

International Regulatory Reform Meeting

Madrid, 23-24 June 2010-06-09

"Simpler, better and less burdensome: the road toward Smart Regulation"

Workshop session 3b: "A world without bureaucracy"

"Prospects for regulatory quality: current trends in the OECD, the European Commission and selected countries" – Contribution from Charles-Henri Montin, Better Regulation Expert, Brussels

The purpose of this informal note is to present recent changes in the regulatory quality agenda at the OECD and EU level and in selected countries, to ascertain the substance of the changes, conceptual or methodological, and determine the degree of convergence of these trends, and possibly venture some hypothesis of success in the coming years.

It is highly improbable that we will soon see the "end of bureaucracy, but there are certainly some positive changes in the air, not least under pressure from recent events.

This analysis document represents the personal views of the author, and can be found online at <http://replus.eu> with embedded hyperlinks to facilitate access to sources.

I. OECD

OECD restates relevance of regulatory reform...

A major promoter of regulatory reform since the 1980's, OECD is continuing to centralise expert knowledge on the use of legislation for optimal delivery of public policies. A 27 May 2010 position paper on "[regulatory reform for recovery and growth](#)" presents lessons and insights from research on the use of regulatory reform during crises, and its contribution to increasing competition, market openness, citizens welfare, hastening the exit from the crisis. Far from making regulatory reform less relevant, a time of crisis often raises the sense of urgency, helping responsible governments to take the difficult decisions

... and adjusts its objectives to the new circumstances

The new content of regulatory quality is best described in the mandate of the regulatory policy committee: "[issues for the next three years 2010-2012](#)", which updates objectives for some well known items, and lists some promising developments, often taken from national best practice. Here are some of the most innovative ideas:

- widening of scope: the "integrated, horizontal and multidisciplinary approach to regulatory quality" will be seeking "to enhance overall social welfare, not just sectoral interests."
- closer integration with substantive policies such as social welfare goals, sustainable impact assessment and an increased focus on citizens; multi-level and cross-border issues; incorporation with economic development programmes, including the promotion of innovation and investment policy; link with civil service reform and budget processes;
- association of private institutions in delivering results: as the functions of states have been reduced, other actors must be involved (regulatory governance);
- shift to risk based regulation, and enhanced international regulatory dialogue;
- improved communication about success of reforms

Reading the full document is recommended.

II. EU: appearance of a new concept: "smart regulation"

With the entry into force of a new treaty, and the start of a new Commission with a renewed mandate, it was to be expected that a new political impetus be given to the Better Regulation (BR) strategy that had played such an important role in Mr Barroso's first mandate (2005-2009) in defining objectives and working methods of Commission directorates general. I will address three especially relevant documents:

President [Barroso's guidelines](#) for his second mandate

Among other political signals, this document offers a kind of "chart" of smart regulation; it was the first time the concept was put forward in the Commission, and as such must be read carefully. Here are the main points:

- we need to continue building the framework of social, environmental and technical regulation that make markets work for people
- rules must ensure transparency, fair play and ethical behaviour of economic actors, taking due account of the public interest.
- Smart regulation should protect the consumer; deliver effectively on public policy objectives without strangling economic operators such as SMEs or unduly restricting their ability to compete.
- The ex ante assessment of the first Commission must be matched with an equivalent effort in ex post evaluation, to guarantee efficient policy implementation, "removing bureaucratic processes and unnecessary centralisation"

Better Regulation in "EU2020"

For 10 years, better regulation has been one of the main tools to support the Lisbon strategy for growth and jobs. With [EU 2020 strategy](#) designed as a successor to the current Lisbon strategy, what is going to happen to the BR agenda in the next decade?

The landmark communication dated 3 March outlines "a strategy for smart, sustainable and inclusive growth", and member states reached an agreement on that basis enclosed in the [25-26 March conclusions](#).

These documents do not include any specific reference to the quality of regulation, but take a more economic approach. The improvement of EU law will however continue to be one of the tools to bring about growth and jobs, with a special effort dedicated to the removal of "bottlenecks", some of which are of a regulatory nature.

