SMART REGULATION
A cleaner, fairer and more competitive EU

The Danish Government

Government of the Netherlands

HM Government

Contacts

This document can be accessed via:
www.eogs.dk
www.rr.nl
www.bis.gov.uk

For enquiries about this publication, contact:

Division for Better Business Regulation,
Ministry of Economic and Business Affairs, Denmark
Signe Jensen, email: SIJ@eogs.dk

Regulatory Reform Group, The Netherlands
Natalia Cerrato, email: n.cerrato@rr.nl

Better Regulation Executive, United Kingdom
Johannes Wolff, email: johannes.wolff@bis.gsi.gov.uk, or
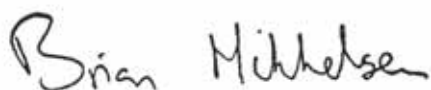Jennifer Smookler, email: jennifer.smookler@bis.gsi.gov.uk

Foreword

At the start of a new decade, facing challenges such as climate change, an economic slowdown and an ageing population, Europe must find a fresh approach to achieving its social, economic and environmental aspirations. It is more critical than ever to choose, design and implement interventions – both regulatory and non-regulatory – in a way that effectively delivers benefits while minimising costs. This report – jointly written by the Division for Better Business Regulation in the Ministry of Economic and Business Affairs in Denmark, the Regulatory Reform Group in the Netherlands and the Better Regulation Executive in the United Kingdom – suggests specific ways to do so.

We believe that putting end-users – those affected by regulation such as employees, consumers, businesses and other organisations – at the heart of the way that interventions are chosen, developed and delivered is key to their success. The EU has made great strides in its better regulation agenda. We welcome Commission President Barroso's decision to build on this foundation and make "smart regulation" a key priority of his second term. We must now seize the opportunity to make into a reality that vision of a cleaner, fairer and more competitive future across the EU.

Brian Mikkelsen,
Minister for Economic and Business Affairs
Denmark

J.C. de Jager,
Minister of Finance
The Netherlands

M.J.A. van der Hoeven,
Minister of Economic Affairs
The Netherlands

Peter Mandelson,
Secretary of State for Business,
Innovation and Skills
United Kingdom

Ian Lucas,
Minister for Business and
Regulatory Reform
United Kingdom

Contents

Executive Summary
Smart Regulation: What, Why and How

1. **Over the past couple of years Europe has faced unprecedented challenges.** The current economic, social and environmental circumstances make it more important than ever to ensure that European policy is effective in delivering necessary protections and efficient in keeping costs to a minimum to achieve a good outcome for all those affected.

2. In this context, Commission President Barroso's proposal in September 2009 for "smart regulation" as a new approach to European policy-making is a significant opportunity. It is a chance to rapidly translate the principles of the EU's existing better regulation agenda into tangibly improving the quality of life for European citizens and businesses. And, in these tougher times, smart regulation can be a key vehicle to providing urgent support for economic recovery and growth, while delivering greater fairness and a cleaner environment.

3. Achieving this will require an evolution in the way that the European Commission, Parliament, Council and Member States consider regulation, towards an integrated, end-user focused and measurable approach. This report is our contribution to finding a way to make smart regulation a reality.

4. We welcome the progress that the European Commission in particular has made over the last few years to apply the tools of its existing better regulation agenda. This includes some excellent work consulting on policy proposals, committing to producing impact assessments and establishing a target to reduce administrative burdens on business by 25 per cent by 2012. Now is the time to consolidate this and to consider how the EU can do even better. The effectiveness of this approach also depends on Member States and the end-users of regulations playing their part.

5. In particular, we believe there are four key elements that are central to smart regulation for the next phase of reform. These are outlined below.

   - The EU should strive to be 'best in class' in how it deals with regulation. Representing 27 Member States, the EU can be best placed to address such urgent issues as climate change, the quality and safety of food and other consumer goods and the creation of new jobs. But doing so will require regulatory and non-regulatory interventions to be developed and implemented in a smarter way, learning from the very best practice in Member States and countries from around the world.

- We need an approach that embeds the elements of smart regulation in every intervention in every policy area, rather than it operating in isolation. Smart regulation should not only be restricted to supporting business growth. It can also, for instance, be an essential means of finding cost-effective ways to reduce carbon emissions and create a low carbon economy. It can help safeguard consumer rights on products and services by focussing regulatory and non-regulatory interventions where the risk is greatest. And, in the area of the financial services market, while it is clear that further single market regulation is needed, smart regulation tools can ensure that new measures are proportionate, targeted and do not impede wealth-creation.

- Smart regulation should further help EU institutions effectively work together in the development and design of policy: contributing to the development of joined-up decision-making. It can provide a framework for the Commission, Council, Parliament and Member States to make transparent, evidence-based decisions that encourage and deliver democratic oversight in sensitive areas. This is especially significant given the Parliament's new powers, under the Lisbon Treaty, in the area of justice and home affairs.

- Keeping end-users – employees, consumers, businesses and other organisations[1] – in mind during policy-making, is the only way to consistently create smart regulation. End-users are key to highlighting where there is a problem and judging whether an intervention will be effective. Getting them involved at every stage of the policy-making process – from choosing how the Commission should intervene, to developing a policy, to the Council and Parliament deliberating upon it and Member States implementing it – means that interventions will be thought through more clearly and better implemented from the beginning. It is the policy makers' responsibility to involve the end-users, just as it is the end-users' and Member States' responsibility to contribute to the process.

6. Commission President Barroso recently set out why this end-user focus is so important:

    ¨Revitalising the link between the peoples of Europe and the EU will make it both more legitimate and more effective. Empowering citizens to be involved in decisions affecting their lives, including by ensuring transparency on how they are taken, will help to achieve these aims.¨[2]

WHY 'END-USER'?
EMPLOYEES, CONSUMERS, BUSINESSES AND OTHER ORGANISATIONS

We use the term 'end-user' to capture everyone who is affected by regulation – both those who incur costs as a result of compliance and those who receive its benefits. In many cases, these groups can often be the same. People who 'use' regulation should be able to understand why it is needed, what its benefits are and that the costs it may impose are necessary and proportionate.

We believe that making end-users central to the policy-making process – by being aware of their needs, seeking their views, using these views and demonstrating the value of their contributions – is the best way to achieve this aim. End-users are best placed to provide relevant, up-to-date information, which can improve the quality of the evidence on which decisions are based.

---

7. Creating and implementing smart regulation effectively for end-users requires three key elements:

    • firstly, that there are opportunities for end-users to get involved;

    • secondly, that robust governance mechanisms and incentives ensure their contributions are taken into account effectively; and

    • thirdly, that quantitative and qualitative progress is tracked and communicated to end-users in a systematic way.

    A number of Member States already have a range of practices in these areas that others and the EU can learn from. We highlight these throughout the report.
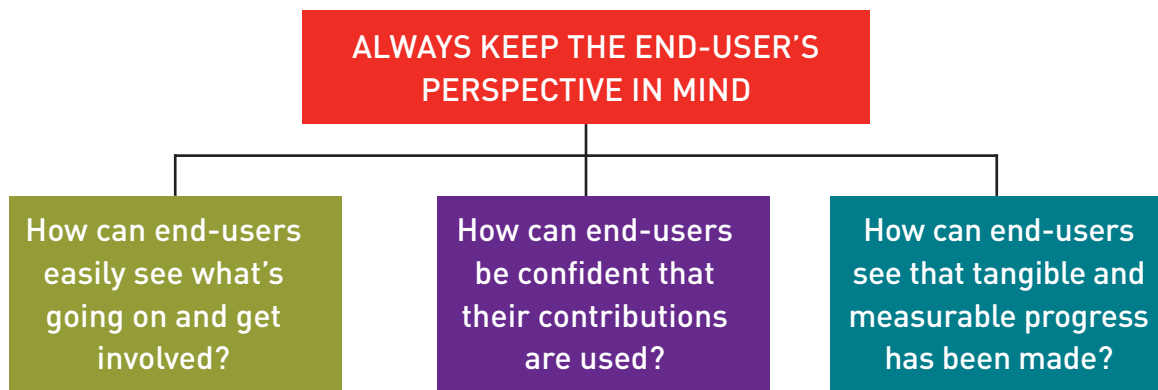
8. This report focuses on how to put the end-user at the heart of European policy-making, towards an integrated approach. It considers how this can be done in three particular areas, as outlined below. We recognise that some of the recommendations may put pressure on institutional resources, but we believe the issues are important enough that a solution must be found. The following outlines our priority proposals:

'End-user' focused EU legislation

End-users should be at the heart of how European institutions consider interventions... **→** ... to ensure sustainable economic growth, social fairness and a cleaner environment.

ALWAYS KEEP THE END-USER'S PERSPECTIVE IN MIND

| How can end-users easily see what's going on and get involved? | How can end-users be confident that their contributions are used? | How can end-users see that tangible and measurable progress has been made? |

How can end-users easily see what is going on and get involved?

