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EU Regulatory Fitness

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

EU Regulatory Fitness

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

EU Regulatory Fitness

1. SMART REGULATION: RESPONDING TO THE ECONOMIC IMPERATIVE

EU legislation is essential to achieve the objectives of the EU Treaty and to set the conditions for smart, sustainable and inclusive growth, benefitting citizens, businesses and workers. Achieving these goals is a shared responsibility between the Commission, the other European Institutions and the Member States. The economic and financial crisis has revealed costs of non-action, weak legislation and enforcement in some areas. It has prompted a call for strengthened economic governance and financial regulation at EU level. At the same time, the crisis has focused attention on the costs of EU legislation and the challenges of implementing and enforcing the laws already on the statute books. National administrations, already under strain, find it difficult to keep up with the transposition and application of EU legislation. Businesses and citizens raise concerns about the complexity and administrative load of laws. The European Council has called for further efforts to reduce the overall regulatory burden at EU and national level.

The Commission is responding to these concerns. Since outlining new initiatives two years ago¹, it has consolidated its impact assessment system. The 25% target set under the Action Programme for Reducing Administrative Burdens has been met and exceeded. Legislation has been simplified and codified. Significant simplification proposals in several policy areas are being examined by the European Parliament and Council. For example, the Commission proposed an ambitious simplification agenda covering the next Multi-annual Financial Framework². The Commission has been applying a ‘Think Small First’ principle and is using the full set of regulatory instruments (from enhanced consultations and impact assessment to specific implementation monitoring) to adapt EU regulation to the needs of micro-enterprises³. Pilot policy evaluations (‘fitness checks’) have been launched⁴. Many problems on the correct application of EU legislation are being solved without having to resort to formal infringement procedures. The public is being systematically consulted on policy initiatives.

¹ COM(2010) 543 ‘Smart Regulation in the EU’.

² See COM(2011)500 ‘A budget for Europe 2020’, Regulation (EU, Euratom) No 966/2012 and COM(2012) 42 ‘Simplification Agenda for the MFF 2014-2020’.

³ COM(2011) 803 ‘Minimising regulatory burden for SMEs’ - In early 2013, the Commission will present a first progress report and scoreboard focusing in particular on the priorities identified by small businesses in the conferences held in Member States and in the EU-wide consultations running up to late 2012.

⁴ http://ec.europa.eu/dgs/secretariat_general/evaluation/docs/fitness_check_en.pdf.

The Commission will continue these activities and is determined to meet policy goals at minimum cost, achieving the benefits that only EU legislation can bring and eliminating all unnecessary regulatory burden. It will continue to strengthen its regulatory tools and to apply them systematically across its regulatory activities. The Commission will also step up its implementation and enforcement in close cooperation with the other European institutions and the Member States. It will combine various initiatives now underway into a Regulatory Fitness and Performance Programme (REFIT) aimed at eliminating unnecessary regulatory costs (i.e. burden) and ensuring that the body of EU legislation remains fit for purpose.

The Commission does not believe that setting global targets and/or quantitative formulae for managing the stock of legislation will produce the desired results. This requires a more tailored approach with an assessment of actual benefits and costs — identifying whether they are directly related to EU legislation or to the implementation choices made by the Member States. Such an approach would make it possible to more accurately target cost reduction and regulatory improvements and would be better suited to the specificities of EU policy making.

In strengthening its approach to Smart Regulation, the Commission has drawn upon inputs from the European Parliament⁵, the Committee of the Regions⁶, a public consultation⁷, the Impact Assessment Board⁸, the work of the High-Level Groups of National Regulatory Experts and on Administrative Burdens, and the 2012 OECD ‘Recommendation on Regulatory Policy and Governance’⁹.

2. A REGULATORY FITNESS AND PERFORMANCE PROGRAMME

The current economic situation demands that EU legislation be even more effective and efficient in achieving its public policy objectives: demonstrating clear added value, delivering full benefits at minimum cost and respecting the principles of subsidiarity and proportionality. The final result must be a simple, clear, stable and predictable regulatory framework for businesses, workers and citizens.