The [Monti report](#) on a new strategy to "relaunch" the single market (May 2010) which relies on improved rules for the integration and functioning of markets, which is "applied BR". The section on "regulating the internal market, ma non troppo" offers an update on the use of legal acts to harmonize markets, and related challenges(pages 93 to 103).

Other EU positions

The future evolution of regulatory quality will naturally be influenced by new guidance or requests received from the European Council and its committees. Two committees regularly address this issue. Here are their most recent pronouncements:

The Council conclusions adopted at the 3-4 December 2009 [Competitiveness Council](#): Member States call for "new instruments and better use of e-government in the better regulation work", and taking into account compliance costs and perceptions of the effects of regulatory requirements.

At its 16 February 2010 meeting, the [Economic and Financial](#) committee (**ECOFIN**) adopted conclusions which commend "smart regulation initiatives" and call for further work in support of the internal market¹.

In the [European Parliament](#), there have not yet been many "tests" of the commitment to regulatory quality, but a recent decision (16 June) on [food labelling](#) was hailed as a simplification of food labelling rules, and welcomed by industry as a rare case where administrative burdens had been considered during the discussion.

One trend is to reduce the intervention at EU level, leaving member states free to introduce the extra requirements they may feel are necessary. A recent example is the March Commission position on [genetically modified organisms](#).

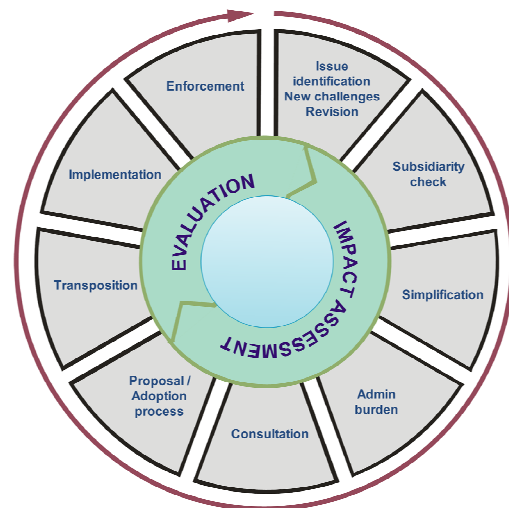
Some attention should also be given to the [new inter-institutional framework](#) for better regulation, which is expected to be finalised between the European institutions by September, with many ramifications on impact assessment and other law making procedures.

The future of regulatory quality at the European level will also be influenced by the influence of the preliminary observations of the European Court of Auditors " [Impact assessments in the EU institutions](#): do they support decision making?" which was published on the Council's website in May 2010. This report identifies a number of weaknesses with regard to the Commission's procedures for selecting initiatives to undergo IA, for consultation with interested parties and for the quality review of draft IA reports, some of which are already being tackled (for instance the publication of all the "roadmaps" of the preparation of new legislation.

Evolution of content of the regulatory policy

Considerable attention is being devoted to further improving the impact assessment scheme in the Commission. Under the new smart regulation orientations, it is expected that the impact assessment system will be upgraded: though it compares well with national systems, there is still progress to be made, some indications are provided by the Impact Assessment Board's (IAB) report for 2009 ([SEC\(2009\)1728 final](#), dated 29/01/2010):

- transparency should be improved by the publication of a list of planned IAs starting in 2010;
- improved follow-up of IAB opinions;
- more standardised format for executive summaries.



¹ "In line with the 2007 Single Market Review, which emphasised the need for a better understanding of the functioning of markets based on an evidence-based approach the Council also reiterates its support for the market monitoring and **smart regulation initiatives** to deepen the Single Market in the EU2020 Strategy with a modern evidence-based tool kit. The Better Regulation initiative has contributed to improving the functioning of the single market, by developing impact assessments of policy proposals, and further extending the simplification and reduction of administrative burdens. These economic tools for better inform regulatory or non-regulatory initiatives in the future could be further explored."

The assessment of new legislation will consistently seek to address the widest possible range of impacts, with a newly confirmed emphasis on social impacts. This work will be supported by the [new guidelines](#) issued by DGs SANCO and EMPL.

Regarding the **stock of existing legislation**, the two flagship programmes (Action Programme for reducing AB and Simplification Rolling Programme) will continue.

