

Outcome of the public consultation on Smart Regulation

I. INTRODUCTION

This stakeholder consultation aimed at collecting input for a Communication presenting the Commission's priorities for smart regulation, as announced in the President's political guidelines of autumn 2009.

The consultation ran from 23 April to 25 June, as an internet consultation open to all stakeholders and the consultation papers were translated into all official EU languages. The Commission also accepted a number of contributions after the deadline.

There were 79 replies to the consultation from a broad range of stakeholders, including 4 individual citizens, 17 non registered and 38 registered organisations, as well as 20 public authorities. These can be accessed at

http://ec.europa.eu/governance/better_regulation/smart_regulation/contributions_en.htm

This report summarises the views provided by stakeholders. The Commission's reply to the major points raised can be found in the Communication on smart regulation [COM(2010)543]. Given many detailed contributions on how to improve public consultation, the Communication announces a full review of the Commission consultation policy by 2011.

II. GENERAL COMMENTS

A high number of often very detailed contributions show genuine interest in the better/smart regulation agenda. The responses broadly underlined the need for the Commission and other institutions to keep smart regulation high on the agenda. Some stakeholders pointed out that this is particularly important, given the increasingly cross-sectoral nature of the objectives of the Europe 2020 strategy.

A majority of stakeholders appreciated the progress made on the reduction of administrative burden and simplification, although a number of stakeholders were concerned that the agenda is too business-driven and called for higher priority for the interests of public authorities and citizens. Most appreciated the Commission's intention to invest more in the ex post evaluation of policies. Some suggested that the Commission should not propose any new legal act, if the existing one has not been fully implemented.

There was also a large consensus among the stakeholders that, while there are necessary improvements to be made, the Commission's overall approach to impact assessment is appropriate. Most of the stakeholders pointed to the fact that the responsibility for delivering and implementing high quality regulation cannot be limited to the Commission alone: a much more active involvement of the European Parliament and Council on the one hand, and the Member States on the other, is needed to bring success. Stakeholders also very much agree that the Commission should improve on how it consults stakeholders. Many stakeholders called also for a reinforcement of the role of the Impact Assessment Board.

III. THE KEY ISSUES RAISED

1. SIMPLIFYING AND MAKING THE EXISTING LEGISLATION LESS BURDENSOME

Many stakeholders commented on simplification and reduction of administrative burden and provided concrete examples of good practice from the Member States¹. While a majority of stakeholders appreciated the Commission efforts and supported the general idea of simplifying existing law, including codification and removing obsolete acts, as well as cutting the red tape, three major lines of criticism to the current approach emerged.

Reduction method

First, a number of stakeholders, including business organisations, criticised what they perceived as a 'piece-meal' approach, i.e. starting with 13 priority areas, and called for a full baseline measurement of all costs, including compliance costs with a reduction target. A net target, meaning that the expected savings should be corrected by taking into account any new information obligations, was proposed. At the same time many stakeholders wanted to focus on reducing the most irritating, though not necessarily the most burdensome, obligations for business. These could be identified by an intensified dialogue between the Commission and the stakeholders, as is the case in some Member States. Stakeholders pointed out that the measurement should clearly identify the origin of the burden – e.g. national vs. EU.

Scope of the programme for administrative burden reduction

Secondly, some stakeholders, including social and environmental NGOs, pointed out that in its current form the programme for reducing burdens is focused on business only, and needs to be broadened to take into account the needs of citizens and public authorities. Otherwise there is a risk of simply shifting burden from business to those two groups, or missing out significant reduction potential elsewhere. A few stakeholders called for a separate reduction programmes for big business and SMEs. Additionally, some stakeholders, including NGOs and social partners, argued strongly against any reduction measures that would touch on the policy objectives, and risk lowering e.g. work and health or environmental standards.

The role of Council, Parliament and the Member States

Thirdly, many stakeholders were concerned about slow progress in adopting reduction proposals by the Council and Parliament, and called for a fast track procedure in these institutions. Some suggested that the Commission should go as far as withdrawing its proposals, even those not belonging to the administrative burden reduction programme, if amendments introduced in the legislative process increase the administrative burden for business.