9. The EU institutions and Member States have made progress over the last few years, developing better ways of informing end-users and inviting their views. But some end-users continue to suggest that more should be done to involve and keep them in mind during European policy-making.[3] There is evidence that government openness is positively linked to lower regulatory burden and effective regulatory governance.[4]

10. End-users should be able to contribute to policy-making at each stage of the policy-making cycle. We propose that the Commission should make two-way communication more effective by extending the minimum eight week consultation period and applying the new minimum consistently. Following the Commission's commitment in the *Small Business Act for Europe*, the Commission should quickly introduce common commencement dates for all business-related proposals.

11. We propose that the Commission's forward plan for the year – the Legislative and Work Programme – be strengthened, by defining and publishing what constitutes a 'significant' measure for inclusion and the likely scale of individual measure's benefits, costs and administrative burdens. The Commission should include a two-page executive summary with

key estimated costs and benefits in its impact assessments. The Council and Parliament should use these consistently to inform their deliberations and should make more use of the Commission's offer to provide advice and update impact assessments throughout the process. For this to be effective it will be important that end-users are also proactive in providing quality information to inform the process.

How can end-users be confident that their contributions are used and produce tangible results?

12. Smart regulation will only be realised if EU institutions proactively take end-users' contributions into account, improving how EU interventions are chosen, developed, deliberated upon and implemented. In turn, better policy-making is associated with improved sustainable economic growth. And, if end-users are confident that this is happening, this should improve their compliance with the legislation and enhance the legitimacy both of the legislation and the EU institutions that created it.

13. We welcome progress over recent years to develop and embed better governance structures, such as the Commission's Impact Assessment Board (IA Board) and the High Level Group of Independent Stakeholders on Administrative Burdens (Stoiber Group). Nevertheless, the integrated approach can be further supported and improved by stronger monitoring and advisory input. We believe that the IA Board should make further use of external experts to ensure rigorous quantification of the costs and benefits of proposals; that it should push for alternatives where feasible; and that its opinions be given greater weight. The remit of the Stoiber Group should be strengthened to examine the role of all three EU institutions in imposing new unnecessary burdens and incorporate policy costs and irritants, while taking real benefits into account.

14. Irrespective of what they are called, we believe that programmes aimed at reducing existing regulatory burdens on businesses, should deliver tangible results on an ongoing basis. The Commission, Council and Parliament should improve the quality of the policy framework by considering alternatives to legislation and systematically checking the relevance of proposals throughout the policy-making process.

How can end-users see that genuine quantitative and qualitative progress has been made?

15. There are several major better regulation initiatives at the EU level – but it is often difficult for the end-user to assess how effective they have been. For smart regulation to be a success, there need to be transparent mechanisms across the whole programme to ensure that end-users can clearly see how well the EU is delivering on its promises and provide a clear plan for ongoing improvements.

16. We believe that the Commission and Member States should improve accountability by better monitoring and communicating the quantitative outcomes of smart regulation and how end-users are experiencing improvements.

17. To help create better ownership and accountability of the agenda across all the institutions, Commissioners should have clear responsibilities for delivering smart regulation in their specific policy areas. It is equally crucial that all European Parliament committees and Council formations integrate smart regulation work as part of their oversight and policy-making process. The European Court of Auditors should evaluate the smart regulation process on a systematic basis to enable further reform and improvement.

18. **It has rarely been more necessary or urgent** for the European Commission, Council, Parliament and Member States to successfully deliver their interventions and the aspirations they embody. Smart regulation provides a clear way for them to create well thought-out, practical and proportionate responses to some of the greatest issues Europe faces. We encourage them to seize this opportunity to do so.

Chapter 1
How can end-users of regulation easily contribute their views and see what is going on?

19. The Commission and Member States have made commendable progress over the last few years to develop better ways of informing end-users and inviting their views. But certain end-users continue to suggest that more should be done to involve and keep them in mind during European policy-making.[5] We recognise that the Commission in particular must often rely on the quality of information that end-users are willing or able to provide. And, as we suggest here and in Chapter 2, improved end-user participation and transparency will only be effective if the EU institutions and Member States genuinely encourage and take into account these contributions throughout the process.

Better evidence through effective two-way communication and longer consultations

20. To ensure policies are effective when they are applied in practice, it is fundamental that end-users can contribute their views at the right time in the policy-making process and have enough time to do so. We believe this is as true at the European level as it is at the national level. We also acknowledge, however, that effective two-way communication between end-users and policy-makers is not an easy aim to achieve. Traditionally, policy-makers have not always asked for first-hand experience from end-users. And in turn, end-users do not always provide necessary evidence to underpin policies.

21. Despite this challenge, policy making at both the European and national level must be improved if end-users are to be reassured about how legislation supports and develops their economic, social and environmental well-being.

22. The Commission has in place many excellent ways of fostering good two-way communication to inform its policies. For instance, we strongly support the Commission's steps to improve and develop how it formally consults on proposals. These include introducing minimum standards for consultation in 2002 and the development of a web-based register of all ongoing EU consultation – Your Voice in Europe – which allows the public to view consultation responses online.

CONSULTATIONS: EUROPEAN BUSINESS TEST PANEL (EU)

Established in 2003, the European Business Test Panel (EBTP) supports the European Commission's consultation strategy. It is an innovative and potentially powerful tool for Commission policy-makers to test early ideas and seek initial data direct from a large sample of businesses.

The Commission could improve the opportunity for the Panel to achieve its full potential by encouraging businesses to more actively use the Panel. It could encourage businesses to become, and remain, engaged by offering feedback on how surveys have informed and influenced policy. Member States could also consider how to encourage businesses to contribute. [6]

23. However, a number of stakeholders across the political spectrum have called for an extension of the Commission's eight-week minimum consultation period, to fit with international best practice.[7] It is helpful that the Commission accepts that more than eight weeks consultation may be necessary, especially for "proposals which are particularly complex or sensitive", or if consultations span holiday periods.[8] But we need to go further. Several OECD countries have longer minimum periods for national consultation.[9] Since end-users are further removed from the policy process at European level, the Commission should make the consultation time longer than these national averages.

24. Even within the current eight week minimum however, there are already three ways of strengthening the system. The first is to ensure the minimum period is applied consistently to all proposals. The second is that the clock starts only once all translations of the documents have been published. Thirdly, end-users could be told before consultations are published formally that their input will be required by a clear deadline. This would allow them to set aside time where required.

25. Another example of good two-way communication is the new Commission's commitment to provide feedback to users about how their views have been taken into account. We encourage every Commission Directorate General to put this into action.[10] It is precisely this type of initiative that we believe will foster greater cooperation and input from end-users to improve policy outcomes.

26. We believe there are real benefits to incorporating the views of those who must abide by legislation into the process of developing EU law. Effective two-way communication early on in policy development will also ultimately improve outcomes. It will allow end-users to comment on the underlying principles of the proposal, and even provide feedback about whether they think there should be a legislative intervention at all. Although we recognise that some information may be market-sensitive, end-users' willingness to share information with the Commission is absolutely vital to the effectiveness of its policy-making process and contributes to the connection between the EU and people's everyday lives.

27. For example, Denmark's Burden Hunter programme has helped policy-makers obtain a better understanding of what is particularly troublesome, what creates value for end-users, what initiatives can achieve the desired outcome and how initiatives can be implemented most effectively.[11] The Commission should reinforce and apply user-centric approaches when developing new legislation.

USER-CENTRIC APPROACH TO IDENTIFYING REGULATORY BURDENS

There are many examples across the EU where Member States and the Commission can draw inspiration on how to seek views and communicate with end-users:

Kafka (Belgium) – Belgium's Kafka initiative introduced an online contact point, www.kafka.be where citizens can submit comments on existing regulations and make proposals for their improvement and simplification. The proposals received on the website have formed the basis of a reform programme – the Kafka Plan – for the entire Federal Government. Over 200 specific simplification projects have been implemented under the plan, ranging from the abolition of paper accounts to the improvement of home-working regulations.[12]

Burden Hunters Project (Denmark) – The Burden Hunter project applies user-centric innovation techniques to allow users themselves to identify the red tape that causes them most irritation. Civil servants have conducted visits to businesses to see first-hand the regulatory challenges they face. The user-centric approach allows businesses themselves to set the agenda for regulatory action and help develop solutions to cut administrative burdens. Work is ongoing to deliver results on a range of problems within nine areas perceived as particularly irritating, including government inflexibility, lack of mutual obligation and complexity. The Burden Hunter project has led to identifying a number of new initiatives to cut red tape.[13]

Simplifying Together (France) – France has developed a framework that focuses on 'life-events' in order to better understand the burdens faced by businesses. These include key points in the life of a business, such as starting up, moving premises or hiring an employee. Using this framework, and through a broad process of consultation with the users of regulation, they have developed a programme to reduce the number of processes, the cost and the time to navigate these events.[14]

Getting earlier end-user input by improving the Legislative and Work Programme and other forward planning

28. If end-users' input is to have maximum value, they should be able to see at a glance what is going on in order to decide how best to focus their input. The Commission already has several innovative mechanisms to achieve this aim. The Commission publishes its annual Legislative and Work Programme setting out its proposals for the next year and updates it throughout the year. It also publishes more detailed information on each of the proposals in roadmaps and provides regular updates in monthly 'Harley Reports'. Once the Commission has made a proposal, the European Parliament and Council provide access to draft EU laws as they go through the policy-making process via the online portal Pre Lex. Lastly, the Commission has committed to applying common commencement dates to EU laws affecting business and agreed to publish an annual statement of these laws entering into force.