To move further towards this goal, the Commission will launch a Regulatory Fitness and Performance Programme (REFIT) building on its experience in evaluating and reducing administrative burden. REFIT will identify burdens, inconsistencies, gaps and ineffective measures. Attention will be paid to possible regulatory burden related to how EU legislation is implemented at the national and sub-national level¹⁰. Through REFIT, the Commission will identify, assess, adopt, and monitor

⁵ Report on the 18th report on better legislation and report on the 28th annual report on monitoring the implementation of EU legislation.

⁶ Opinion of the Committee of the Regions on ‘Smart Regulation’ 2012/C 9/04.

⁷ http://ec.europa.eu/governance/better_regulation/smart_regulation/consultation_2012/docs/consultation_en.pdf.

⁸ SEC(2012) 101 ‘Impact Assessment Board Report for 2011’.

⁹ <http://www.oecd.org/gov/regulatorypolicy/49990817.pdf>.

¹⁰ The administrative burden added during implementation of EU legislation at the national level is estimated to be roughly a third of the total.

implementation of, initiatives which will result in significant regulatory cost reduction or simplification.

The REFIT Programme builds upon a broader approach to policy evaluation piloted through the ‘fitness checks’ launched since 2010¹¹. Experience thus far demonstrates the need for a common framework for conducting these assessments — to show how they fit into the overall objective of ensuring smart regulation and eliminating burdens, to involve all relevant levels of government and to facilitate wide stakeholder participation.

The REFIT process will start with a mapping exercise to identify the regulatory areas and pieces of legislation with the greatest potential for simplifying rules and reducing regulatory cost for businesses and citizens without compromising public policy objectives. Normally, the mapping will point to areas where further evaluation, including of costs and benefits, is needed. These evaluations will also assess whether quantitative targets for burden reduction should be examined in the concerned field and in relation to EU and Member States responsibilities respectively. Where the mapping provides sufficient evidence that more immediate action is needed, an impact assessment process for the proposals will be launched. Stakeholders will be informed throughout the process and their views will be essential for the prioritisation of activities.

The REFIT programme will be implemented in a transparent manner. In line with its "evaluate first" policy, in principle, the Commission will not examine proposals in areas of existing legislation until the regulatory mapping and appropriate subsequent evaluation work has been conducted. Planning will be public. REFIT evaluations will be publicly flagged in strengthened multiannual evaluation plans starting from 2014. A dedicated annex in the Commission work programme will list all planned REFIT initiatives starting from the 2014 work programme. A tracking system (scoreboard) will be set up to assess the progress of proposals through the EU institutions and at the implementation stage.

Possible areas for REFIT evaluation planning will also come from activities which are already on-going or in the pipeline. These include the results of the current EU-wide consultation of SMEs on what they consider to be the Top Ten most burdensome EU regulations and the outcomes of ongoing ‘fitness checks’ and other regulatory evaluation work¹². The ongoing rolling simplification programme and work on reducing regulatory burdens for smaller businesses will also be immediately merged into the new programme. Further indications will be provided by the finalisation of assessments of the information and consultation of workers in the social field, type-approval of motor vehicles, internal aviation-market policy and food chain legislation. Reviews of waste legislation, the retail sector, occupational health and safety, petroleum refining, aluminium and other industrial products are also already planned.

¹¹ On EU freshwater policy in the environment area, on information and consultation of workers in the social field, on type-approval of motor vehicles, on food chain legislation and on internal aviation-market policy.

¹² Notably the already available results for construction, business and tourist services.

Finally, REFIT will include a follow-on to the Administrative Burden Reduction Programme (ABR) — ABR Plus. The 2007 Programme aimed to reduce burdens on business stemming from EU legislation by 25% by 2012. It covered around 80% of the main sources of administrative burden. The Commission has gone beyond the target by presenting proposals to cut the administrative burden by over 30%, while measures equalling 25% have been adopted by the co-legislators. The detailed results of the Action Programme are presented in an accompanying Staff Working Document¹³.