¹ These are not listed here, but will be carefully analysed by the Commission services and by the High Level Group of Independent Stakeholders on Administrative Burden.

As for the future successful delivery of simpler regulations, stakeholders pointed to the need for the Commission to follow more closely developments in the Member States, including on how they deliver their own reduction programmes.

With regard to checking the real impacts of the simplification programmes, the stakeholders largely proposed an idea of a 'reality check', which would entail checking the effects of measures directly with the business affected.

High Level Group of Independent Stakeholders on Administrative Burden

Finally, many stakeholders appreciated the work done by the High Level Group of Independent Stakeholders on Administrative Burden. Some were critical, however, of its current composition as being unbalanced towards business, and big business in particular. They called for this to be addressed, in particular if the Group extends its activities beyond administrative burden issues to broader issues of simplification. Both abolishing the Group altogether and the prolongation of the Group's mandate behind 2012 were proposed.

2. POLICY EVALUATION

The stakeholders agreed that ex-post evaluation is an important tool that should be further developed and more widely used both on the EU and MS level. Unlike for the simplification and reduction of administrative burden, however, the stakeholders could point to relatively few good practices in the Member States.

Some stakeholders had concerns that ex-post policy evaluation might be too business-orientated and may eventually lead to deregulation. It was also mentioned that ex post evaluation can be expensive and needs therefore be carefully targeted and designed. They stressed the need to initially analyse how well legislation delivers on its objectives and to take into account not only immediate costs reductions but also longer term benefits, such as consumer welfare.

Scope of the evaluation

Stakeholders expressed support for carrying out evaluation for entire sectors rather than individual pieces of legislation – so called 'fitness checks', and they provided a number of concrete ideas for sectors which should be subject to the pilot studies. These are listed below. On the other hand, stakeholders pointed out that a thematic/sectoral approach might be insufficient to deal with cross-sectoral legislation. Some suggested that the starting point should be type of a business activity or specific business sector, e.g. SMEs, butcheries or bakeries, rather than legislative area, e.g. food safety.

At the same time the stakeholder stressed the importance of establishing an evaluation-life-cycle that would introduce an ex-ante evaluation for each new legislative act to anticipate short-comings and help to fix the scope and timing of ex-post evaluations in advance.

Promoting the evaluation culture

Many stakeholders proposed that including a sunset clause and a revision date for any new policy initiative/legislation should be obligatory. That would help to keep the EU law free of obsolete, unimplemented legislation. In this context, stakeholders stressed the need for clearly drafted legislation without abstract references that may lead to different interpretations in the Member States. In a similar vein, exemptions for individual Member States make legislation patchy and difficult to implement and should not be used.

In order to further motivate the Member States, some stakeholders proposed establishing an EU evaluation award, or a central evaluation entity at EU level that would ensure objectivity and independence of the evaluation results. Also, it was proposed to revise the evaluation guidelines.

Finally, some stakeholders stressed that evaluation should also be used to align the terminology of legislative acts which address similar issues and to check if consistent legal requirements/consequences are established.

Involvement of stakeholders

Stakeholders expressed the wish to be better informed about how the evaluation process in general as well as how individual evaluations will be organised, and how it will fit in with existing tools, such as implementation reports. The need for an involvement of stakeholders and MS in the evaluation process was also underlined. The participation of regional and local authorities in the evaluation process is key, in particular in MS with federal structures.

Pilot evaluations

Respondents suggested the following policy areas/ industrial sectors for pilot policy evaluations:

- Audio-visual media services
- Automotive industry
- Biocide directive
- Biotech industry
- Cohesion and structural funds
- Company law
- Consumer rights
- Consumer electronic goods
- Education and training
- Emission trading scheme as compared to National Emission Ceiling Directive
- Employment relations
- Energy
- Environment, including waste and resource and REACH²
- Financial regulation (markets)
- Food safety
- Health
- Internal market
- Individual rights
- Justice
- Pharmaceuticals
- Research programmes (such as Framework Programme 7)
- Services directive
- Statistics
- Taxation (VAT)
- Transport
- Working Time Directive

² Some stakeholders pointed out that it is still too early for the ex-post evaluation of REACH

Stakeholders proposed also some criteria for selecting pilot evaluations:

- Availability and quality of data
- MS/Stakeholder relevance, not only for businesses, but also for citizens
- Cross-sectoral dimension
- Legislative density
- Precedence character of evaluation results for other policies

3. IMPACT ASSESSMENT

A large majority of stakeholders support the integrated approach for assessing the impacts of new proposals and all in all the Commission impact assessment system. However, the views diverged on what could be improved in terms of the scope, depth of the analysis, quality control of impact assessments or the assessment of social impacts. Some stakeholders also pointed to a risk of overloading the impact assessment guidelines with too many additional elements that could eventually lead to politicising the IA.