29. We welcome these excellent initiatives, each of which offers greater transparency and helps businesses in particular plan effectively for legislative changes. We encourage common commencement dates to be introduced quickly for all business-related proposals. However, we think there are ways in which the Commission could go even further to encourage end-user input.

30. We are encouraged by Commission President Barroso's proposal to invite the Parliament to identify areas of importance in the work programme before it has been approved. To balance input, we would envisage and encourage the Council to have the same opportunity.

31. We think the Commission should now build on this strong basis in two main ways. It should ensure that the Legislative and Work Programme, and the monthly updates via the 'Harley Reports', include all Commission proposals. It should also provide more detail about individual upcoming proposals. These should clearly be visible to end-users to provide them with greater opportunity to give feedback on proposals.

32. In terms of wider coverage, the Commission's 2009 Impact Assessment Guidelines state that, in future, the Legislative and Work Programme should include significant delegated acts alongside other significant measures.[15] We suggest that the Commission builds on this by outlining and publishing the criteria by which a measure is designated 'significant' and include the scale of its likely benefits, costs, and administrative burdens.

33. In this context, we strongly believe that roadmaps should include more detailed information, including the evidence that underpins a proposal and an estimate of the likely costs and benefits it would bring if implemented. Only by providing more rigorous justification for proposals at this early stage of policy development, will the Commission stand the greatest chance of engaging key relevant end-users to help shape the final outcome.

34. By the same token, we strongly encourage Member States and end-users to use these resources to inform their contributions. They are valuable only to the extent that people can and do use them.

INCREASING TRANSPARENCY: FORWARD REGULATORY PROGRAMME (UK)

In order to increase transparency for the end-user, the UK has published a Forward Programme of all new regulations that will impact on business and are due to come into force before the end of April 2011. It includes details of the measures' economic costs and benefits up to 18 months before they are implemented. The Programme is intended to strengthen the Government's management of regulation, allow businesses and those affected by regulation to plan more effectively for regulatory impact and as a result increase end-user scrutiny.[16] This could be considered as a measure to improve transparency for the Commission and Member States.

Transparent policy-making by communicating and updating impact assessments throughout the policy-making cycle

35. Impact assessments provide end-users and policy-makers with the analysis and evidence that form the basis of all political decisions to produce legislation. They help ensure interventions are necessary and carried out in the most effective way. The Commission has worked hard to develop its process of impact assessments and we welcome the recent commitment to "extend the impact assessment approach to certain key comitology proposals".[17] To ensure that end-users can easily access, verify and challenge the data throughout the policy-making cycle, we believe that the impact assessment process should now be taken a step further.

36. Key data in impact assessments must be effectively presented and communicated. We warmly welcome that the guidelines for Commission impact assessments take account of the social, environmental and economic impact and include an 'SME Test' of the specific costs and benefits for small and medium sized enterprises (SMEs). Commission impact assessments now also include 10 page executive summaries. However, end-users have indicated that these summaries are still too long and often do not include the most relevant information.[18] We believe end-users should engage with the evidence provided in the impact assessments, but also recommend that all Commission impact assessments summarise the key estimated costs and benefits in a two page template. Not only would such a summary improve scrutiny and help keep track of progress, it would also aid the Parliament and the Council in their deliberations.

37. At present, the Commission consults end-users on draft proposals but not on accompanying draft impact assessments. It seems to us that a valuable opportunity to improve the quality of the proposal is lost as a result. We think that one way of addressing this would be to give end-users the opportunity to review and verify the information in the draft impact assessment before the proposal is finalised by the Commission.

CONSULTING ON IMPACT ASSESSMENTS (UK)

The UK views impact assessment as a continuous process to help the policy-maker fully think through and understand the consequences of possible and actual Government interventions: from the early stages of identifying a policy challenge, through to the development of policy options, public consultation and final decision-making, and on to the review of implementation. A Small Firms Impact Test is included in impact assessments for proposals that will affect business.

In the UK, there are certain points in this process at which an impact assessment must be published or re-published. One of these points is when a policy proposal is opened to public consultation. This allows the end-user not only to comment on the proposal, but also on the analysis and evidence underlying it.[19]

38. A crucial weakness in the European policy-making cycle is that the Commission's original impact assessment is not updated as a proposal is amended during deliberation by the Council and the Parliament. The Parliament and the Council agreed in 2005 to "assessing the impacts of their own substantive amendments".[20]

39. However, in practice these commitments are yet to bear fruit. Parliament sometimes undertakes studies of expected impacts on substantive amendments, but often it does not.[21] The Council has so far implemented this agreement only once, in carrying out an impact assessment of its amendments to the Batteries Directive during the Dutch EU Presidency in 2004.[22]

40. We believe that the Council and Parliament should honour their agreement and undertake impact assessments on substantive amendments, or invite the Commission to provide analysis on proposed amendments. This could take place, for instance, between first and second readings of proposed legislation.

41. In the same spirit, the impact assessments of final agreed legislation should be produced and published. This would provide crucial baseline information against which post-implementation assessment can be measured and would serve as a useful transition to transposing EU legislation into national law. The EU institutions should decide which of them is best placed to do this.

42. We encourage Member States to also produce their own national impact assessments for transposition, to provide specific and nationally-based information for end-users.

43. We recognise that updating impact assessments may put pressure on institutional resources, in particular for the Council and Parliament. Nevertheless, we believe the issue is important enough that a solution must be found. The EU institutions should consider how the Council and Parliament can receive the analytical support necessary for them to develop impact assessments on substantive amendments. The Indicative Guidance for Working Party Chairs on Handling Impact Assessments, published in 2007, proposed a range of options in this area, which we encourage the institutions to test fully.[23]

44. In summary, increasing participation and transparency is the central starting point for achieving smart regulation at every level of governance. We recognise that this is not straightforward, but by improving end-users' opportunities to get involved, the Commission can create greater buy-in to the process and improve the final result – greater benefits at lower cost. Crucially of course, this depends both on the information that end-users themselves provide, and the Commission, Council and Parliament having systems to take these views into account. This is the focus of Chapter 2.

CHAPTER 1: SUMMARY OF PROPOSALS

THE COMMISSION SHOULD MAKE TWO-WAY COMMUNICATION MORE EFFECTIVE AND EXTEND THE MINIMUM CONSULTATION TIME PERIOD

1. The Commission should reinforce and apply user-centric approaches when developing new legislation. This will help ensure that the legislation is well targeted and effective and increase the likelihood of compliance.

2. The Commission should improve two-way communication by extending the minimum consultation period to give end users, and particularly small businesses, more opportunity to respond.

3. The minimum consultation period should be applied consistently, the clock should only start ticking once all translations of the documents have been published, and relevant end-users should be informed when their input will be required before consultations are published formally.

THE COMMISSION SHOULD IMPROVE THE LEGISLATIVE AND WORK PROGRAMME AND OTHER FORWARD PLANNING

4. Following the Commission's commitment in the Small Business Act for Europe, the Commission should quickly introduce common commencement dates for all business-related proposals, so that all new legislation comes into force at clear points in the year.

5. The Commission should continue to strengthen the Legislative and Work Programme (LWP) by defining and publishing what constitutes a 'significant' measure for inclusion and the likely scale of individual measures' benefits, costs and administrative burdens. This also applies for delegated acts.

EU INSTITUTIONS SHOULD COMMUNICATE AND UPDATE IMPACT ASSESSMENTS THROUGHOUT THE POLICY-MAKING CYCLE

6. All Commission impact assessments should include an executive summary or template of no more than two pages to keep track of the progress made, summarising the key estimated costs and benefits to assist policy-makers in using key information throughout the policy-making process.

7. Impact assessments should be carried out on all significant measures, including on delegated acts and, in order to increase transparency, be updated throughout the policy-making cycle: from draft impact assessments to substantive amendments in Parliament and Council, when a proposal has been finalised and by Member States for transposition, as this would provide a good baseline for ex-post evaluation.

8. The EU institutions should consider how the Council and Parliament can receive the analytical support necessary for them to carry out impact assessments on substantive amendments.

Chapter 2
How can end-users be confident that their contributions are used in the policy-making cycle and produce tangible results?