Benefits will not materialize until the ABR is successfully implemented. ABR Plus will therefore focus on follow-up in the Member States. Member States will be asked to report by 31 December 2013 on how they implemented ABR measures. The High Level Group on Administrative Burden will be tasked with assisting and advising on this follow-up, comparing estimated results with the initial estimates and facilitating best practice exchange between Member States. It will also follow up with business and Member States on Member State implementation of EU measures reducing unnecessary administrative burden particularly for smaller businesses. The High Level Group mandate is therefore being extended till the end of the current Commission's term of office.

3. SMART REGULATION TOOLS: SHARPENING PERFORMANCE

The Commission deploys a number of different tools in its Smart Regulation policy. These are continually being improved.

3.1. Impact assessment

The Commission's impact assessment (IA) system has been judged first class¹⁴ — transparently assessing legislative and non-legislative policy options by comparing both potential benefits and costs in economic, social and environmental terms. The system is comprehensive, transparent and subject to independent scrutiny.¹⁵ IAs are performed for all proposals with significant direct impacts. Within the past two years, operational guidance has been issued for analysing impacts on fundamental rights¹⁶, competitiveness¹⁷ and micro-enterprises¹⁸. The independent scrutiny by the Impact Assessment Board (IAB)¹⁹ enhances the reports' quality and a positive IAB opinion is needed in principle before a proposal can be submitted to the Commission for a decision. The IAB's scrutiny has been strengthened through targeted changes in

¹³ SWD(2012) 422 'Review of the Commission Consultation Policy'.

¹⁴ OECD 2011 'Sustainability in Impact Assessments — A review of Impact Assessment Systems in selected OECD Countries and the European Commission', European Parliament 2011, 'Comparative study on the purpose, scope and procedures of impact assessments carried out in the Member States of the EU', CEPS/University of Exeter 2012, 'Regulatory Quality in the European Commission and the UK: Old questions and new findings'.

¹⁵ European Court of Auditors Special report N° 3/2010 'Impact Assessments in the EU institutions: do they support decision making?'.

¹⁶ http://ec.europa.eu/governance/impact/key_docs/docs/sec_2011_0567_en.pdf.

¹⁷ http://ec.europa.eu/governance/impact/key_docs/docs/sec_2012_0091_en.pdf.

¹⁸ http://ec.europa.eu/governance/impact/key_docs/docs/meg_guidelines.pdf.

¹⁹ http://ec.europa.eu/governance/impact/iab/iab_en.htm.

its mandate and rules of procedure²⁰. Whether or not an IA will be conducted is stated in roadmaps which are publicly available.²¹ IAs as well as IAB opinions are publicly available. Since the IAB's establishment in 2006, more than 700 opinions have been issued. The creation of a new Directorate for Impact Assessment in the European Parliament is adding a further external level of scrutiny and quality control.

Most respondents to the stakeholder consultation support the Commission's integrated approach. The most frequent suggestions for achieving even higher quality more consistently include: a greater effort to quantify impacts, a clearer presentation of headline results, consultation on draft impact assessments, external IAB members and a binding requirement for positive IAB opinions.

The evidence and existing studies show that the current set up is delivering results efficiently. According to a study by the European Parliament²², 'the EU system is comparatively well-developed with both internal and external checks and balances' and 'there is general consensus that the IAB contributes to improved quality of IAs. According to a CEPS/University of Exeter analysis²³, quantification of costs and benefits is as frequent, or more frequent, than in other systems. In no system is the opinion of independent scrutiny bodies binding on political decision-makers. The Commission therefore considers that neither external IAB members nor binding IAB opinions are necessary and that they would not be compatible with its own right of initiative, the institutional roles of the European Parliament and Council and accountability to the public at large.

