

CRACKING DOWN ON ADMINISTRATIVE BURDENS: WHY BUSINESS IS NOT LATCHING ON*

di Claudio M. Radaelli

(Professor of Political Science and Jean Monnet Chair Director, Centre for Regulatory
Governance, University of Exeter)

11 luglio 2007

pubblicato su www.federalismi.it

Better regulation is a priority of the Lisbon agenda for competitiveness in Europe. The Vice-President of the European Commission and the leaders of the most influential Member States have recently celebrated a major agreement on this topic, based on the 25 per cent reduction of administrative burdens generated by the EU. On 8-9 March 2007, the European Council agreed “that administrative burdens arising from EU legislation should be reduced by 25% by 2012”. The European Council also invited the Member States “to set their own national targets of comparable ambition within their spheres of competence by 2008”.

The Commission has established an impact assessment board reporting to Vice-President Verheugen to check at the highest political level within the Commission on the

* This occasional paper arises out of my current research on better regulation in Europe funded by the Economic and Social Research Council of the UK, grant on “Regulatory Impact Assessment in Comparative Perspective” No. RES-000-23-1284.

quality of impact assessment. The board has now released the first wave of opinions, asking in some cases for more precise quantification of the elimination of administrative burdens.¹

The Netherlands and the UK have already experimented for several years with independent quality control bodies. Germany has joined the group recently with its federal Normenkontrollrat, and Sweden may follow suit. The major task of these bodies, at least in the Netherlands and Germany, is to assist and challenge departments in the elimination of unnecessary burdens.

There is quite a bit of interesting networking going on in Europe. The heads of the quality control bodies from Germany, the Netherlands and the UK discuss matters of common interest every month in video-conference. At the international conference on 'challenges on cutting red tape' (Rotterdam, 1 March 2007) they addressed Vice-President Verheugen with a letter asking for more incisive action on the war on burdens and more independent scrutiny. There is also intense cooperation on tools and methods with the aim of sharing best practice and practical knowledge in ad-hoc intergovernmental networks and in the OECD.

London has always been an important better regulation hub. The new Prime Minister of the UK, Gordon Brown, has made clear his views on 'red tape Europe' on several occasions when speaking from no.11 at Downing Street. With three other Finance Ministers, he set regulatory reform priorities for the EU in a letter published in January 2004. From no.10 the political clout of his words will only increase.

The Member States and the Commission are for once in full agreement on the need to set and achieve targets on administrative burdens. They have argued that this would increase competitiveness in Europe, and help European firms struggling with red tape.

Yet in my empirical research on better regulation in Europe I have heard politicians and senior policy officers lamenting that the business community is not latching on. Perhaps they like regulation - it is supposed to be their favourite teddy bear, so says the chair of the

¹ See the opinion of Food Hygiene – Administrative burdens omnibus, http://ec.europa.eu/governance/impact/docs/ia_2007/op_abr_omnibus.pdf.

Better Regulation Commission². Perhaps we need to communicate better - so say the World Bank and the OECD in their review of the Dutch experience³. Perhaps we are not making the right reforms - so says economist Dieter Helm in a recent article⁴. Perhaps we are after low hanging fruits and they wait and see until we get serious - so says a recent study on administrative burdens reduction initiatives funded by DG Enterprise⁵. Perhaps business does not see administrative burdens as the major regulatory hindrance to economic activity and competitiveness - so says the economic evidence: nowhere does economic analysis show that information requirements are the major problem for firms.

On balance, there may be reasons not to haste to celebrate the advent of rationality and business friendly regulatory environments in Europe. The devil is always in the detail. In this short piece I do not address the technical limitations of the standard cost model. They are well known, and so are the counter-arguments. Rather, I look at some lesser-known political details and expose the devil therein.

One of the major ideas behind the better regulation movement was to avoid political bias - towards de-regulation, more regulation, and regulation driven by special interest politics. The movement's goal, indeed, was to recast the agenda of regulatory reform from quantity to quality. The problem – we heard - is not more or less regulation, but to increase the capacity of governments to produce high quality regulation. The tools of better regulation would deliver good regulation because proposed and exiting rules would be assessed on the basis of empirical analysis. This is indeed rational analysis, assisted by economics and other ways to gather empirical evidence.

It seems that this commitment to rationality and regulatory quality has quickly been forgotten. Let us look at the fundamentals of good regulation. In terms of increasing the potential for growth, what matters is efficient regulation – some markets have to be deregulated in Europe, but in specific sectors market-friendly regulation makes firms more competitive. When there is a clear market failure some types of regulation or economic

² Rick Haythornwaite, Britain's secret shame: we just love red tape, *Financial Times*, 9 February 2006.

³ Konvitz, J. (2007), 'Administrative simplification in the Netherlands: Main findings by the OECD and World Bank Group', paper given at Challenges of cutting red tape, Rotterdam, 1 March 2007.

⁴ Helm, D. (2006), 'Regulatory reform, capture, and the regulatory burden', *Oxford Review of Economic Policy*, 22 (2), 169-85.

⁵ Boeheim, M., et al. (2007), 'Pilot project on administrative burdens - Final report', (Vienna and Brussels (WIFO and CEPS): DG Enterprise and Industry, Contract Nr. B2/ENTR/05/091-FC).

instruments can provide net benefits to the society. It is the net benefit to social welfare that matters.

