



**COUNCIL OF
THE EUROPEAN UNION**



Conclusions on Smart Regulation

***3094th COMPETITIVENESS (Internal Market, Industry, Research and Space) Council meeting
Brussels, 30 May 2011***

The Council adopted the following conclusions:

"THE COUNCIL,

1. RECOGNISES that better regulation initiatives so far have provided significant support for economic recovery and growth; that considerable results have been achieved and that we now need to build on this positive progress; CONSIDERS that the time has now come to move up a level and systematically apply smart regulation principles throughout the EU policy-making process;
2. EXPRESSES ITS CONVICTION that smart regulation is an important tool to further improve competitiveness to ensure smart, sustainable and inclusive growth, as laid down in the Europe 2020 Strategy;
3. WELCOMES the innovative approach and elements set out in the Commission's Communication on Smart Regulation¹, especially the added value of the new principles; REFERS to previous Council Conclusions on Better Regulation and the progress achieved so far, among others, through harmonisation and mutual recognition; RECALLS the relevant conclusions of the European Council of 24th and 25th of March, 2011 especially that the overall regulatory burden, in particular for SMEs, should be reduced at both European and national levels, and that the Commission will report on this issue by the summer;

¹ COM(2010)543 final.

P R E S S

4. REAFFIRMS that the principles of smart regulation constitute the basis for evidence-based EU decision making, from policy conception to implementation, and that the systematic use of all methods and tools of smart regulation during the whole policy cycle is indispensable at European and also at Member States level, while respecting the *acquis communautaire* and having due regard for legal certainty; NOTES that all EU institutions have to fulfil their existing inter-institutional commitments²; IS CONVINCED that EU institutions and Member States have a shared responsibility for smart regulation;
5. WELCOMES the efforts made by the European Parliament to improve the quality of legislation;
6. CONSIDERS that it is important to further increase the quality of regulation to improve the regulatory environment for business and citizens, including reduction of administrative burdens and removing cross-border barriers, particularly for SMEs and microenterprises, and to make also citizens' lives easier and to increase coherence within European and between European and national legislation; UNDERLINES that the opportunities offered by the Single Market have to be supported by simple, consistent, transparent and accessible legislation;

IMPROVING EXISTING EU LEGISLATION AND ENSURING HIGH QUALITY OF NEW LEGISLATION THROUGH IMPACT ASSESSMENTS, SIMPLIFICATION, AND REDUCTION OF ADMINISTRATIVE BURDENS

7. STRESSES that the systematic use of ex-ante impact assessments and the appropriate use of ex-post evaluations during the whole policy cycle – from policy making to legislation, implementation and enforcement, and eventual revision of legislation – is a key tool to ensure the quality and coherence of EU law; RECALLS that in appropriate cases alternative solutions to regulation should be considered; RECOGNISES the necessity of ex-ante impact assessments and ex-post evaluations including all-comprehensive analysis about the different aspects of legislation and taking into consideration the quantifiable, the non-quantifiable and the possible indirect effects;
8. WELCOMES the relevant commitments of the Commission in its communication on the review of the "Small Business Act" for Europe³, and its communication on an Integrated Industrial Policy for the Globalisation Era⁴, as well as its intention to propose ways to exempt micro-enterprises from certain future regulations; STRESSES the need for a reinforced analysis of the impacts on competitiveness, a more systematic application of the "Think Small First" principle, and for further strengthening the application of the 'SME test', to ensure the systematic examination of impacts on SMEs and microenterprises and the consideration of results in all relevant legislative and policy proposals, taking into account *inter alia* the ability of European businesses to compete on the EU markets and outside the EU, and the differences between micro-, small and medium-sized enterprises;
9. UNDERLINES the importance of an integrated approach to impact assessments including also the assessment of the social impact of initiatives to ensure equal attention on citizens, social inclusion, equality of gender and non-discrimination; RECOGNISES the need for efficient use of the results of consultations, available data and information for assessments;

² Inter-institutional Agreement on Better Lawmaking (2003); Inter-institutional Common Approach to Impact assessment (2005).

³ COM(2011)78 final.

⁴ COM(2010)614 final.