Regarding the calls for consultation on draft IA reports, it should be noted that the Commission already requires stakeholders to be consulted on all key aspects of an impact assessment and further improvements to consultation are planned. Consultation normally takes place early in the impact assessment process to allow stakeholders to influence the framing of the problems and the choice of options early in the process. If consultation were to take place only once on draft IAs, the options would already have been identified, reducing the scope for meaningful stakeholder inputs. If two consultations were to be held, the policy cycle would be even lengthier. Furthermore, IA reports accompanying Commission proposals are public. This means that stakeholders can also provide their views in the course of the legislative process.

There remains, nevertheless, scope to further improve the quality and clarity of IA reports and better exploit IA processes for REFIT. The Commission will further improve the ex ante assessment of costs and benefits. It will also include a standardised two-page summary sheet in its IA reports to facilitate quick identification of key results of the impact assessment, including estimated benefits and costs. It will review and update its IA guidelines in 2014, following a public consultation.

²⁰ http://ec.europa.eu/governance/impact/iab/members_en.htm.

²¹ http://ec.europa.eu/governance/impact/planned_ia/planned_ia_en.htm.

²² See footnote 14.

²³ See CEPS/University of Exeter 2012 in footnote 14.

3.2. Evaluation

Evaluation is an integral part of the Commission's effort to maximise the benefits and minimise the costs of EU policies, as already highlighted in the 2010 Smart Regulation communication. The strengthening of the evaluation of EU regulatory measures goes hand-in-hand with increased attention to the evaluation of financial programmes. Article 318 of the Treaty on the functioning of the EU (TFEU) introduced a new requirement for the Commission to submit to the European Parliament and the Council an evaluation report on the Union's finances based on the results achieved.

The Commission is strengthening its evaluation system and applying its 'evaluate first' principle. The share of significant proposals in the Commission Work Programme supported by available or ongoing evaluations rose from 32% to 44% between 2011 and 2012.

Various issues have come to the fore in the effort to strengthen evaluation and in the public consultation responses. Evaluations have traditionally examined individual funding programmes or pieces of legislation, with less attention being paid to evaluation of broad areas of legislation and cross-cutting issues. There is also a timing issue with impacts of both programmes and policies being measurable only many years after their inception.

With a view to improving the political relevance and ownership of evaluation results, the Commission is reviewing its evaluation system and will set out a revised framework for policy and programme evaluation in 2013. The new approach will examine how evaluation results could be better anchored in the policy development cycle. The evaluation process could be designed alongside the policy itself with better monitoring and reporting. There is room for increased transparency in planning and greater stakeholder involvement. An end-of-Commission review based on evaluation results could be considered.

The evaluation guidelines, including guidance on the evaluations under REFIT, will be revised following a public consultation. Finally, given the importance of implementation for regulatory effectiveness and efficiency, the new approach will also launch on a pilot basis joint evaluations with interested Member States. The High Level Group of National Regulatory Experts will be encouraged to advise on these pilots and on the means of Member State involvement. The Group's mandate is being extended till the end of the current Commission's term of office in order to provide advice and exchange of best practice on Smart Regulation activities.

The Commission is furthermore examining how to redesign and improve the Article 318 TFEU report. A reliable method of annual reporting on results achieved is needed drawing from the assessment frameworks under the current and future Multi-annual Financial Frameworks and from the monitoring data from the Commission's annual reporting instruments²⁴.

²⁴ That is: the Commission's Strategic Planning and Programming Cycle — the Annual Activity Reports, Annual Budget Statements, etc.

3.3. Consulting citizens and stakeholders

Listening to citizens and stakeholders is fundamental for smart regulation at all stages of the policy cycle. The Commission has a variety of means set out in the Treaties and policy documents to interact with stakeholders²⁵. A wide set of tools — from roadmaps to open and targeted public consultations — are available for the Commission to dialogue with interested parties at various stages.

Since the beginning of 2012, the Commission has strengthened the voice of stakeholders by extending the minimum period for public consultation from eight to twelve weeks²⁶. Also, SMEs and micro companies have directly voiced their problems and concerns in dedicated conferences organised in Member States. A review of consultation policy has been finalised and its results are detailed in an accompanying Staff Working Document²⁷.

