



Nationaler
Normenkontrollrat

Regelrådet



Regulatory Policy
Committee

The End of the Commission's Action Programme for Reducing Administrative Burdens in the European Union -

What comes next?

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General Remarks

The *Advisory board on regulatory burden (ACTAL)*, the *Nationaler Normenkontrollrat (NKR)*, the *Swedish Better Regulation Council (Regelrådet)* and the *Regulatory Policy Committee (RPC)* are independent bodies to advise respectively the Dutch, German, Swedish and British governments on smart regulation in general and the overall regulatory burden, including administrative burden reduction in particular. In this capacity we have developed comprehensive expertise in smart regulation and reducing the overall regulatory burden for businesses imposed by legislation. We play an important role in challenging, monitoring and advising our governments on these issues. We follow the European agenda on better and smart regulation closely, especially by contributing to the work of the High Level Group of Independent Stakeholders on Administrative Burdens (HLG) as members or observers. Additionally, our daily work allows us to come into direct contact with many EU derived regulations at the stage they are transposed into domestic legislation. This gives us a unique insight into the effect and consequences of proposed EU interventions.

The Lisbon treaty highlighted greater competitiveness as an issue, which of course has always been a goal of the EU since its foundation. The Europe 2020 Strategy followed up on the Treaty by focussing on smart, sustainable and inclusive growth. In both strategies, smart regulation and reducing administrative burdens to business have been identified as important drivers to achieve the strategies' goals. Undeniably, a regulatory framework of high quality that is as least burdensome as possible in relation to the purpose of the legislation to business will foster competitiveness and growth in the EU.

Furthermore, in times of economic and financial crisis, political support for the EU is liable to decline. Transparent procedures and smart regulation are needed more than ever to drive competitiveness and support of the EU as a positive institution for growth.

To this end we believe the EU should continue to reinforce its programmes on smart regulation. As the Action Programme for reducing administrative burdens will end in 2012, a new programme needs to be developed to keep the momentum. Some progress has been made so far, but there is still quite a way to go. A change in the mindset, a cultural shift towards smart regulation as a basic prerequisite of proposed legislation has not yet been reached.

Lessons learned from the European Smart Regulation Agenda

1. Action Programme for Reducing Administrative Burdens

In 2006 the Commission started its Action programme for reducing administrative burdens. One important aspect of the programme was the measurement of the administrative burdens to business stemming from 72 European directives and regulations. The measurement showed that European companies have to spend 124 Billion Euro each year in total to comply with the information obligations in the measured legislation.¹ The analysis of the measured legislation enabled the identification of areas where administrative costs could be reduced.

Another important result of the measurement was the realisation that small and medium-sized companies are often the ones that are particularly affected by administrative require-

¹ Cf. COM(2009)544, "Action Programme for Reducing Administrative Burdens in the European Union – Sectoral Reduction Plans and 2009 Actions, p. 4.

ments.² Nevertheless, measuring only parts of the existing stock of legislation does not provide insight into the total amount of administrative cost stemming from European legislation. There are of course, areas where no measurement has been carried out and so it is likely that there is still room to further reduce administrative costs to business.

With the Action programme the Commission has set the gross target to reduce 25% of the measured burden by 2012. So far, the Commission claims that it has tabled proposals to reduce the burden by 38 Billion Euro or almost 31%.³ Out of these, measures worth 26 Billion Euro have already been adopted by the co-legislators, while measures worth 12 Billion Euro are still pending adoption by the European Parliament and the Council. Nevertheless, it is not only because legislative procedures in the EU are lengthy and transposition in Member States is slow, businesses are yet to see the effect of these measures. More important is rather the fact that new costs have been imposed on business by new legislation. As it is unclear how much burden has been imposed by new legislation, it is also unclear whether aggregate the burden has decreased at all. That is the effect of not having a net target which would ensure that new burdens have to be offset elsewhere.