45. Having obtained end-users' opinions, it is vital that there are governance structures in place to ensure these views are fully taken into account by policy-makers as interventions are chosen, developed, deliberated upon and implemented. This is what will deliver smart regulation: effective, targeted intervention that respects subsidiarity, delivers better compliance with the legislation and improves perceptions. The OECD points out that good regulatory institutions are key to delivering regulatory policy and ensuring the quality of regulation. Although the EU has taken significant measures to ensure regulations take end-users into account, more must be done to make it 'best in class'.[24]

Ensuring the best policy outcome by improving the use of regulatory alternatives throughout the policy-making cycle

46. It is important that end-users be assured that a legislative outcome is not the only option on the EU institutions' table. There is a danger that the 'do-nothing' option or alternatives to legislative action are excluded too early in the process and certainly by the time the Commission Legislative and Work Programme is published.

47. Considering alternatives to legislation is fundamental to achieving good outcomes. There are times when there is no substitute for regulatory intervention, but non-legislative alternatives can provide more flexibility, can be amended more easily and can be implemented more quickly whilst achieving the same outcome. This can be key in markets that experience rapid cultural, economic or technological change.[25] The OECD has noted that:

> "Efficient and effective policy action is only possible if all available instruments are considered. The instruments include a wide range of non regulatory, instruments, as well as a number of distinctly different forms of regulation."[26]

48. We commend the EU's existing use of alternatives to regulation and encourage its further development, as outlined in the Inter-Institutional Agreement on Better Law-making. We welcome the Commission considering alternative approaches for small and micro-business and 'specific measures' such as derogations, transition periods and exemptions, in particular from reporting requirements.[27] We hope that the Commission continues to work with small businesses across policy areas to develop and promote effective interventions, on the basis of expected costs and benefits. We call on all Member States to support this.

THINKING SMALL FIRST

SMEs represent 99 per cent of enterprises in the EU and account for up to 80 per cent of employment in some industries.[28] In the current economic climate, it is more important than ever that we encourage their growth by finding ways to make their lives as simple as possible. Member States from across the European Union are taking action to make sure this happens:

Germany has relaxed the rules regarding the recording of driving times for vehicles between 2.8 and 3.5 tonnes. This will have a direct and positive impact on the small businesses that are heavily reliant on such vehicles, saving the economy around €36 million per year. [29]

Finland has introduced www.palkki.fi – a website through which small firms with five or less employees can fulfil their obligations as employers, offering fully automatic and electronic reporting and calculation of earnings, tax and social security contributions.[30]

Ireland has reduced the frequency with which small firms need to file and pay taxes. This both supports small firms' cash-flow and has dramatically reduced the number of forms that need to be filled in on an annual basis.[31]

Poland has reduced the minimum amount of capital required to register a limited or joint-stock company from around €12,000 to €1,200. In conjunction with the 'one-stop shop', an online platform for start-ups, this move will open up markets to small and micro-businesses that would not otherwise have met the capital requirements.[32]

49. As part of the review of the Inter-Institutional Agreement, EU institutions should consider how to better manage alternatives to regulation throughout the policy-making cycle. End-users should know that the European Parliament and the Council also actively consider non-legislative measures, where they can be as effective as, or more effective than, legislation.

CONSIDERING ALTERNATIVES TO REGULATION

Out-of-court settlements (Czech Republic) – The Czech Republic has introduced measures to facilitate out-of-court settlements in consumer disputes. By reducing the need for lengthy and expensive court processes, and supporting the dispute-resolution process through information, mediation and arbitration, the new provision aims to broaden access to justice, while minimising the burdens caused by legal proceedings.[33]

Mobile phone chargers (EU) – The Commission announced in June 2009 that 10 mobile phone producers have signed a voluntary agreement to use standardised chargers for mobile phones. The mobile phone market in Europe is responsible for thousands of tons of waste each year. This voluntary agreement has been viewed by industry and EU institutions as a good alternative to new costly legislation.[34]

The European Declaration on Paper Recovery (EU) is a voluntary, industry-led initiative and has contributed to the EU becoming the world leader in paper recycling.[35]

Self-assessment (Spain) – Spain has introduced a system to enable small and micro-businesses to identify hazards in the workplace, the solutions needed to resolve them, and extend access to external expertise where it is needed. The system ensures that the burden of regulation on businesses is minimised, and is backed up by a clear means of support.[36]

These examples illustrate that the Commission and Member States can successfully use alternatives to regulation to achieve the same aims with fewer burdens. They should continue to do so more frequently.

Improving regulatory outcomes by strengthening the Commission's Impact Assessment Board and embedding smart regulation principles in the work of the Council and Parliament

50. End-users should be assured that the process by which impact assessments are developed is fair and comprehensive, that principles such as 'think small first' have been applied consistently and that decisions are based on the end-user evidence and expertise available. This can be achieved by developing the analysis and influence of the Commission's Impact Assessment Board (IA Board) and ensuring that the Parliament and Council embed smart regulation principles in their everyday work.

51. The Commission has worked hard to improve the quality of its impact assessments. Central to this has been the establishment in 2006 of the IA Board as an independent, internal watchdog. In doing so, it has undoubtedly improved the quality of impact assessments. In 2008 the Board sent back almost one third of all draft impact assessments, asking lead Directorates General to improve their analysis of the problem, impact and alternative policy options. This has led to the beginning of a positive change in culture in the Commission.

52. However, we think there are three main ways in which the IA Board could be even more effective in driving culture change right across the Commission and further improve outcomes for end-users.

53. Firstly, we think the IA Board could make more use of its option to engage external experts' advice to ensure rigorous quantification of the costs and benefits for end-users of proposals. It should push for alternatives to regulation and the importance of proportionality where feasible.

54. Secondly, we believe the IA Board's recommendations must have a direct impact on improving the quality of the policy itself, not just the impact assessment that accompanies it. The College of Commissioners should ensure that the IA Board's opinion is taken into account before it takes a final position on policy proposals.

55. Thirdly, in order to assure end-users that the internal review of Commission impact assessments is working, we suggest tougher consequences if the IA Board's views are not taken into account. One option would be that any proposal that does not have a positive final IA Board opinion should be subject to oral procedure in the College of Commissioners. A proposal that has not received a positive IA Board opinion could also be reported explicitly to Council and Parliament at their first discussion of a proposal. The Parliament, Council and Member States must ensure that they use the IA Board's opinion as a key part of their scrutiny of the proposal.

Introducing robust monitoring to ensure the reduction of regulatory burdens is tangible for businesses

56. Reducing unnecessary burdens of regulations on business is an important part of the European Union's strategy to improve economic performance and productivity and one we support. The EU's administrative burden reduction programme and simplification programme should make sure that businesses enjoy the greatest benefit from EU legislation in the least burdensome way.

57. The EU's Simplification Rolling Programme was established in 2005 to update, modernise and simplify the EU's existing body of law. Although it has been successful in cutting back some 7,800 pages of the EU's body of law, it is generally not clear how far businesses have felt direct benefits from this work.[37] The administrative burdens reduction programme was established in 2007 and has been working towards cutting EU administrative burdens by a commendable 25 per cent by 2012. The Commission has estimated it will deliver savings for businesses that could total €40 billion.

58. Irrespective of what the existing regulatory programmes are called, our priority is that the Commission, Parliament and Council now deliver tangible administrative burden reductions for businesses and identify and contribute to reducing other unnecessary burdensome policy costs[38] and irritants. These types of burdens are ones that may not always be most

burdensome in terms of time, but are regarded as highly unnecessary and frustrating by those who must comply with obligations. It is also crucial that any proposals adopted as part of these programmes exclusively reduce regulatory burdens, rather than adding to them.

59. Given the emphasis we place on these proposals, we make some suggestions below for how, as a first step, they could be delivered within the context of the two existing programmes.

The EU Simplification Programme

60. To ensure that its simplification measures focus on reducing regulatory burdens in a tangible way, the Commission should establish a simple rule about what can be categorised as a simplification measure, with clear objectives and beneficiaries. We believe it should only be called a simplification if it *reduces* regulatory burdens. Conversely, any measure that increases burdens should *not* be considered part of the Simplification Programme. Simplifications such as codification and consolidation – as they do not reduce regulatory burdens – should instead be considered part of the programme to improve the quality of the EU body of law.

61. We also believe that where it is clear that the original cost estimates of proposed simplification proposals do not match their actual savings to businesses and others, these estimates should be adjusted. In order to maintain the programme's credibility with end-users, we believe any such changes must be reflected in the overall success criteria of the initiative.

62. Crucially, we believe an effective simplification programme has the potential to target other burdensome aspects of regulation stemming from the EU, such as policy and inspection costs. This must however, be underpinned by robust delivery mechanisms, such as setting burden reduction targets by sector, to ensure it leads to worthwhile economic benefits.

The EU administrative burden reduction programme for businesses

63. Achieving the 25 per cent administrative burden reduction target will rely on the Council and Parliament handling the Commission's proposals in a timely manner, not adding unnecessary new burdens and bearing in mind how and whether they will achieve real benefits for businesses. We warmly welcome the Commission's recent launch of a number of sectoral reduction measures that will contribute to reaching the target.