The Commission consults widely, respecting principles of openness and transparency and following minimum standards which are generally acknowledged as appropriate, respond to international best practice and are usually respected. Over the last three years, stakeholders views were sought through more than 300 open consultations published on the ‘Your Voice in Europe’ website. All impact assessment reports completed over the same period relied on extensive open or targeted consultations. In nine open consultations out of ten, the minimum period was respected.

The review confirmed the validity of the Commission’s consultation policy and tools, as well as the progress in implementation achieved over the years. Nevertheless, the review and stakeholders’ views pointed to areas where further improvements in implementation could be made. Consultations do not always ask the right questions at the right time and sometimes fail to reach those directly affected who cannot always be addressed in their native languages. The accompanying Staff Working Document details the measures planned to address these issues.

The Commission will extend the reach of consultations by publishing a rolling calendar of planned consultations on the ‘Your Voice in Europe’ website, by better mobilising Member States’ communication channels, by exploring the use of innovative consultation tools, by improving the quality of feedback and by examining if consultation documents and summaries could be more widely translated within existing budgetary limits. It will also update and clarify the minimum standards by including clearer operational criteria. Finally, to foster improved quality, internal control and support mechanisms (such as guidelines and best-practice libraries) will be strengthened. Together, these measures will allow public consultations to better support all phases of the evaluation, impact assessment and decision-making processes.

²⁵ See SWD(2012) 422..

²⁶ <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/1&format=HTML&aged=0&language=EN&guiLanguage=en> .

²⁷ SWD(2012) 423 ‘Action Programme for Reducing Administrative Burdens in the EU – Final Report’.

4. SMART REGULATION GOVERNANCE: IMPROVING IMPLEMENTATION

EU legislation cannot serve its purpose if it is not effectively implemented and enforced. An implementation perspective is essential at all points in the policy cycle. Moreover progress in implementation will be a key factor in the assessment of regulatory fitness.

4.1. Supporting the implementation of EU legislation

Member States bear the primary responsibility for the implementation of EU legislation. The Commission supports them through a variety of measures: implementation plans that identify the main implementation challenges and suggest support measures, problem-solving mechanisms such as EU Pilot²⁸ and best-practice exchanges (e.g. the Best Practice Report of the High Level Group on Administrative Burden²⁹). Inter-institutional dialogue and transparency have also been enhanced³⁰.

The Commission will continue to monitor progress in the implementation of key areas of EU legislation, focussing on identified single-market priority areas³¹. It will take a more systematic and risk-based approach to conformity assessment which will strengthen compliance verification and provide valuable input for ex post evaluation. The Commission will also prepare implementation plans for Directives on a more systematic basis and apply the use of common commencement dates for EU regulations and decisions affecting business more widely. Finally, the Commission will do its utmost to ensure that appropriate time is provided between adoption and transposition date.

4.2. Making legislation clearer and more accessible

Managing the quality of the legislation also means making sure it is as clear, accessible and easy to comply with as possible. Ongoing efforts to this end will continue. These include the simplification, codification, recast and consolidation of legal texts as well as reducing the volume of legislation by repealing obsolete provisions. Since 2005, the Commission approved 640 initiatives aimed at simplification, codification or recasting. More than 4450 legal acts have been repealed, of which 1750 as a result of codification and recasting. All amended regulations and directives as well as a selection of decisions have been consolidated in all languages originally translated and are available via the EUR-Lex website. Electronic access to the full body of EU legislation is also being improved: the new e-Justice Portal was launched in 2011 and the new EUR-Lex Common Portal will become operational on-line in 2013. In 2011, the Commission proposed to give legal effect to the electronic publication of the Official Journal³². Finally, the Commission will continue its efforts to improve the quality of drafting to ensure more concise and

²⁸ http://ec.europa.eu/eu_law/infringements/application_monitoring_en.htm.

²⁹ http://ec.europa.eu/dgs/secretariat_general/admin_burden/best_practice_report/docs/bp_report_signature_en.pdf.