It is difficult to say how to achieve the right balance of market, self-regulation, and rules in each and every sector. The best way to proceed is to consider carefully the costs and benefits of proposed regulation – and to review existing regulation with the same regulatory quality benchmark. Macro targets on burdens relying on ad hoc methods like the standard cost model have little to do with the rational calibration of regulatory tools via cost-benefit analysis. No-one is against taking burdens out of the statute book, the question is the opportunity cost – at least 20-million GBP have been spent in the UK in direct costs arising out of the baseline measurement of burdens. We must make sure that resources are invested in the most efficient way.

Add to this that we do not have empirical evidence leading us to conclude that administrative burdens are the most acute regulatory problem for firms across the whole of the EU – they may be a more serious problem in countries like Italy than in the UK, yet the countries that are doing more to compress administrative burdens are paradoxically the ones that prima facie seem to gain the lowest marginal benefit from the exercise. More solid evidence is needed to make the investment in the campaigns against administrative burdens more socially acceptable. For example, how high is the problem of information requirements on the list of the regulatory problems encountered by the European firms? If the plan is to allocate resources wisely, we should find where the highest marginal return of investing an extra Euro on better regulation policy can possibly be. Indeed, in the age of the information society one would think that the marginal cost of complying with information requirements is decreasing.

As Professor Wiener reminded us, the investment in administrative burdens programmes should demonstrate to firms that we are not reducing burdens and at the same time increasing policy costs⁶. Public administrations may well ask for a bit less of information, but only to increase the overall compliance cost – if a public organization has less information, it may become more rigid in setting rules. For the firm, the difference between a cost generated by information requirements or by the policy itself is marginal. What matters

⁶ Wiener, J. B. (2006), 'Better regulation in Europe', *Current Legal Problems*, vol.56.

is the total regulatory burden. It is a shame that very few governments are interested in targeting this problem.

Anyhow, how do we know if we are on the right track? Most of us are looking at targets and whether they will be met or not. However, the crucial test in the following years will not be how many departments comply with the reduction targets set by central unit. All in all, departments and units belong to the same executive, the incumbent wants to be re-elected, and chances are that at the end of the electoral cycle the targets will be somewhat reached. The test, instead, is whether business will have taken any notice – serious better regulators should not rely on self-referential systems but use surveys and panel data of firms to check on the achievement of burden-reduction targets. Countries like the UK and the Netherlands are rightly moving in this direction, but there is no systematic awareness of the crucial role played by this apparently small quality assurance detail.

The common answer to criticisms of the war on red tape is that the whole of the better regulation agenda is targeting the regulatory costs of the firm. Apart from the burden-reduction campaigns, there are simplification plans and other business friendly initiatives to reduce costs. But here again we seem to miss the lessons of some 30 years of experience with rational policy analysis in the USA and Canada. The most robust goal that better regulation should set is to increase the credibility of regulation by setting regulatory quality priorities. In turn, this creates an important pre-condition for the legitimacy of the state. Europe has been the theatre of too many regulatory crises, in which the credibility of EU and domestic regulators has been questioned and the legitimacy of single market and domestic rules put in jeopardy. To balance “politically” better regulation around a single stakeholder and the cost side of the good regulation equation is not rational in terms of credibility and legitimacy.

Better regulation is credible if its effort is to deliver in terms of welfare or net benefits over time. Again, the point is about the quality of regulation and specifically quality for whom? I submit that, if anchored to a case by case examination of rules on the basis on benefit-cost criteria, better regulation is first and foremost better governance, for all the regulatory stakeholders. In turn, the benefit-cost criteria may need to go beyond cost-benefit analysis, especially when dealing with incommensurables and benefits that are hard to quantify. But it is vital not to forget the benefit side of the equation when dealing with regulatory reform. To go back to simplification and war on red tape, there is no reason why

we should not be able to use benefit-cost criteria in getting rid of old legislation and when attacking the problem of information requirement or compliance costs. In this case too, all is need is an anchorage to regulatory quality, and not identify quantity as the sole measure of reform.

In conclusion, the business community may have much less to gain from the current better regulation euphoria than it may seem. First, unless the ambitious better regulation plans are monitored using information from business and other regulatory stakeholders (interestingly, the Netherlands is experimenting with tools to measure how citizens perceive burden reductions over time), the new initiatives may be captured by the self-referential logic of administrative routines and electoral politics. So far, rationality has been dominant in the language of the better regulators, but old (bureaucratic and electoral) politics has been the main concern. Second, although the current agenda is presented to the media as pro-business, better regulation may over time decrease the overall credibility and legitimacy of regulation, and the business community may be criticised for having tilted the regulatory scale in one direction. The confidence gap between citizens and business can increase, although the primary cause is politics.

Third, and paradoxically, business and the economy as a whole may not get much from bold large-scale programmes to reduce burdens if other regulatory costs are introduced and rules are not checked on the basis of benefit-net criteria. For these reasons, business should pay more attention to the serious efforts being made with the rational, dispassionate analysis of how individual regulations will create or have generated costs and benefits affecting a wide range of stakeholders. It is from this type of analysis, rather than from large-scale old soviet-style multi-annual targets, that more rationality and more efficiency and competitiveness will be injected in the European economy. The devil is always in the detail, and for once the business community may be wise to wait and see until the details are specified.