10. CONSIDERS that simplification has to remain a key objective of the various public policies of the European Union and also a criterion for the evaluation and review of existing legislation; UNDERLINES the necessity of the application of digital solutions – where appropriate – as a tool of simplification and reduction of administrative burdens;
11. ACKNOWLEDGES the steps taken by the European Union and Member States for the reduction of administrative burdens to reach the 25% EU target by 2012; UNDERLINES the need for a continuous review of existing legislation in this respect and to avoid the creation of unnecessary administrative burdens during the legislative process; UNDERLINES the importance of good governance including the reduction of unnecessary administrative burdens for public administrations;
12. WELCOMES the activity of the High-Level Group of Independent Stakeholders on Administrative Burdens, and looks forward to the report on best practices in Member States to implement EU legislation in the least burdensome way;
13. ENDORSES the findings and recommendations of the European Court of Auditors' Special Report⁵, and in particular:
 - the fact that the impact assessment system of the Commission is, on balance, effective in supporting policy development and decision-making;
 - the fact that the Commission's Impact Assessment Board's reviews contributed to their quality of impact assessments;
 - the need for quantifiable and comparable data as a means of ensuring the optimal presentation and utility of impact assessments;
 - the fact that the impact assessments have to take more consideration of the implementation and enforcement costs of new legislation at national level;
 - the need for considering ex-post evaluations as a basis for future impact assessments;and

RECALLS the finding that impact assessments were not updated as the legislative procedure progressed and the Council and the European Parliament rarely performed impact assessment on their substantive amendments;

14. COMMITS ITSELF, AND INVITES THE EUROPEAN PARLIAMENT to
 - establish their impact assessment systems in order to examine, where appropriate, the potential effects of their substantive amendments⁶;
 - pursue the practice of discussing impact assessments during the legislative process;
 - take into consideration the result of ex-post evaluations of existing acts when considering new legislative proposals;
 - constantly focus on the provision of the most simple and transparent rules without imposing unnecessary administrative burdens;
 - co-operate closely with the Commission in particular regarding the applied impact assessment methods and the data and information used;

⁵ No 3/2010 – “Impact assessments in the EU institutions: Do they support decision-making?”

⁶ Note: On 12 May 2006 the Committee of Permanent Representatives took note of the report "Handling Impact Assessments in Council - Indicative Guidance for Working Party Chairs" (doc. 9382/06) and agreed to recommend that it be used, in a flexible and pragmatic way, as an indicative guidance for the handling of impact assessments including for assessing the impact of the Council's own substantive amendments.

- make further efforts to promptly adopt the pending legislative proposals aiming to reduce administrative burdens;
15. INVITES the Commission to
- pursue its efforts to conduct a comprehensive analysis of expected and existing economic, social, and environmental impacts of legislation while taking into consideration the specificities of different Member States;
 - continue increasing the quality of information by gathering quantifiable and comparable data to ensure balanced and evidence-based impact assessments with the ambition that a large majority thereof have comprehensive quantification in line with its guidelines;
 - give close consideration to the conclusions and recommendations of the European Court of Auditors' Special Report, especially those regarding the analysis of the enforcement costs and the consistent use of the Standard Cost Model in the course of the quantification of the potential administrative impact of legislative proposals;
 - continue to invite stakeholders for feedback on the preliminary findings and data used, via appropriate interim documents for this purpose;
 - continue to make steps towards simplification, unnecessary administrative burden reduction and coherence by examining together in a comprehensive way all relevant pieces of legislation concerning the regulated field in question during the review of existing acts and the creation of new legislation, which takes account all factors;
 - make further efforts to reduce the stock of EU legislation by repealing obsolete legislation and to promote the use of digital tools;
 - prepare a report on the implementation of the Action Programme for Reducing Administrative Burdens by the end of 2012, in order to be able to take stock of the entire programme⁷, and, in the light of the results reached, examine the need for further measures in order to keep reducing unnecessary administrative burdens;
 - elaborate the guidelines on preparing ex-post evaluations to examine the effectiveness and efficiency of EU legislation and to identify new opportunities to simplify, improve legislation, and to reduce the overall regulatory burdens, in particular for SMEs;
 - develop comprehensive policy and legislation evaluation approaches ("fitness checks") in order to analyse whether the legal provisions effectively deliver the intended results;
 - work in close cooperation with the Council and the European Parliament to establish a common methodology on how to assess the potential impacts of new legislative proposals, and share with them the methodology and the data used for their own impact assessments;
16. INVITES the Member States – taking into account their national circumstances and administrative systems – to
- provide – if available – appropriate data and information and the results of relevant ex-post evaluations to the EU institutions to support the preparation of impact assessments;
 - carry out ex-ante impact assessments and ex-post evaluations on a progressive basis regarding the implementation of EU legislation and the national regulations at their own prerogatives;
 - continue to reduce the administrative burdens at national level in order to achieve their respective reduction targets in due time;
 - continue to simplify their national legislation to facilitate the application of law, for the benefit of all the stakeholders concerned;

⁷ COM(2007) 23 final.

