their national circumstances. Concrete action plans to simplify existing red tape must be put in place with ambitious and quantitative targets, deadlines and controls. UNICE appreciates the Commission's intention to encourage such simplification, including the setting up of a dialogue to curb the practice of "gold-plating" EU directives at national level, and hopes that the exchange of best practices and peer review, also in the area of impact assessments, will achieve better regulation at national level.

28 April 2005

Memorandum from WHICH?

About Which?

1. Which? is an independent, not-for-profit consumer organisation with around 700,000 members and is the largest consumer organisation in Europe. At EU level we are members of the European consumer federation BEUC. Entirely independent of government and industry, we are funded through the sale of our Which? range of consumer magazines and books. Which? was formerly known as Consumers' Association.

2. Many of the policy issues that concern Which?, including trade and competition policy, financial services, food safety and consumer protection, are within the EU's competence. Regulation is often necessary to establish a competitive single market to the benefit of consumers and to protect consumers' basic rights of access, information, choice, safety, quality, representation and redress.

Clarity and Regulatory Impact Assessments

3. Useful consultation, meaningful impact assessments and proper scrutiny of regulatory proposals are only possible if the proposals and the accompanying information are succinct, written in clear language and understandable without reference to other EU regulations. The Commission has made some improvements in recent years, but some proposals in the Official Journal are still in a form that conceals their purpose and are in language that discourages comment.

4. We would support moves to make the process of producing regulatory impact assessments (RIAs) more consistent, transparent and, above all, independent. RIAs should not rely on input from those with a vested interest in the outcome. Our experience suggests that industry estimates of regulatory and other costs should be treated with considerable caution unless credible independent supporting evidence is provided.

5. In addition to RIAs, we would like to see much greater clarity from the Commission at an early stage of the impact of regulatory proposals on consumers and on national legislation. The Consumer Institute proposed by DG SANCO could play a useful role here.[22]

6. The Commission increasingly emphasises the importance of evidence-based policy-making. As with RIAs, we stress the importance of independently-prepared evidence: where reports are prepared by external consultants, they should be published as soon as they are available to the Commission.

Consultation

7. Which? believes that good consultation can contribute to effective regulation. However, current consultation procedures are often ineffective. In its White Paper on Governance,[23] the Commission noted that it ran "nearly 700 *ad hoc* consultation bodies" and that the two-day hearing on the telecoms package had "550 participants". However, while EU consultative committees and public hearings are useful means for hearing the views of participants, they are rarely an effective means of consultation at a significant level of detail. They also often lack balance, with the majority of participants generally drawn from industry and other client groups. Consumer and citizen groups may provide at best a token presence.

8. Improved written consultation mechanisms are also needed. Working papers should be made available much earlier in the policy-making process, as consultation at a later stage often only invites interested parties to endorse or to oppose a firm proposal. Subsequent versions of policy papers should also be available for comment.

Regulation in Financial Services

9. The financial services sector is one in which there is much debate about the quality of and need for regulation. We are concerned that regulations often appear to be drafted in the absence of meaningful assessments of retail financial markets in the Member States. Without a thorough knowledge of the types of products on the market, methods of delivery, consumer understanding, levels of existing and potential cross-border activity, and of the effectiveness of competition policy and levels of implementation and enforcement of existing EU financial services legislation, it is difficult to see how informed policy formulation can take place.

10. Opportunities for consumer input have been limited. Which? is concerned that the Lamfalussy process reduces public accountability and effectively excludes consumers from discussions on the regulations necessary to complete the single market in financial services. A single market in financial services will not develop without consumer confidence, and Baron Lamfalussy himself criticised proposals to extend the process to retail banking and insurance issues. The European consumers' organisation BEUC has also questioned whether the Lamfalussy process does actually, as claimed, lead to faster and more efficient lawmaking.[24]

[22] Communication for a Health and Consumer Protection Strategy (p 12), April 2005.

[23] Commission White Paper on European Governance, 25 July 2001.

[24] Bureau Européen des Unions de Consommateurs (BEUC): Application of the Lamfalussy process to securities market legislation, January 2005.

Simplification and Deregulation

11. Which? accepts the need to carry out a comprehensive programme of simplification of existing legislation. Any proposals to simplify the law should however reflect the EU Treaty requirement (in Article 153) to ensure a high level of consumer protection, and should be subject to open consultation at an early stage and to the full EU law-making process.

12. It is important that the proposed group of high-level national regulatory experts to be established by the Commission to advise on better regulation issues[25] takes a balanced approach, and does not focus on those regulations which industry lobbies regard as inconvenient while leaving in place those that enable them to continue protectionist policies.

Role of the Council and the European Parliament

13. Good initial drafting and effective impact assessment are crucial but the Council and the European Parliament have an equal, if not greater, responsibility for ensuring effective regulatory outcomes. The Parliament does not always sufficiently take into account issues of effective regulation and enforcement when considering amendments. The Council often proceeds on the basis of substantially amended and often hastily-prepared Presidency compromise texts in a drive for consensus, presenting little opportunity for further impact assessment or proper consultation.

14. Early consultation by UK government on EU regulation is also crucial and again it is most likely to be effective when proposals are at very early stages of consideration, well before Green Papers are issued. As a UK Presidency initiative, we would welcome a review by the Cabinet Office of departments' practices. Overall, our experience is that some government departments are much better than others on early consultation on EU regulatory proposals.

15. We would particularly commend the way in which the DTI has kept stakeholders informed about developments on the unfair commercial practices directive, the services directive and the sales promotions regulation: at the other end of the scale, HM Treasury has shown considerable reluctance to enter into dialogue with consumers on proposals on the financial services action plan. At the time of writing, Which? has not received a reply to a letter sent to the Financial Secretary in November 2004 with proposals for initiatives in the UK Presidency to promote a debate on retail financial services regulation.

Improving Effective Regulation in the Member States

16. Late transposition, bad transposition and weak enforcement undermine the single market. Which? has proposed that, when implementing EU legislation, Member States should be required to notify the Commission with the details of their relevant national agencies with responsibility for enforcing it. A recent Commission Recommendation[26] sets out some good practice guidelines on implementation but is largely exhortatory, and we would like to see the Commission being more robust in pursuing national administrations over infringements of EU law.

17. We have set out some concerns and recommendations about regulatory bodies in the Member States in our response to the Commission's Green Paper on services of general interest [COM (2003) 270 final], on issues such as governance, accountability, openness, consultation and the risks of regulatory capture. We would be happy to provide the Committee with more information.

Self-regulation and Co-regulation

18. Which? recognises that self-regulation can offer protection over and above what the law requires, but it cannot be a substitute for fundamental legal rights. Self-regulation will only work where there is good coverage of the relevant market, mandatory compliance with agreed rules, proper enforcement and stakeholder involvement. Experience to date with EU-level codes of practice is unfortunately not encouraging. We would be happy to provide the Committee with more information on this issue.

May 2005

[25] Communication on Better Regulation for Growth and Jobs in the European Union, COM (2005) 97 final.

[26] Commission Recommendation of 12 July 2004 on the transposition into national law of directives affecting the internal market (2005/309/EC).

Printed in the United Kingdom by The Stationery Office Limited
9/2005 309943 19585