64. The programme has made an impressive start and we urge the Council and the Parliament to adopt pending proposals swiftly. However, we believe that half way through the programme there are a number of issues that need to be addressed if businesses are to reap the full benefit of the exercise.

65. Firstly, we believe that to ensure tangible results, the 25 per cent target should take account of burdens that arise from new EU legislation, for instance including sectoral targets. Moreover, we think that the scope of the programme should be widened by considering further proposals for reduction within the current 13 priority areas.[39] It is also likely to deliver better results for businesses if policy areas beyond the original 13 are considered, such as in the domains of privacy laws, accountability for receiving government grants and trade facilitation.

66. Having committed to this target, action must be taken by all EU institutions, as well as Member States, to deliver it in a tangible way by 2012.

67. We also believe that, throughout the policy cycle, impact assessments are the key way to monitor how the administrative burden target is being met against its baseline. The analysis in the impact assessment could then also form the basis for determining whether further reduction proposals are required.

68. Lastly, if a reduction proposal by the Commission is not accepted by the Council or Parliament, it should not count towards reaching the target. The institutions must work closely together to find another solution to deliver tangible savings in that particular policy area.

69. In the coming years, the Council and Parliament will need to implement administrative burden reduction proposals. We urge Parliamentary committees and Council formations to keep this overall target in mind when considering the proposals.

70. Introducing and improving eGovernment systems is another key way of reducing administrative burdens for end-users. Good electronic systems can share data already collected by the government, to prevent double reporting and errors. Electronic systems can reduce time spent and the annoyance factor for end-users. Electronic systems also make it easier for businesses to find the information they need, particularly as it is available 24 hours a day. The Commission, Council and Parliament should ensure that new legislation does not create barriers to implementing eGovernment solutions.

IMPROVING eGOVERNMENT SYSTEMS

Efficient electronic solutions lead to improved government services and progress and growth for businesses in an increasingly globalised and digital economy.

Digitisation (Austria) – Austria has introduced a range of digitised services, including the record of Austrian Federal law and a digital lawmaking system to extend access to the legislative process. It has introduced a free-to-access web portal for government procurement, which allows small businesses better access to the government tendering process for low-value contracts. The government's central online portal is widely used for accessing information and online forms, and registers an average of over 2.5 million page views per month.[40]

Compulsory digitalisation (Denmark) – Denmark intends to make all communication between businesses and authorities electronic in 2012. Efficient electronic solutions lead to improved and efficient government services and progress and growth for Danish businesses in an increasingly globalised and digital world. To ensure that the new electronic solutions achieve their full potential, the Government will make electronic reporting compulsory in a number of areas.[41]

The gradual introduction of compulsory computerisation will make it possible to respond to any problems for government authorities or businesses that arise in connection with implementing electronic solutions up until 2012. During the period of transition to compulsory electronic reporting to government authorities up until 2012, the Government will ensure that electronic systems are of sufficient quality and that there is adequate access to support and sufficient and timely communication with businesses.

71. We support the advisory work of the High Level Group of Independent Stakeholders on Administrative Burdens (Stoiber Group) in scrutinising the administrative burden programme, by identifying further savings. We welcome Commission President Barroso's announcement in September 2009 that the Stoiber Group will continue its important work for another two years.[42] We encourage the Commission to consider carefully its views. We believe that the remit of the Group's important work should be strengthened to examine the role of EU institutions – including Council and Parliament – in imposing new unnecessary burdens and be widened to incorporate other existing burdensome regulatory issues, such as policy costs and irritants. This would maximise the benefits and minimise the costs from regulation for businesses.

BROADENED AND DEEPENED REGULATORY REFORM PROGRAMME FOR BUSINESS (THE NETHERLANDS)

The Dutch administrative burden programme for business is based on three key elements: a 25 per cent net reduction target, linking the operation to the budget cycle, and establishing ACTAL as an independent watchdog.

The World Bank and OECD have identified the Dutch programme as a world leader in this field (joint 2007 review).[43] The 2008 progress assessment by the World Bank concluded that the current Dutch broadened and deepened regulatory approach for businesses is the leading and most innovative programme in the world.[44]

The most critical elements now in place, include the institutional consolidation and strengthening of the programme through the Regulatory Reform Group, broadened tasks and auditing responsibilities for ACTAL, the independent Business Regulatory Burdens Commission for more tangible results, a regulatory monitoring mechanism linked to the budget cycle and continued high level political oversight under the Prime Minister's auspices.

The result-orientated programme has been broadened and deepened with a balanced mix of quantitative and qualitative targets: for instance a second consecutive 25 per cent net reduction target for administrative burdens, targeting and reduction of substantive compliance costs and inspection costs in priority areas, increase of the quality of services delivered to businesses regarding the regulation affecting them. Another new feature of the programme is its renewed communication strategy. The overall objective is to increase the 'visibility' of the achieved results, linked to tangible messages for businesses.

This example illustrates that the Commission and Member States can successfully use a focused administrative burden reduction programme as a stepping stone for a broadened and deepened regulatory approach.

72. Across the EU, inspection and enforcement practices differ greatly. It would be beneficial to both the functioning of the internal market and the reduction of EU administrative burdens to agree a number of principles of good inspection and enforcement across the EU. With these principles, competent authorities in Member States would be given greater flexibility to apply 'new' practices and tailor their inspections according to risk-based approaches. The potential savings for the EU economy could be considerable, ensuring that the way in which EU regulators enforce the law is proportionate and concentrated on those businesses and activities where the risks of regulatory failure are more damaging to society and the economy.

USING PRACTITIONER EXPERTISE TO IMPROVE POLICY-MAKING (EU)

A checklist tool developed by the European Union Network for the Implementation of Environmental Law (IMPEL) and the European Network of Environment Protection Agencies, highlights the value of involving in policy design and review the practitioners that are responsible for implementing and enforcing proposals.[45]

The checklist helps identify barriers and better regulation opportunities in the legislative process. It poses questions relating to legislative policy and choice of instrument, suitability for transposition and implementation, quality of the legislation, practicability of compliance by the target group and enforceability. To date it has been successfully used to check and improve Commission proposals for recasts of the Integrated Pollution Prevention and Control (IPPC) and Waste Electronics and Electrical Equipment (WEEE) Directives. We suggest that the Commission and Member States continue to use this checklist as part of the smart regulation agenda.

Improving the quality of legislation by checking its relevance throughout the policy-making cycle

73. There should be opportunities for end-users to contribute to reshaping or reconsidering legislative proposals throughout the policy-making cycle. Currently, once an idea gains momentum, it can seem to move through the institutions even where evidence is lacking or circumstances change.

74. We propose that the Commission, Council and Parliament should develop mechanisms to check periodically that proposals are still relevant and reflect current evidence. We support Commission President Barroso's suggestion that every five years – at the start of a new Commission – Parliament is invited to review whether to take forward regulatory proposals inherited from the previous Commission.[46] The Council should also have a role in this process.

75. There are a range of other potential ways in which the continued relevance of proposals can be achieved. We outline them below as possible options for the institutions to consider.

76. *Before choosing an intervention* the Commission should undertake detailed evaluation of the current policy situation to establish whether action is actually needed before proposing an intervention. It should assess whether the proposal is consistent and coherent and if it can be integrated into other related areas of law. In addition, the Council and Parliament should take account of the need for this evaluation, and for an impact assessment, when requesting a proposal from the Commission. This should be based on direct contact between Commission officials and end-users to evaluate whether there is a need for additional action.

77. The Stoiber Group has considered a check-list for legislators when drafting new or revised legislation. This was originally conceived for aiding administrative burden reduction, but we believe some of the questions should be asked when considering *any* intervention. It requires policy-makers to consider questions such as 'why is new legislation necessary; could better implementation of existing legislation obtain the desired results; and would the legislation be coherent with other acts?'[47]

78. If it determines that action should be taken, the Commission should provide a clear justification for intervention in both its Legislative and Work Programme and its roadmaps. The OECD places the EU 14th out of 31 rankings on 'provision of justification for regulatory action', so there is room for improvement.[48] Knowing why an EU intervention has been chosen is key to ensuring its legitimacy to end-users. It can also help end-users put forward better ways to achieve the objective.

79. *Once proposals are introduced to Parliament or Council* they rarely seem to be removed, even if they have not been passed after several sessions. There are currently few mechanisms at EU level to enable regulatory proposals to be re-assessed on the basis of their continued quality, viability and relevance. This contrasts with the experience in many Member States, where legislation is time-limited and must be reintroduced if it has not been passed within one parliamentary session. We believe the EU institutions and Member States should consider ways of bringing EU more in line with many of its Member States. In the meantime, we encourage the review of pending proposals at the start of each new Commission to check whether they are still relevant.