Additionally, the fact that businesses are yet to see the effect might be caused by the narrow scope of the Action programme focussing only on administrative burdens. From the experiences in our countries administrative burdens are only a small part of the costs businesses have to face due to regulation. Therefore, in Germany, and the Netherlands we have broadened the scope from administrative burden to the overall regulatory burden in our national programmes, and in the United Kingdom the RPC routinely scrutinises a full cost and benefit analysis. The Swedish Better Regulation Council also scrutinises the overall regulatory burden when scrutinising impact assessments.

Though the Action programme may have several shortcomings it has been an important driver for smart regulation as it has begun to raise awareness of the topic. The programme showed, as similar programmes did in the Member States, that one key success factor is to set a quantitative target for burden reduction as this enables the success of the programme to be monitored.

2. Impact Assessments

There is no doubt that since 2005, the Commission's impact assessments have improved significantly. By analysing costs and benefits, and addressing all significant economic, social and environmental impacts, the Commission's integrated approach is now a good policy tool in the decision making process. Nevertheless, the current impact assessment system has a number of deficiencies:

Today, impact assessments, including ex-ante measurements of administrative burdens, are carried out for some European legislative proposals. As impact assessments are a precondition for informed decision making and are of the utmost importance to embed a better regulation mindset, it should be the rule that impact assessments and ex-ante measurements are carried out for every new legislative or regulatory proposal by the Commission

Furthermore, we have encountered several impact assessments that have not been carried out properly because assessments of single impacts were missing or were of very weak quality. This relates for example to the administrative burden assessments which – if at all – often only present the total amount of cost introduced. The same refers to the impacts for small and medium-sized companies which are very sensitive to regulatory changes. Furthermore, in cases where the Commission's impact assessments are carried out completely

² Cf. COM(2009)544, "Action Programme for Reducing Administrative Burdens in the European Union – Sectoral Reduction Plans and 2009 Actions, p. 5.

³ Cf. COM(2010)543 final, "Smart Regulation in the European Union", p. 3.

by external consultants it appears that the assessment of the impacts had limited relevance on the drafting of the proposal.

It is regrettable that in the Commission's impact assessment system, stakeholder consultation is carried out only at a very early stage. The draft proposal together with the accompanying impact assessment is not consulted upon with stakeholders. Thus, the opportunity to have a quality check of the impact assessments by those who have the best knowledge on the policy area, i.e. the stakeholders concerned, is missed. Whereas roadmaps are helpful to inform stakeholders of the planned legislative proposals, they are not done for all proposals.

Furthermore, there is no independent and external scrutiny of impact assessments. We do not consider the Impact Assessment Board, how professional the members might be, genuinely independent as its members are high level civil servants of the Commission appointed by and subject to the instructions of the Commission President. This opinion is shared by the European Parliament as stated in its resolution on guaranteeing independent impact assessments, and others.⁴

3. Institutional Setup

The process to implement smart regulation as a guiding principle has been driven primarily by the Commission and Member States. Although the Council strongly committed itself to better regulation in its 2007 European Spring Council conclusions, in its daily work in the Council working groups impact assessments and burden reduction seem to play only a minor role. Similarly, in the European Parliament impact assessments are rarely discussed and Parliamentary amendments to Commission proposals are not accompanied by impact assessments. Recently, however, the European Parliament has agreed to set up an autonomous structure for the European Parliament to carry out impact assessments where appropriate on major amendments to Commission proposals, and to scrutinise the Commission's impact assessments.⁵

The High Level Group of independent stakeholders on administrative burden, chaired by Dr. Edmund Stoiber, plays an important role in smart regulation. Though the Commission has enlarged and extended its mandate, although only until December 2012, the group regrettably is still not involved in scrutinising new legislative proposals.

The Commission's Impact Assessment Board as an institution is insufficient to guarantee independent impact assessments and to drive smart regulation. Though it has to be acknowledged that the importance of impact assessments has increased steadily since the Impact Assessment Board was installed, its setup is not suited to fully exploit its potential. As long as it remains an agent of the Commission it cannot provide truly independent and therefore fully credible scrutiny and advice.