³⁰ See OJ L304/47 and OJ C369/14.

³¹ See COM(2012) 259 'Better governance for the single market'.

³² COM(2011) 162 'Proposal for a Council Regulation on electronic publication of the Official Journal of the European Union'.

readable texts. These measures will support the integrated evaluation of policy areas, facilitate public consultation and help national administrations in transposition and implementation.

5. SMART REGULATION: A SHARED MISSION

5.1. The European Parliament, Council and advisory bodies

In its 2010 Communication, the Commission called on the European Parliament and Council to make better use of impact assessments in their decision-making processes and to analyse impacts when discussing any substantive amendments in line with their commitments under the inter-institutional agreement on better lawmaking.

The Commission notes that only limited progress has so far has been achieved with regard to the analysis of impacts of substantive amendments.

However, the Commission welcomes the establishment of a new directorate for Impact Assessment in the European Parliament. The Commission supports the good practice of some Committees which make the Commission's impact assessment the starting point for further analytical work by the European Parliament. This should ensure comparability with the Commission's own impact assessment approach and avoid any duplication of effort.

The Council has not established an impact assessment capability. The Commission considers that it could make greater use of impact assessments in its decision-making processes, for example by taking into full account the Commission's impact assessments when starting work on the accompanying proposals.

The Commission will continue to respond constructively to requests to expand on aspects of its impact assessments and/or to share its data and methodology on a case by case basis. It invites both Institutions to focus on delivery, so that a more significant proportion of the amendments they make have directly benefited from evidence-based impact analysis.

The Commission also welcomes the support and endorsement of the Institutions for its work to reduce and minimise administrative and regulatory burden and invites them to support the simplification proposals under discussion and to endorse and support the REFIT programme.

Finally, the Commission welcomes the support of the Economic and Social Committee and of the Committee of the Regions. Their platforms and networks can be an important source of information for preparing evaluations and impact assessments.

5.2. Member States

Cooperation between the Commission and Member States is crucial if EU legislation is to deliver its full benefits at minimum cost to citizens, workers and enterprises. The strength of national administrative capacity and national regulatory quality have a direct impact on whether EU public policy aims can be achieved on the ground. Inputs from Member States' administrations and institutions are of critical

importance for the design and evaluation of EU legislation. In transposing and implementing EU legislation, including the rules governing activities funded by the EU budget, Member States are responsible for ensuring that their regulatory framework is clear and accessible. National Parliaments play a key role in checking that the subsidiarity principle is correctly applied.

The Commission encourages Member State authorities to participate more actively in its public consultations and evaluations, including by mobilising their national dedicated networks, so as to improve the evidence basis for policy-making. It stresses that, in this context, early feedback from Member States is fundamental for robust subsidiarity analysis.

The Commission also underlines that national impact assessment can be of use to help discussions in Council on changes to its proposal and to help Member States with transposition and enforcement issues.

The Commission invites Member States to ensure effective delivery at national level of the ongoing initiatives to reduce the administrative burden, and to take due account of the recommendations of the February 2012 report on best practices, to implement EU legislation in the least burdensome way and to participate actively in the exchange of information on efficient methods of implementing EU regulation³³. It also invites them to take full advantage of the simplification possibilities offered by EU legislation and to ensure the clarity and accessibility of national rules transposing EU legislation.

Finally, the Commission emphasises the importance of efficient public administration for the timely transposition, implementation and enforcement of EU legislation.

6. CONCLUSIONS

To guarantee EU regulatory quality, EU legislation and the national rules that implement it, must be managed in a manner that ensures it continues to efficiently achieve its public policy objectives. Regulatory frameworks must be fit for purpose and remain so as problems evolve, new solutions emerge and political priorities change. To this end, the Commission will make the identification of unnecessary costs and areas for performance improvement an integral and permanent part of its policy-making and programming across all EU legislation.

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http://ec.europa.eu/dgs/secretariat_general/admin_burden/best_practice_report/best_practice_report_en.htm