80. *After legislation has been implemented:* A number of OECD countries have established standardised mechanisms to evaluate whether existing regulations are functioning effectively.[49] Commission President Barroso recently expressed his intention to place greater emphasis on ex-post evaluation:

> "We need to match this huge investment in ex-ante assessment with an equivalent effort in ex-post evaluation. All these initiatives are designed to focus EU action on the essentials, removing bureaucratic processes and unnecessary centralisation."[50]

81. We welcome this focus on working to improve legislation continuously once implemented. We believe this approach should be strengthened in order to reduce the burden and increase the benefit of legislation for end-users.

82. The Commission's guidelines require that impact assessments outline the nature, frequency and purpose of subsequent evaluation exercises. Building on this, the EU institutions should develop a strategic plan to ensure all new legislation is reviewed once it has been passed, including a mechanism for measuring its outcome.

83. The EU should take the recently published sectoral reduction measures on administrative burdens for businesses further. It should develop a strategic plan to systematically undertake ex-post evaluation of sectors as an ongoing review of the acquis communautaire and its implementation.

84. Taking these proposals into account should better ensure that the elements of better regulation result in the practice of producing smart regulation. Only by embedding the views of end-users into their everyday policy-making, can EU institutions fully deliver legislation that is as effective as possible.

CHAPTER 2: SUMMARY OF PROPOSALS

ENSURING THE BEST POLICY OUTCOME BY IMPROVING THE USE OF REGULATORY ALTERNATIVES THROUGHOUT THE POLICY-MAKING CYCLE

9. We encourage the Commission to continue working with small businesses across policy areas to develop and promote effective measures, on the basis of expected costs and benefits, and call on Member States to support this.

10. EU institutions should review the Inter-Institutional Agreement to consider how to better assess and manage alternatives to regulation throughout the policy-making cycle.

IMPROVING REGULAT ORY OUTCOMES BY STRENGTHENING THE COMMISSION IMPACT ASSESSMENT BOARD AND EMBEDDING SMART REGULATION PRINCIPLES IN THE WORK OF COUNCIL AND PARLIAMENT

11. The Impact Assessment Board could make more use of its option to engage external experts' advice in order to ensure rigorous quantification of the costs and benefits on end-users of proposals. It should push for alternatives to regulation wherever feasible.

12. The Commission, Council and Parliament should ensure that the IA Board's opinion is considered as part of taking a position on policy proposals.

13. In order to assure end-users that the internal review of Commission impact assessments is working, we encourage tougher consequences if the IA Board's views are not taken into account.

INTRODUCING ROBUST MONITORING THAT ENSURES THAT THE REDUCTION OF REGULATORY BURDENS IS TANGIBLE FOR BUSINESSES

14. Irrespective of what the existing regulatory programmes are called, the Commission, Council and Parliament should make sure they deliver tangible reductions in administrative burdens for businesses on an ongoing basis. The Commission should extend its programme to identify and reduce policy costs and regulatory irritants, and ensure that any proposals as part of its programmes exclusively reduce regulatory burdens.

15. A measure should only be called a simplification if it reduces regulatory burdens. So-called 'cosmetic' simplifications such as codification and consolidation should instead be considered part of the programme to improve the quality of EU law.

16. The simplification programme should cover other burdensome aspects of EU regulation, such as policy and inspection costs. This should be underpinned by robust delivery mechanisms such as setting burden reduction targets by sector to ensure it leads to worthwhile economic benefits.

17. The scope of the administrative burdens programme should be widened by considering further proposals for reduction within and beyond the current 13 priority areas.

18. If a Commission burden reduction proposal is not accepted by the Council or Parliament, it should not count towards reaching the target. We urge Parliamentary committees and Council formations to keep this overall target in mind when considering the proposals. The institutions must work closely together to find another solution to deliver tangible savings in that particular policy area.

19. To ensure tangible results, the 25 per cent target should take account of administrative burdens that arise from new EU legislation, for instance including sectoral targets.

20. It would be beneficial to agree a number of principles of good inspection and enforcement across the EU, giving Member States more flexibility to apply new practices and tailor their inspections according to risk-based approaches.

21. The EU should ensure that new legislation does not create barriers for eGovernment solutions when implemented.

22. The remit of the Stoiber Group's work should be strengthened to examine the role of EU institutions (including Council and Parliament) in imposing new unnecessary burdens and be widened to incorporate other regulatory issues, such as policy costs and irritants.

IMPROVING THE QUALITY OF LEGISLATION BY CHECKING ITS RELEVANCE THROUGHOUT THE POLICY-MAKING CYCLE

23. The EU institutions should develop mechanisms to check periodically that proposals are still relevant and reflect current evidence. Specific ways of doing so are suggested in the body of this report.

Chapter 3
How Can End-Users See Genuine Quantitative And Qualitative Progress Has Been Made?

85. There are several major better regulation initiatives at EU level – but it is often difficult for the end-user to know what they are, let alone assess how effective they have been. If smart regulation is to be a success, there need to be clearer mechanisms across the whole programme to ensure that end-users can clearly see how far the Commission, Council and Parliament are delivering on their promises. Additional ways of measuring the success of the programme would help illustrate the real difference it makes to end-users and give clear indicators of where the programme can improve.

86. We believe there are a number of ways to make this happen, including clearly measuring progress, clarifying who is responsible for implementing the smart regulation programmes and improving oversight of the whole agenda.

The EU should improve accountability by better monitoring and communicating quantitative and qualitative progress

87. The progress of the EU's better regulation programme is currently measured in a range of different ways. For individual new legislative proposals, the Commission produces impact assessments that estimate benefits, costs and administrative burdens. We support the work of the Commission Secretariat General and the Impact Assessment Board to report how many Commission impact assessments are conducted and reviewed as well as supporting their development. The EU also introduced a target in 2007 to reduce by 25 per cent the administrative burden of existing legislation, which we warmly endorse. However, as we outline below, we believe that measuring the progress of the smart regulation agenda on new and existing legislation should be developed further.

88. In practice, end-users are often affected by a series of different pieces of legislation, rather than a single measure in isolation. At present, while the Commission publishes impact assessments for individual pieces of legislation, it does not make clear the aggregate total of these costs and benefits over time.

89. We believe the Commission should publish an annual progress report that sets out the aggregate benefits and costs of legislation that has come into force over the previous year, based on the individual impact assessments. This should provide an overview of the total

burdens per key area that have been added and reduced and put them in the context of the 25 per cent burden reduction target. An aggregate figure would improve accountability and enable end-users more clearly to evaluate how effectively smart regulation has met its aim to deliver benefits in the least burdensome way. It would also provide a baseline for subsequent evaluations. An alternative way of presenting the information could be for the Commission, Council and Parliament to produce a frequently updated online 'overview' to illustrate progress.

90. The Commission should also ensure that the way it measures the progress towards smart regulation is allied to delivering noticeable changes for end-users. The OECD has noted that data such as perceptions-based information can be useful to better understand the effectiveness of regulatory management.[51]

91. We believe that understanding and measuring end-users' perceptions of regulations matters because it contributes to understanding how far changes are genuinely being felt by end-users. In addition, perceptions can, for instance, impact on business decisions to innovate and invest: if regulations are misunderstood, they can mean extra unnecessary spending on encouraging compliance or reduced investment. And negative perceptions of legislation can reduce respect for the law overall.[52] Understanding perceptions can help the Commission, Council, Parliament and Member States decide both where they should focus burden reductions and assess how well new legislation is working in practice.

MONITORING AND COMMUNICATING PROGRESS: 'THE PROGRESS OVERVIEW' (THE NETHERLANDS)

In order to show end-users how far measurable and tangible progress has been achieved, the Netherlands has developed a visible, at-a-glance overview of progress towards achieving 14 key quantitative and qualitative indicators linked to quantitative targets to reduce regulatory burdens on businesses. It uses the idea of dashboard dials to present clearly the targets and how far they have been achieved. Progress is measured against the three core aims of 'less, simpler, tangible':[53]

'*Less*' includes targets about administrative burdens, substantive compliance costs, inspection burdens and subsidies;

'*Simpler*' measures more reliable, transparent and faster results; and

'*Tangible*' tracks perceptions around the issues that business view as key irritants, linked to quantitative targets as well.

The Commission, Parliament, Council and Member States should consider how to make more visible the progress in their smart regulation programmes.

92. This is not a new idea: since 1973, the European Commission has been monitoring the evolution of public opinion in the Member States. Commission President Barroso highlighted the importance of perception again in 2009:

> "We should be under no illusions: the gap in awareness of the EU can only be closed in full partnership with national and regional authorities... We need a more mature dialogue with our citizens on decisions that affect their daily lives."[54]

93. We also believe that competitiveness rankings are important to measuring the success of the smart regulation programmes. A number of Member States already use the World Bank 'Doing Business' Survey to provide a good indication of competitiveness and their better regulation programmes compared to trading partners.

94. We believe that the Commission and Member States should develop a mechanism by which it can monitor and communicate quantitative and qualitative progress of its smart regulation programmes. This could include competitiveness rankings according to the World Bank Doing Business Survey and perception indicators.