This drive will be further supported and intensified by synergies brought about by association of the **ex post evaluation** resources (see [Secretariat General webpage](#)) to the BR agenda. Evaluation is now to be listed among the major BR tool. All policies and legislations can be expected to be assessed within the next five years (see below the "fitness check"). New legislation should not be envisaged/planned before the evaluation of the existing policy framework has been completed.

The concentration of resources devoted to Better Regulation in the Secretariat General provides the necessary means to upgrade the Commission's action, by tapping the synergies between the different tools of BR. This change also reflects the fact that BR is not only a business agenda, but that it also addresses the concerns of EU citizens and seeks to preserve the European environment.

Renewal of mandate of the Stoiber group

On April 15th, the president of the Commission made a [statement](#) commending the work of the [High Level Group of independent stakeholders](#), chaired by Mr. Edmund Stoiber, and announced an expanded mandate for that advisory group. Simplification, monitoring Commission proposals through the legislative process, and efficient national implementation of EU law are among the new topics on which Mr Barroso expects the stakeholders to support the continued drive to cut bureaucracy and red tape.

Continued implementation of the AP

[COM\(2009\)544](#) (October 2009) listed around 100 red tape cutting initiatives of the Commission either adopted or under way, in 13 "sectoral reduction plans" offering a total reduction potential in excess of the 25% target, provided all measures become effective.

Some remaining challenges:

- enactment of Commission proposals into EU law via the legislative procedure: this requires that the Commission support the proposals in discussions in European Parliament and Council;
- identification of further reduction possibilities to cover the risk that some important proposal does not make it into EU law.

To keep up the pace in reducing red tape, in order to reach the -25% target by 2012, it is reasonable to expect that all services will account each year for progress in reducing AB and simplifying compliance with EU rules.

The new content of Smart Regulation: the "fitness check"

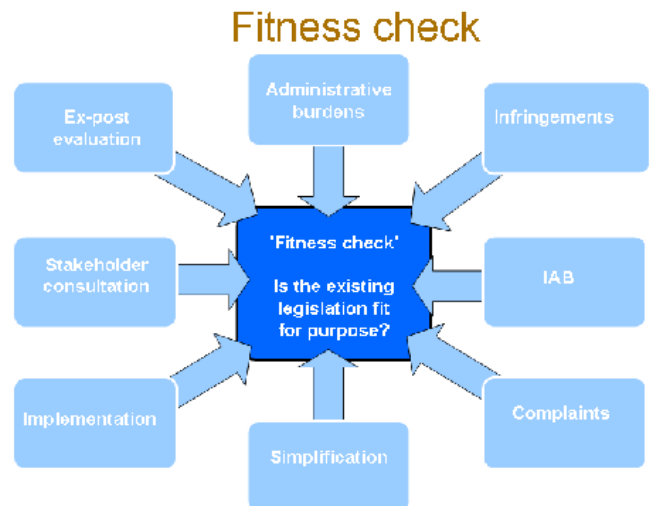
The Commission, in its [2010 Working Programme](#) (COM(2010)135 of 31 March 2010), has developed its plans for a new screening of the *acquis communautaire*, and the new importance of the ex post evaluation tool.

"A systematic ex-post evaluation of existing legislation is essential to ensure that our policies form a coherent framework and deliver effectively on their objectives. Over time, a full ex-post evaluation will become a requisite for the revision of important legislative acts to be included in future Commission's Work Programmes.

To keep current regulation fit for purpose, the Commission will begin reviewing, from this year onwards, the entire body of legislation in selected policy fields through "fitness checks". The purpose is to identify excessive burdens, overlaps, gaps, inconsistencies and/or obsolete measures which may have appeared over time. Pilot exercises will start in 2010 in four areas: environment, transport, employment and social policy, and industrial policy." (p. 10)

Rather than collect individual "candidates" for simplification or AB reduction measures on the basis of general criteria (as in the Simplification Rolling Programme), the exercise addresses systematically clusters of EU texts, each representing a policy area, and collect all available information before deciding if the item requires some type of action: simplification, codification, consolidation, repeal or other.

