



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 25 November 2013
(OR. en)**

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NOTE

From: Presidency
To: Council

Subject: Smart Regulation (*Non-legislative activity*)
= *Adoption of Council conclusions*

1. On 18 June 2013, the Commission adopted a Communication "Follow-up to the 'Top Ten' Consultation of SMEs on EU Regulation". On 2 October 2013, it adopted a Communication entitled "Regulatory Fitness and Performance (REFIT): Results and Next Steps" and another one entitled "Strengthening the foundations of Smart Regulation - Improving evaluation".
2. On 4 October 2013, the Presidency presented draft conclusions responding to the above Communications to the Working Party on Competitiveness and Growth. The Working Party discussed the draft conclusions at three meetings.
3. On 20 November 2013, the Permanent Representatives Committee took note of the draft Conclusions, resolved one of the outstanding issues and agreed to forward them to the Council in view to their adoption. It is to be noted that the French delegation has a reservation on the above Conclusions.
4. The Council (Competitiveness) of 2 - 3 December 2013 is invited to solve the outstanding issue and adopt the Council Conclusions set out in the Annex to this Note.

Revised draft COUNCIL CONCLUSIONS ON SMART REGULATION

”THE COUNCIL (Competitiveness)

1. **RE-EMPHASISES** that regulation at Union level is necessary in order to ensure that EU policy goals, including the proper functioning of the Single Market, are attained. Therefore, and especially in the light of the challenges being faced by the European economy, there is a need to ensure that EU regulation is transparent, simple and is achieved at minimum cost, while fostering competitiveness and job creation, and always taking into account proper protection of consumers, health, the environment and employees.

Regulatory Fitness and Performance (REFIT)

2. **WELCOMES** the Commission’s Communication on REFIT "Results and Next Steps" which provides for a comprehensive framework to streamline activities related to revision of the stock of EU legislation and the development of systematic analysis, based on evaluation and fitness checks, and **LOOKS FORWARD** to further quick, concrete and transparent progress on regulation related actions at EU level and in Member States, inter alia, through implementation of the REFIT programme.
3. **ACKNOWLEDGES** the work already undertaken in recent years to alleviate the unnecessary burden of legislation and **NOTES** Member States’ own progress made when designing and implementing national smart regulation programmes and initiatives.
4. **UNDERLINES** the need for a comprehensive scoreboard to track progress at the EU and national level, including any quantification of costs and benefits, where possible, of all initiatives proposed under REFIT, such as ABR Plus programme, the Top 10 consultation and current actions in the context of the SME scoreboard.

5. **CALLS ON** the Commission:

- to publish in its annual work programme all legislative initiatives deriving from REFIT, including simplification of existing EU law, withdrawals, repeals and consolidations;
- in cooperation with Member States and stakeholders, to identify and prioritise legislation and regulatory frameworks that pose the biggest regulatory burdens, paying particular attention to the sectors with a high capacity for growth, innovation and job creation; building upon this work, to develop a five year roadmap for the implementation of the REFIT programme, which will be updated annually on a rolling basis, to simplify and reduce the overall regulatory burden;
- to consider specific targets in sectors with high regulatory burden in order to bring tangible benefits in terms of reduction.

Ex-post evaluation

6. **NOTES** the findings of the Impact Assessment Board Report 2012 that a significant number of impact assessments did not include the results of ex-post evaluation.
7. **WELCOMES** the Commission's commitment to "evaluate first" and to ensure systematically that all significant proposals for a revision are backed up by a robust evaluation, including fitness checks, in assessing whether EU actions are actually delivering the expected results.
8. **WELCOMES** the Commission's Communication on "Strengthening the foundations of Smart Regulation – improving evaluation", which aims to strengthen further the Commission's evaluation system by fully integrating it in the policy cycle and by making it more transparent, critical and comprehensive.

9. **ENCOURAGES** Member States and stakeholders to contribute to the public consultation on strengthening Commission evaluation policy and practice.
10. **CALLS ON** the Commission:
- to develop further, building on previous experience and the outcome of the public consultation, the methodological basis for evaluations and fitness checks, including competitiveness aspects and implementation costs;
 - to ensure a coordinated approach regarding planning, prioritisation and implementation of ex-post evaluations and fitness checks as well as to undertake independent quality assessment.
11. **CALLS ON** Member States and the Commission to cooperate on data collection, monitoring and evaluation, where possible and appropriate, exercising fitness checks and joint evaluations.