MEASURING COMPETITIVENESS: WORLD BANK DOING BUSINESS SURVEY

The annual World Bank Doing Business survey measures how easy it is to do business in 183 countries. The report is used by businesses, policy-makers, investors, and researchers worldwide to compare economies and aid informed policy-making. The rankings have served to increase the appetite for regulatory reform worldwide, and have added a new dimension to global competition.

An analysis of the Survey data over the last six years gives the EU a collective ranking based on the scores of its Member States. It shows little improvement. In the 2010 Survey the EU ranks 22nd – the same rank as in 2004. The EU could use the rankings to focus its work on simplifying and reducing regulatory administrative burdens and further improve its competitiveness as a place to do business.[55]

Many Member States already use the rankings to focus their work on simplifying and reducing regulatory administrative burdens and further improve their competitiveness as a place to do business.

Greece has instigated a wide-ranging set of reforms for start-ups, aimed at increasing their ranking by at least 15 places.

Poland's 'one-stop-shop' for business start-ups has helped it improve its ranking in the Starting a Business category by 28 places.

95. Finally, there should be greater clarity for end-users about which organisations and individuals are responsible for delivering and monitoring EU regulatory policy. We welcome Commission President Barroso's commitment to put the better regulation services under his direct authority. To ensure ownership of the smart regulatory agenda across the Commission as a whole, all Commissioners should also have clear responsibilities to deliver smart regulation in their specific policy areas. The role of the SME Envoy, created in 2001, could similarly be enhanced through transparent objectives for consulting SMEs and embedding the Think Small First principle within the Commission. Member States and Ministers should also be mindful in their interventions of their role in delivering smart regulation.

The Council and Parliament should strengthen their oversight of smart regulation to increase democratic scrutiny

96. Going forward, end-users should be assured that there is consistent oversight of the overall smart regulation agenda by the European Parliament and Council. Parliament and Council are critical, for instance, to ensuring the success of reducing administrative burdens and their ownership of the smart regulation agenda is vital.

97. In the Parliament, the Legal Affairs Committee has lead responsibility for the overall better regulation agenda with input from Budgetary Control and Internal Markets Committees, which also currently consider some elements of the existing better regulation programmes. In the Council, two Council formations – Ecofin and the Competitiveness Council – have a direct interest in the overall better regulation programme. We welcome their commitment. However, as outlined below, we also believe that every Council formation and Parliamentary committee should consider, as a matter of course, how to deliver smart regulation as part of their oversight and policy-making process.

98. The OECD recognises that parliaments can play a key role in strengthening regulatory quality:

    "As the institutions responsible for approving legislation, they can exercise oversight and control over the application of better regulation principles for new and amended regulation".[56]

    In six OECD countries, a Parliamentary committee or body regularly reports on progress on regulatory policy and reform across government.[57] There is currently no dedicated Committee or secretariat in the European Parliament considering the overall agenda or individual programmes on a consistent basis.

99. We welcome Commission President Barroso's commitment to seek ways of "helping the European Parliament to exercise its scrutiny rights over the full range of politically important decisions".[58] To fulfil its role of representing EU employees, consumers and businesses, all Parliamentary Committees that consider legislative proposals should consider smart regulation as part of their scrutiny. Parliament should also explore whether to establish a

Parliamentary Better Regulation Committee to focus on reviewing all of the better regulation programmes or to give responsibility to the Conference of Committee Chairs for agreeing better regulation commitments. This could be supported by the network of better regulation experts in each committee secretariat.

100. Political input is crucial to driving forward the smart regulation agenda within the Council as well as in the Parliament. We believe that every Council formation should consider in its policy-making smart regulation as part of its oversight of the regulatory areas that fall under its responsibility.

The European Court of Auditors should evaluate the smart regulation programmes to enable further reform and improvement

101. The end-user should be able to see that the entire EU regulatory process is held to account and reviewed to ensure it is fit for purpose. To this end, the European Court of Auditors has assessed the impact assessment system across the whole policy-cycle. This report is due to be published in 2010. Regular evaluation of all regulatory processes provides an independent, systematic overall check on the quality of regulatory outputs and governance systems, improving the credibility and perceptions overall.[59]

102. Building on the European Court of Auditors' (ECA) current assessment of the impact assessment system, the ECA should assess on a systematic basis whether better regulation programmes are delivering on their promises. This should include a yearly quality check of impact assessments to ensure proper quantification of costs and benefits and that the analysis has fully informed the development of the proposal.

103. Measuring the progress of the regulation agenda is a linchpin in achieving success. It can help identify the impact of smart regulation on end-users' and the value of their participation in the policy-making cycle as well as ensuring a clear direction for policy-makers. Crucially, it can provide an incentive for end-users to begin or continue participation, ultimately helping to create necessary, proportionate and credible EU interventions.

CHAPTER 3: SUMMARY OF PROPOSALS

THE EU SHOULD IMPROVE ACCOUNTABILITY BY BETTER MEASURING AND COMMUNICATING QUANTITATIVE AND QUALITATIVE PROGRESS

24. We believe that the Commission should publish an annual progress report that sets out the aggregate benefits and costs of legislation that have come into force over the previous year, based on the individual impact assessments. This should provide an overview of the total burdens per key area that have been added and reduced and put them in the context of the 25 per cent burden reduction target.

25. The Commission and Member States should develop a mechanism by which it can monitor and communicate effectively the quantitative and qualitative progress of its smart regulation programmes. This could include competitiveness rankings according to World Bank Doing Business survey and perception indicators.

26. The Commission should consider how best to ensure ownership of the better regulation programme across the Commission as a whole, and how to ensure that all Commissioners have clear responsibilities to deliver smart regulation in their specific policy areas, supported by Member States and Ministers.

THE COUNCIL AND PARLIAMENT SHOULD STRENGTHEN THEIR OVERSIGHT OF SMART REGULATION TO INCREASE DEMOCRATIC SCRUTINY

27. Every Council formation and Parliamentary committee should consider, as a matter of course, how to deliver smart regulation as part of their oversight and policy-making process. This engagement by all relevant committees and Council formations will enhance the sense of ownership, in particular when dealing with concrete reduction proposals as part of the administrative burden reduction programme.

28. Parliament should consider how it can more systematically promote smart regulation and explore whether to establish a Parliamentary Better Regulation Committee to focus on reviewing all of the better regulation programmes or to give responsibility to the Conference of Committee Chairs for agreeing better regulation commitments.

THE EUROPEAN COURT OF AUDITORS SHOULD EVALUATE THE SMART REGULATION PROGRAMMES TO ENABLE FURTHER REFORM AND IMPROVEMENT

29. Building on the European Court of Auditors (ECA) current assessment of the impact assessment system, the ECA should assess on a systematic basis whether better regulation programmes are delivering on their promises.

Endnotes

[1] Such as charities, social enterprises and voluntary and community organisations.

[2] Barroso, J.M., Political Guidelines for the Next Commission, 2009, p.33.

[3] See, for example: Business Europe, Response to Third Strategic Review of Better Regulation 2009.

[4] Islam, R., World Bank, Policy Research Working Paper No. 3077, Do More Transparent Governments Govern Better?, 2003; and OECD, Policy Brief: Public Sector Modernisation, 2005, p.2.

[5] See, for example: Business Europe, Response to Third Strategic Review of Better Regulation, 2009.

[6] See: www.ec.europa.eu/yourvoice/ebtp/index_en.htm

[7] Four OECD countries have longer consultation periods: OECD, Indicators of Regulatory Management Systems– Annex 1., 2009, p.113.

[8] European Commission, Impact Assessment Guidelines, 2009, p.19.

[9] The UK, Switzerland, Sweden and New Zealand have minimum consultation periods of 12 weeks. See: OECD, Indicators of Regulatory Management Systems – Annex 1, 2009, p.113.

[10] European Commission, Impact Assessment Guidelines, 2009, p.19.

[11] See Mind-Lab, The Burden-Hunter technique: A user-centric approach to cutting red tape, 2008. Available at: http://www.mind-lab.dk/en/cases/byrdejagt.

[12] See: www.kafka.be

[13] See: http://www.mind-lab.dk/en/cases/byrdejagt

[14] See: www.ensemble-simplifions.fr

[15] European Commission, Impact Assessment Guidelines, 2009.

[16] See: HM Government, The Government's Forward Regulatory Programme, 2009. Available at: http://www.bis.gov.uk/frp.

[17] Also known as delegated acts. José Manuel Barroso, Political Guidelines for the Next Commission, 2009, p.29.

[18] See, for example: Eurochambres/ UEAPME, Joint Letter on Impact Assessments, 2009. Available at: http://www.ueapme.com/IMG/pdf/090428-Impact_assessment_letter.pdf.

[19] See: HM Government, Code of Practice on Consultation, 2008. Available at: http://www.berr.gov.uk/files/file47158.pdf.

[20] European Union, Inter-Institutional Common Approach to Impact Assessment (IA), 2005, para. 3 Available at: http://ec.europa.eu/governance/impact/ia_in_other/docs/ii_common_approach_to_ia_en.pdf.