CONSULTATION

17. STRESSES the need to strengthen the participation of all stakeholders, in particular SMEs, microenterprises and citizens, in the legislative and evaluation processes, and to enhance the effectiveness of consultation processes at all levels; WELCOMES the extension of the public consultation period by the Commission to 12 weeks from 2012 and the review of the Commission's consultation policy in 2011;
18. COMMITS ITSELF, AND INVITES THE EUROPEAN PARLIAMENT to give due consideration for the interests of end-users, in particular the results of consultations by the Commission, when considering the impact of their own substantive amendments;
19. INVITES the Commission to
 - enhance the effectiveness of stakeholder consultation and to maintain a strong relationship with civil organisations;
 - identify further possibilities for increasing the participation of all stakeholders and citizens in consultations, including the cooperation of the Member States' administrations, with the aim of improving data and information bases;
 - examine how to enhance further the quality of consultation documents to better reflect the needs of stakeholders, and in particular SMEs, microenterprises and citizens;
 - make an effort to make more effective use of the consultation tools available in order to facilitate and promote consultation processes and to introduce alternative solutions to better channel the suggestions of interested parties without on-line access, taking into account the targets set out in the Digital Agenda for Europe⁸;
20. INVITES the Member States – taking into account their national circumstances and administrative systems – to
 - take account of end-users' interests to find user-friendly solutions in the course of transposition of EU legislation into national law;
 - make an effort to promote the participation of all end-users, in particular stakeholders, SMEs and civil organisations in the consultations at European and national level;

EASILY UNDERSTANDABLE LANGUAGE, TRANSPARENCY AND MORE ACCESSIBLE LEGISLATION TO ACHIEVE CONSISTENT IMPLEMENTATION AND COMPLIANCE WITH EU LAW

21. STRESSES that the language of legal acts has to be as simple and as comprehensible as possible for all interested parties and citizens in all official EU languages; RECALLS the need to facilitate access to legal and relevant preparatory documents by using effective communication technologies; EMPHASISES that all the parties concerned, and in particular the end-users, need to be clearly informed of all their rights and obligations set out in legal acts, and that appropriate tools and methods have to be chosen for this purpose;

⁸ COM(2010) 245 final/2.

22. **COMMITTS ITSELF, AND INVITES THE EUROPEAN INSTITUTIONS** to
- ensure the simple, transparent and comprehensible formulation of the text of legal acts and all relevant documents;
 - provide more comprehensible, accurate and practical information on legal acts with the aim of facilitating matters for the interested parties and citizens, taking into consideration their diversity and specificity in order to comply with the regulation adopted;
 - continue to develop the EUR-Lex portal, aiming for a more user-friendly system to promote easy access to EU law;
23. **INVITES** the Member States – taking into account their national circumstances and administrative systems – to
- draft legal acts by using clear and comprehensible language during the implementation of EU legislation and national law-making;
 - make an effort to provide for all interested parties easily understandable information on the content and application of adopted legal acts, taking into account the diversity and specificity of the concerned groups;
 - make an effort to provide different types of access to the official documents prepared during the decision-making and legislation procedure at national level;

IMPROVING IMPLEMENTATION OF EU LEGISLATION

24. **STRESSES** the need for timely and full implementation and enforcement of EU law in its entirety in all Member States at all levels to achieve common goals;

REAFFIRMS the need to take account of the varying administrative and legal organisations of Member States in order to formulate adequate rules corresponding to the best common solutions and different national legal environments; EMPHASISES the importance of using and promoting – where appropriate – alternative solutions by organizing workshops, establishing guidelines, providing information or managing complaints to further facilitate the timely and correct implementation and enforcement of European law and the exchange of best practices;

25. **COMMITTS ITSELF, AND INVITES THE EUROPEAN PARLIAMENT** to better consider the implementation and enforcement-related impacts, including the compliance costs, of their substantive amendments;
26. **INVITES** the Commission to
- conduct evaluations with analysis of implementation and enforcement costs, to elaborate implementable and enforceable legal acts to ensure the effectiveness and consistency of EU law;
 - take further steps to promote, where this shows a clear added-value, the use of peer review processes to spread best implementation and enforcement practices between Member States;
 - continue to give assistance where appropriate to Member States in transposing EU law;

27. INVITES the Member States – taking into account their national circumstances and administrative systems – to make further progress towards better, efficient and timely implementation of EU law at all national levels, in particular with a view to avoiding over-implementation (“gold-plating”), by regulating in a simple, transparent and less burdensome way, by using, as much as possible, digital tools, and by taking into consideration all relevant impacts in an integrated manner;

CONCLUDING REMARKS

28. STRESSES the importance of maintaining strong, continuous and balanced co-operation between EU institutions and with the Member States in order to ensure a priority application of smart regulation principles throughout the whole policy cycle and across policy areas, with the objective of facilitating the achievement of strategic goals and strengthening competitiveness and growth of Europe, and to put fully and efficiently in practice all elements of smart regulation."
-