A significant number of stakeholders called on the Commission to provide a more quantitative analysis, as well as a clearer presentation of the results of the analysis in the executive summary of the impact assessment. Some pointed out that the impact assessment system should be more balanced with the sustainable development strategy, while others felt that it should be more coherent with the objectives of the EU 2020 strategy.

In the context of subsidiarity and checking for value added, some stakeholders also called for greater attention to be paid to existing policies and legislation in the Member States, so that the value added of an EU action can be made visible in individual Member States.

Stakeholders welcomed the improved transparency on impact assessment planning through roadmaps which allows stakeholders to plan their involvement at an early stage. It was proposed to update the roadmaps and publish them also on the websites of the responsible Commission departments.

Quality control

On the quality control of impact assessments, a majority of stakeholders appreciated the work done by the Impact Assessment Board and most of them were in favour of strengthening the role of the IAB. This could be achieved for instance by making the recommendations of the IAB binding, or by requiring that proposals for which there was no positive IAB opinion on the impact assessment, should be automatically put into oral procedure.

Another idea was to enhance the IAB check on impacts of transposition resulting from different legislative approaches to transposition of EU law into national law. An enhanced IAB check of cultural, and here especially educational impacts, was also proposed.

Some stakeholders argued that a control body would be better placed outside the Commission, or at least that membership should be extended to an external expert, which in their view would increase the independence and transparency of the IAB work. Other stakeholders concurred with that view, but preferred the IAB to stay within the Commission, while

changing either its role or composition. For instance, some voices spoke for broadening the membership of the IAB to include a Board Member who would be specifically responsible for health impacts or SMEs impact.

A balanced approach

While most stakeholders were in favour of a balanced assessment of impacts, some argued that the current practice is biased in favour of the economic analysis. To ensure a better balance between the three pillars a 'comply or explain' approach was proposed, considering applicability, significance and/or political relevance of each impact type. Additionally, stakeholders warned against neglecting impacts only because they are difficult to measure. This in particular may be the case for benefits which are expected to materialise only in future. The stakeholders also argued for including 'worst-case' scenarios in the analysis of impacts and for a more rigorous risk-based analysis.

More concretely, various stakeholders stressed the need to strengthen the following aspects of the analysis carried out in impact assessments:

- impact on SMEs, although some stakeholders pointed out that given that SMEs constitute >90% of business it might be difficult to do any meaningful analysis focused on SMEs;
- impact on the global competitiveness of the EU industry, trade flows and WTO compliance issues;
- distributional analysis, ranging from impact on social groups, through impact on economic sectors, to a more detailed assessment of impacts in individual Member States;
- impact on competition.

Finally, stakeholders suggested that the Commission could make greater use of a multidisciplinary approach, and tap into the information and expertise available in the EU agencies. The Commission should also make a greater effort to use better quality data.

Social impacts

With regard to social impacts, many stakeholders agreed that there is a scope for improving the analysis, arguing that this should stay as a part of an overall assessment – alongside the other impacts. Some stakeholders expressed concern that a more thorough assessment of social impacts may lead to an increase in administrative burden. Two major sets of ideas, nevertheless interlinked, for improving assessment of social impact were proposed by the stakeholders.

The first is how to make sure that the social groups which might be less vocal, but nevertheless might be affected by a given policy, are listened to and data is gathered on their situation. For this purpose the Commission should consult directly stakeholders that are socially deprived, or co-operate more closely with the NGOs. Looking at the potential impacts from a household perspective or looking at the changes in social security level should help to frame these discussions.