SME dimension

12. **RE-EMPHASISES** the importance of the Think Small First principle which is enshrined in the Small Business Act.
13. **RECOGNISES** and supports the work already done by the Commission and Member States to reduce regulatory burden on SMEs and micro-enterprises as set out in the SME scoreboard and the examples given in the report of the Group of High Level National Regulatory Experts - SME Working Group.
14. **STRONGLY SUPPORTS** the recommendation of the Impact Assessment Board for the Commission to make full use of the new operational guidance documents¹ to provide a robust assessment of the impacts of proposals on competitiveness and SMEs, particularly on micro-enterprises.

¹ Operational guidance on assessing impacts on sectoral competitiveness within the Commission impact assessment system; Operational guidance on assessing impacts on micro-enterprises in Commission impact assessments.

15. **WELCOMES** the Commission's follow-up Communication to the consultation on the Top 10 most burdensome regulatory areas for SMEs as a first step of the larger REFIT exercise and **CALLS ON** the Commission to seek further opportunities, even in areas where some action has already been taken, to continue the removal of unnecessary regulatory burden especially on SMEs through its rolling REFIT programme, using further Member State and stakeholder input and consultation to understand better SMEs perceptions as appropriate.

Impact assessment

16. **AGREES** that integrated and evidence-based impact assessments are vital, analyzing both benefits and costs, and **STRESSES** that all relevant expertise and inputs from Member States and stakeholders, as well as available independent and scientific data, should be used to ensure the highest quality assessments. **SUPPORTS** a consistent and integrated approach to impact assessments with stakeholder inputs taken into consideration.
17. **VIEWES** the Commission's Impact Assessment Guidelines and further operational guidance, particularly for assessing impacts on sectoral competitiveness and on micro-enterprises, as a coherent package for use in all relevant impact assessments, and **SUPPORTS** the Commission's intentions, in consultation with Member States and stakeholders, to review its Impact Assessment Guidelines, including the SME test.
18. **UNDERLINES** Council's commitment in the 2003 Inter-institutional Agreement on better law-making regarding impact assessments and looks forward to the review report of the 3 pilot projects on further use of impact assessment in Council in the first half of 2014; **CALLS ON** Member States to extend the practice of using impact assessments fully in Council discussions.
19. **WELCOMES** the Commission's initiative to explore possible methodologies for cumulative cost assessment and looks forward to this being reflected in future REFIT work.

20. **CALLS ON** the Commission:

- to ensure consistent use of the Commission’s Impact Assessment Guidelines and the further operational guidance, particularly for assessing impacts on sectorial competitiveness and on micro-enterprises;
- to consider in its impact assessment reports, the impact of its proposals on individual or groups of Member States, especially when major disparities are expected;
- to provide indications, where appropriate, on the relevance of specific impacts, including on SMEs and competitiveness in the roadmaps for forthcoming initiatives and in the executive summaries of impact assessments;
- to finalise its review of public consultation practices and improve possibilities for all interested stakeholders to contribute to all aspects of impact assessment analysis, during the performance of this analysis, and to comment on possible options.

Transposition and implementation

21. **NOTES** the stakeholder concerns about “goldplating” as one of the sources of additional regulatory burden when transposing directives and **ACKNOWLEDGES** the need to develop the evidence base in this area.
22. **ENCOURAGES** the Commission together with Member States to further exchange best practices on transposition and implementation of the EU directives, in order to take smart regulation principles into account during transposition.

23. **INVITES** Member States to examine their implementation of existing EU legislation in the areas of excessively burdensome legislation and to implement new EU legislation in the least burdensome way by using, if and where appropriate, the checklist from the report of the High Level Group on Administrative Burdens “Europe can do better”.²

Transparency and ease of access to information

24. **AGREES** that easy access to information and guidance for national authorities and for stakeholders and transparency of the process is of the key importance for success when implementing smart regulation programmes and projects at the EU and national level.
25. **WELCOMES** the Commission’s efforts to create a platform of the best EU and national smart regulation practice; **ENCOURAGES** Member States and the Commission to collect and provide examples of the best national, regional and local practices and **ENCOURAGES** the Commission to play an active role in disseminating the information.
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² http://ec.europa.eu/dgs/secretariat_general/admin_burden/best_practice_report/docs/bp_report_signature_en.pdf.

FR: reservation on the reference to the High Level Group on Administrative Burdens.