⁴ European Parliament resolution of 8 June 2011 on guaranteeing independent impact assessments (2010/2016(INI)).

⁵ European Parliament resolution of 8 June 2011 on guaranteeing independent impact assessments (2010/2016(INI)).

Conclusions and Recommendations for the next steps

In the last few years, there has been a growing awareness in the European Union of the need to reduce administrative burdens and to adhere to smarter regulation principles. Nevertheless, much remains to be done.

With the end of the Commission's Action Programme in 2012 and the European Parliament starting concrete actions to embark on an own impact assessment system, the first half of 2012 will be an important time to develop and setup programmes and procedures for smart regulation. It will be necessary that the European institutions work on new drivers and safeguards together to ensure that smart regulation remains a key priority within the EU. If this fails, important momentum and achievements will be lost.

Therefore, the Commission should present an ambitious work programme by summer 2012 on how to continue the work to ensure smart regulation and achieve the necessary change in culture.⁶ Such a programme should focus primarily on actions to be taken by the Commission, but should also be able to be used as a basis for a common approach by the Parliament and the Council.

In such a programme the following recommendations should be considered:

1. New Action Programme

When the Action Programme for the reduction of administrative burdens ends in 2012 a new programme should follow up. Its focus should not only be on administrative burdens but on the overall regulatory burden. It should concentrate on certain policy areas which should be selected together with stakeholders. The Commission's ex-post evaluations and fitness checks can be another source to identify policy areas to be tackled.

Furthermore, the new Action Programme should comprise a mechanism that enables effects to be monitored and measured. Such a mechanism should also ensure that the total burden decreases by guaranteeing that new burdens are offset elsewhere for example by implementing a system such as the 'One-in, One-out' rule, recently introduced in the United Kingdom.⁷

2. Improving Impact Assessments

The impact assessment system should be developed further ensuring that roadmaps and impact assessments are done for all new legislative proposals having in mind the special impacts on small and medium-sized companies. Impact assessments should be standalone documents and have a cover page of 1-2 pages showing the key figures. Furthermore, the overall regulatory burden costs should be measured and worthwhile alternatives should be considered more carefully.

⁶ This is supported by the European Parliament, cf. its resolution of 14 September 2011 on better legislation, subsidiarity and proportionality and smart regulation (2011/2029(INI)).

⁷ The One-in, One-out rule says that no new primary or secondary UK legislation which imposes costs on business or civil society organisations (INs) can be brought in without identification of existing regulations of equivalent value that can be removed (OUTs). It applies to most regulation derived from Whitehall Departments though excludes some specific sector regulators. It is also endorsed by the European Parliament in its resolution of 14 September 2011 on better legislation, subsidiarity and proportionality and smart regulation (2011/2029(INI)).

Stakeholders should be further involved by being consulted on the identification of alternatives, on the draft proposal and on accompanying draft impact assessments. As a first step, the Impact Assessment Board should be enlarged by recruiting independent better regulation experts to ensure independent, fully credible scrutiny.

In the European Parliament and in Council impact assessments should be carried out for major amendments. It is important that all three institutions have a common methodology and a structure for carrying out impact assessments.

In the long run the goal should be to institutionalise an independent body borne and supported by Commission, Parliament and Council to assist in carrying out scrutinising impact assessments from across the institutions.

3. Institutional Setup

The mandate of High Level Group of independent stakeholders on administrative burdens should be extended and reinforced. As an independent body where smart regulation experts and stakeholders are represented it could become a more general body advising Commission, Parliament and Council on the whole smart regulation agenda, including the new action programme and impact assessments. It could also serve as a moderator between the institutions on issues concerning smart regulation. Any new mandate would need to be reflected in the setup of the group.

As long as there is no common impact assessment institution between the Commission, Parliament and Council, there should be a direct link between the High Level Group of Independent Stakeholders on Administrative Burden and the Commission's Impact Assessment Board.



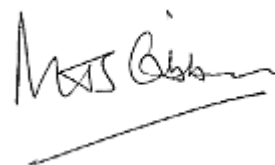
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