The second is to bring specific methodological tools that would enable looking beyond traditional economic impacts. Stakeholders proposed trying the current US approach for a 'humanised cost-benefit analysis' which essentially does not try to put a monetary figure on

every impact, and is not aimed at maximising monetary benefit, thus allowing the inclusion of other considerations such as moral, aesthetic, etc. Similarly, approaches such as 'beyond GDP', taking into account wider costs and benefits, as well impacts of and on the lifestyle, should be applied more often.

4. CONSULTING STAKEHOLDERS

The contributors seem to agree that there is no 'one-size-fits-all' approach to consultations, and that how stakeholders are consulted should be decided on a case by case basis. It was also stressed that the consultations should not be pre-empting their outcome. The stakeholders called on the Commission to respect more consistently its own consultation standards and to prolong the consultation period.

Need to reach out

While the current Commission practice of presenting all public consultations on a dedicated website has been widely acknowledged as a good practice, there was also a large agreement that internet consultations alone are insufficient and must be complemented with a more direct form of communication. Addressing representative organisations directly, using more the European Business Test Panel, European Enterprise Network, consulting the social partners, as defined in the Lisbon treaty, as well as tapping into the expertise of the Economic and Social Committee and the Committee of the Regions have been identified as communication channels to be explored more fully. The Commission was also asked to advertise the consultations in a more proactive way, for instance by publicity in specialist magazines, tv-broadcasts or regional/local press.

At the same time, the Commission was also asked to limit the number of consultations to those that are absolutely necessary. Consultation questions should also be less aggregated and relate more to real-life problems for SMEs or citizens, so that they feel competent to provide contributions.

Ensuring transparency

The stakeholders also called for greater transparency and improved feedback mechanisms that would include:

- Making consultation documents available in all Community languages;
- Publishing all stakeholder contributions as a default option, and – apart from cases where it would be justified – not taking into account the contributions that were submitted as confidential;
- Publishing stakeholder consultations as they come, so that other stakeholders have an opportunity to comment on other stakeholder's opinions;
- Improving the transparency and coverage of the register of the organisations with the vested interest ('lobbies');
- Providing clear feedback, including an explanation of why some of the ideas have not been taken into account, and sending it directly to all consultation participants;

- Making committees much more transparent, including publication of the agendas, documents and minutes, as it is done for the Committees in the European Parliament, as well as information about the committees' members;
- Simplifying on-line access to documents, so that stakeholders can more easily follow developments of a dossier, through the legislative process.

Consultation period

Most of the stakeholders also indicated that there is a need to lengthen the consultation period from eight to twelve weeks, to allow interested parties to make meaningful comments based on their members' expertise. The minimum period of twelve weeks should not count the holiday period and should start from the date all EU language versions are available.

Some also called on the Commission to consult on draft impact assessments, and for this specific issue they felt that a four week period only would suffice. There were also some calls to consult on draft legislation.

In this context some stakeholders criticised the notification system for registered organisations as being unreliable, as the notifications apparently come late.

5. THE ROLE OF OTHER INSTITUTIONS AND MEMBER STATES

Almost all stakeholders call for a greater engagement of the Council and the Parliament in delivering the better/smart regulation agenda. While stakeholders recognised that some progress has been made by individual Council Presidencies or in some Parliament Committees, the situation still remains unsatisfactory.

Some stakeholders demanded that the Council and Parliament should adopt a fast-track procedure for simplification proposals and proposals reducing administrative burden. There should also be a monitoring of the changes introduced by the legislators in terms of administrative burden. Stakeholders also demanded that the Commission put further effort into encouraging the Member States to realize administrative burden reductions already adopted at EU level

Stakeholders expressed that it should become good practice for the Commission's impact assessments to be discussed at the start of any European Parliament Committee and Council Working Group dealing with a new proposal. A great majority of stakeholders requested that the Council and the Parliament assess all impacts of the amendments they introduce, for which the Commission impact assessment could be updated throughout the legislative process.

On a more specific issue, stakeholders also requested further attention to the implementation of the Small Business Act by the EP and the Council.

Stakeholders also recognised the key role of the Member States in implementation that on the one hand does not lead to gold-plating, and on the other hand delivers the policy objectives.