This new approach is made possible by the gradual centralization of the various BR tools in the Secretariat General of the Commission: last year, the ex post evaluation unit was transferred, now it is the simplification and the administrative burdens teams which are being moved. Other types of available information held at Commission level, for instance about the implementation of legislation, complaints, infringements, will also be included in the scrutiny process.



III. National news

National news shows that there is no weakening of the determination of national governments to cut red tape, directly or at the EU level. Already, three "front-runners" in administrative burden reduction (UK, NL & DK) published in March a joint report to the Commission: "[smart regulation: a cleaner, fairer and more competitive EU](#)." Here are some of the main ideas developed:

- Addressing urgent issues as climate change, the quality and safety of food and the creation of new jobs 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.
- Smart regulation needs to be embedded in every intervention in every policy area, rather than operate in isolation. It should not only be restricted to supporting business growth. .. 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 must govern relations between EU institutions in their law-making function.
- SR must keep "end-users" – employees, consumers, businesses and other organisations – in mind at all stages of policy-making.

So far, there has been no reaction to the content of smart regulation as described in informal information about Commission work in progress. No doubt that the next official Communication, planned for the autumn, will generate an interesting discussion.

France

The drive to contain or reduce bureaucracy hinges on the success of the [general review of public policies](#), launched by President N. Sarkozy in 2008. In a country proud of its central administration, reform first comes from inside government; the ministries are keen to show that they are capable of responding to the need for leaner public bodies.

In February, the [third interim report](#) literally lists hundreds of measures modernising, upgrading and streamlining the functioning of services. Each and every activity has been audited, and its efficiency and effectiveness evaluated. The report highlights results: global reduction of running costs, fewer civil servants (by not replacing retirees), sale of office space and other savings. Some of the most impressive measures:

- tax payers now find all their interlocutors in a single unified tax service;
- the unemployed no longer have to commute between two agencies to obtain relief;
- businesses have been given a one-stop-shop at regional level through which they

Concerning regulatory policy *stricto sensu*, efforts are directed at implementing the constitutional revision of 2008 making impact assessments compulsory for all draft primary legislation.

Germany

The German government has updated its 2006 commitment to cutting **bureaucracy**, in a landmark decision dated 27 January 2010 (an [unofficial English translation](#) is posted on regplus.eu).

The 2006 federal programme is to be expanded to encompass compliance costs, once the appropriate methodologies have been developed.

New simplification measures will be adopted to reach the 25% reduction target by 2011; ministries will list and assess reduction measures by May 2010; a new federal plan will be adopted in July by the State Secretaries' Committee;

Six priority areas have been selected including planning, tax declarations, business permits and electronic submission of company registration, citizens' application for services

New burdens created after 2006 will need to be offset by further cuts (net target);

Other measures include expanding the *ex ante* evaluation of effects of all new federal regulation proposals on citizens, businesses and public authorities, broadening the competences of the National Regulatory Control Council and pressing for similar action at EU level.

United Kingdom

The UK Business Secretary announced on 2 June an [action plan](#) to bring an end to the "excessive regulation that is stifling business growth". He detailed the first phase of the Coalition Government's action plan to reduce regulation following the Prime Minister's commitment last week to "re-open Britain for business". The action plan:

- Creates a new Cabinet "Star Chamber" that will lead the Government's drive to reduce regulation which is stifling growth, especially of small businesses. This Reducing Regulation Committee will be chaired by the Business Secretary and will enforce a new approach to new laws and regulations, ensuring that their costs are being properly addressed across the entire British economy.
- Announces an immediate review of all regulation in the pipeline for implementation which has been inherited from the last Government. The cost of implementing this amounts to £5bn annually before April 2011 and £19.1bn per annum thereafter. This will be the first action for the new Cabinet committee.
- Establishes a new "challenge group" to come up with innovative approaches to achieving social and environmental goals in a non-regulatory way. This team would work with experts including Richard Thaler, the US behavioural economist.
- Introduces a new approach that will control and reduce the burden of regulation. A "one-in, one-out" approach, designed to change the culture of government, would make sure that new regulatory burdens on business are only brought in when reductions can be made to existing regulation. (from the official website).