[21] Centre for European Policy Studies (CEPS), Policy-making in the EU – Achievements, Challenges and Proposals for Reform, 2009, p.34.

[22] See the Commission's opinion on the Council and Parliament's amendments to the proposal for a directive on batteries and accumulators and waste batteries and accumulators. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52006PC0017:EN:NOT.

[23] See European Council, Indicative Guidance for Working Party Chairs, 2007. Available at: http://bookshop.europa.eu/eubookshop/download.action?fileName=QC7606353ENC_002.pdf&eubphfUid=464389&catalogNbr=QC-76-06-353-EN-C.

[24] OECD, Indicators of Regulatory Management Systems – Annex , 2009, table 4, p.23.

[25] Better Regulation Task Force, Routes to Better Regulation, 2005, p. 14. Available at: http://archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/routes.pdf.

[26] OECD, Working Papers on Public Governance No. 13, p 35. Available at: http://www.oecd.org/dataoecd/7/37/43016871.pdf.

[27] European Commission, Think Small First – A Small Business Act for Europe, 2008, p.8,.Available at http://ec.europa.eu/enterprise/policies/sme/small-business-act/.

[28] International Finance Corporation, Micro, Small, and Medium Enterprises: A Collection of Published Data, 2005. Available at: http://www.ifc.org/ifcext/sme.nsf/AttachmentsByTitle/SMEDatabase.xls/$FILE/SMEDatabase.xls.

[29] See: www.respaweb.eu/images/bakoev_sem_octnov08/joachimsmend_101108.ppt

[30] See: www.palkki.fi

[31] See: www.revenue.ie/en/practitioner/ebrief/2009/no-782009.html

[32] See: www.doingbusiness.org/Reformers/ECA2009.aspx#P

[33] See: www.mpo.cz/dokument41950.html

[34] See: www.digitaleurope.org/web/news/telecharger.php?iddoc=963

[35] See European Technologies Action Plan (ETAP), statement on paper recycling in the EU: http://ec.europa.eu/environment/etap/pdfs/jan07_eu_paper_recycling.pdf.

[36] See: www.insht.es/InshtWeb/Contenidos/Normativa/TextosLegales/Leyes/2009/PDFs/ley252009de22dediciembredemodificaciondediversasleyesp.pdf

[37] See The European Commission's Better Regulation website: http://ec.europa.eu/enterprise/policies/better-regulation/simplification/index_en.htm.

[38] Also known as compliance costs.

[39] The 13 priority areas are:
Agriculture and agricultural subsidies
Annual accounts/company law
Cohesion policy
Environment
Financial services
Fisheries
Food safety
Pharmaceutical legislation
Public procurement
Statistics Tax law (VAT)
Transport
Working environment/employment relations

[40] See: www.digital.austria.gv.at/

[41] See: www.epractice.eu/en/document/288206

[42] See: http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/09/400.

[43] OECD & World Bank Group, Review of the Dutch Administrative Burden Reduction Programme, 2007.

[44] World Bank Group, Review of the Dutch Regulatory Programme, 2008.

[45] See: European Union Network for the Implementation and Enforcement of Environmental Law, Practicability and Enforceability of the WEEE Directive Recast Proposal", 2009; and, Practicability and Enforceability of the IPPC Recast Proposal, 2007.
Both available at: http://ec.europa.eu/environment/impel/

[46] Barroso, J.M., Political Guidelines for the Next Commission, 2009, p29.

[47] See: http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/high-level-group/index_en.htm.

[48] OECD, Indicators of Regulatory Management Systems, 2009, p.61.

[49] 24 of 30 OECD member countries have mandatory periodic evaluation of existing regulation, and 11 of 30 OECD countries use standardised evaluation techniques or criteria when regulation is reviewed. See: OECD, Indicators of Regulatory Management Systems – Annex 1, 2009, p.128.

[50] Barroso, J.M., Political Guidelines for the Next Commission, 2009, p29.

[51] OECD, Indicators of Regulatory Management Systems, 2009, p.10.

[52] UK Department for Business Innovation and Skills (BIS), Better Regulation, Better Benefits, 2009.

[53] See: http://www.ez.nl/english/Subjects/Reducing_the_regulatory_burden/Documents/Regulatory_burdens_on_businesses_progress_report_May_2009

[54] Barroso, J.M., Political Guidelines for the Next Commission, 2009, p.33.

[55] The collective ranking was based on the mean percentile ranking of each member state across each of the categories in the Doing Business survey. The results are indicative: the methodology for calculating the percentile rankings in each category was adapted from that used in the World Bank's ranking simulator for the 2009 survey, but is based on data from World Bank Doing Business surveys since 2004, available at www.doingbusiness.org.

[56] OECD, Indicators of Regulatory Management Systems, 2009, p 34.

[57] OECD, Indicators of Regulatory Management Systems – Annex 1, 2009, p 126.

[58] Barroso, J.M., Political Guidelines for the Next Commission, 2009, p. 29.

[59] "Around half of OECD member countries make use of an external advisory body with reference from government to review broad areas of regulation. Such bodies have the advantages of bringing an independent view and a store of acquired regulatory policy expertise to the review process and are often powerful tools to support the reform process. Accordingly, this suggests that some room for further progress remains here." OECD, Indicators of Regulatory Management Systems, 2009, p.24.

Bibliography

LITERATURE:

Barroso, J.M., Political Guidelines for the Next Commission, 2009

Better Regulation Task Force, Routes to Better Regulation, 2005

Business Europe, Response to Third Strategic Review of Better Regulation, 2009

Centre for European Policy Studies (CEPS), Policy-making in the EU – Achievements, Challenges and Proposals for Reform, 2009

Eurochambres & UEAPME, Joint Letter on Impact Assessments, 2009

European Commission, Impact Assessment Guidelines, 2009

European Council, Indicative Guidance for Working Party Chairs, 2007

European Union, Inter-Institutional Common Approach to Impact Assessment (IA), 2005

European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), Practicability and Enforceability of the WEEE Directive Recast Proposal, 2009

European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), Practicability and Enforceability of the IPPC Recast Proposal, 2007

Government of the Netherlands, Progress Report: Regulatory Burdens on Business, 2009

HM Government, Code of Practice on Consultation, 2008

HM Government, The Government's Forward Regulatory Programme, 2009

Islam, R., World Bank, Policy Research Working Paper No. 3077, Do More Transparent Governments Govern Better?, 2003

Mind-Lab, The Burden-Hunter technique: A user-centric approach to cutting red tape, 2008

OECD, Indicators of Regulatory Management Systems, 2009

OECD, Policy Brief: Public Sector Modernisation, 2005

OECD, Working Papers on Public Governance No. 13, 2009

OECD & The World Bank Group, Review of the Dutch Administrative Burden Reduction Programme, 2007

UK Department for Business, Innovation and Skills, Better Regulation, Better Benefits, October 2009

The World Bank Group, Review of the Dutch Regulatory Programme, 2008

WEB RESOURCES:

The European Commission's Small Business Act website:
http://ec.europa.eu/enterprise/policies/sme/small-business-act/

The European Commission's opinion on the Council and Parliament's amendments to the
Batteries Directive:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52006PC0017:EN:NOT

International Finance Corporation, Micro, Small, and Medium Enterprises: A Collection of Published Data, 2005:
http://www.ifc.org/ifcext/sme.nsf/AttachmentsByTitle/SMEDatabase.xls/$FILE/SMEDatabase.xls

European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL)
http://ec.europa.eu/environment/impel/

European Technologies Action Plan (ETAP), statement on paper recycling in the EU
http://ec.europa.eu/environment/etap/pdfs/jan07_eu_paper_recycling.pdf

The European Commission's Better Regulation website
http://ec.europa.eu/enterprise/policies/better-regulation/simplification/index_en.htm

Presentation on Germany's better regulation programme:
www.respaweb.eu/images/bakoev_sem_octnov08/joachimsmend_101108.ppt

Note on reforms introduced in Eastern Europe, in the 2010 World Bank Doing Business survey:
www.doingbusiness.org/Reformers/ECA2009.aspx#P

eBrief on the reduction of the frequency of filing and paying taxes in the Republic of Ireland:
www.revenue.ie/en/practitioner/ebrief/2009/no-782009.html

Note on the introduction of out-of-court settlements for consumer disputes in the Czech Republic:
www.mpo.cz/dokument41950.html

Digital Europe's memorandum of understanding on introducing standardized mobile device chargers:
www.digitaleurope.org/web/news/telecharger.php?iddoc=963

The website of the French government's simplification programme:
www.ensemble-simplifions.fr

The website of Belgium's Kafka programme:
www.kafka.be

The Danish Burden Hunter programme:
www.mind-lab.dk/en/cases/byrdejagt

Modifications to Spain's health and safety law to allow for self-assessment by small and micro
businesses (Spanish language):
www.insht.es/InshtWeb/Contenidos/Normativa/TextosLegales/Leyes/2009/PDFs/
ley252009de22dediciembredemodificacendediversasleyesp.pdf