

ANNEX 1: GLOSSARY OF TERMS FOR THE PROJECT TO ASSESS REGULATORY CAPACITIES

(from GOV/SIGMA(2007)6)

‘acquis’ (or *acquis communautaire*) means in European Union the total body of European Union law accumulated so far. When used in the context of enlargement and accession of NMS to the Union, the expression refers to the whole corpus of Community law which NMS have to take over, including:

- The Treaties;
- The decisions taken by the EU Institutions pursuant to the Treaties;
- The case law of the Court of Justice.

‘Administrative burdens of regulation’ means the costs involved in obtaining, reading and understanding regulations, developing compliance strategies and meeting mandated reporting requirements, including data collection, processing, reporting and storage, but **NOT** including the capital costs of measures taken to comply with the regulations, nor the costs to the public sector of administering the regulations.

‘Administrative costs’ within the EU institutions means the costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties. Information is to be construed in a broad sense, i.e. including costs of labelling, reporting, monitoring and assessment needed to provide the information and registration. They are a subset of compliance costs stemming from the generic requirements of the legislation, which also includes substantive costs one-off investments in new production processes, training or increased recurring costs for raw materials and labour (excluding administrative).

‘Administrative compliance costs’ has the same meaning as administrative burdens of regulation.

‘Advisory Groups’ means selected experts or interested parties (e.g., social partners, environmental groups) who are brought together to form a consultative body, either on an *ad hoc* or a standing basis.

‘Alternative policy instruments’ have the same meaning as regulatory alternatives.

‘Alternative to regulations’ means any instruments other than command and control regulation used with the purpose of obtaining policy goals and including policy instruments such as:

- performance based regulation;
- process regulation;
- waiver or variance provisions;
- co-regulation;
- self-regulation;
- contractual arrangements;
- voluntary agreements;
- tradeable permits;
- taxes and subsidies;
- insurance schemes or information campaigns.

‘Baseline’ is a minimum or starting point for comparisons; in this case, it is a minimum set of criteria drawn up by SIGMA, in consultation with the European Commission, for the purpose of this project.

‘Better Regulation, Regulatory Management, Better Regulation and Smarter Regulation’ are the terms which are increasingly being used to convey the concept of an ongoing commitment to improving the processes of policy formulation, legislative drafting and enhancing the overall effectiveness and coherence of regulation.

Better Regulation means a policy to improve regulatory management capacities by adopting a multidisciplinary approach to formulating policy and drafting regulations and using tools such as

impact assessment consultation and simplification. It applies to the flow of new regulations and the stock of existing regulations. It is closely related to but goes beyond regulatory reform which is concerned with reforming regulations so that they operate efficiently. Better Regulation policy is designed to ensure that existing and future legislation is of high quality, i.e., that it is clear, concise and used only when its burdens are proportionate to its aims.

'Consumer' and **'citizen'** are frequently used and it is important to note that these are not interchangeable terms. The term **'consumer'** is meant to refer to individuals when they are participating in the marketplace and consuming particular goods and services. It can also refer to businesses, often the initial customers in particular sectors. The concept of a **'citizen'** is broader and refers to the relationship between individuals and the State (without being used in any strict legal sense to denote nationality). There are circumstances where the State is a producer or supplier of a particular good or service to citizens. In this context citizens can be viewed as consumers of the State¹⁵⁹.

The idea of 'Better Regulation' also helps to draw an important distinction between the wide reform agenda and deregulation. It is accepted that in some cases consumer, investor and the broader public interest may be better served by introducing new regulation and that in other cases it may be better served by removing regulation.

No initial assumption is being made about either the existing quality or quantity of regulation or the need to deregulate. Instead, it is suggested that the goal of Better Regulation will not be achieved by simply seeking to minimise the volume of regulation but rather by using measures that are as simple and straightforward as possible while achieving the same policy objectives.

'Capacity' means the ability to perform appropriate tasks effectively, efficiently and systematically in a timely manner.

'Circulation of proposals for comment' means the process whereby information on regulatory proposals is circulated to a selected group of experts or interested parties for comment.

'Codification' means the systematic arrangement of laws in force.

'Command and Control regulations' means regulations that use the traditional approach of imposing a sanction, typically a fine or imprisonment or both, for failure to comply with an obligation.

'Co-regulation' means a system of shared regulatory responsibilities in which an industry association or professional group will assume some regulatory functions, such as surveillance and enforcement or setting of regulatory standards.

'EU Better Regulation Policy' includes the 'Action Plan on simplifying and improving the regulatory environment,'¹⁶⁰ as part of the European Commission White Paper on European Governance² and the March 2005 Communication "*Better Regulation for Growth and Jobs in the European Union*"³, and the November 2006 Communication "*A strategic review of Better Regulation in the European Union*"⁴.

'Governance' includes 'rules, processes and behaviour that affect the way in which powers are exercised, particularly as regards openness, participation, accountability, effectiveness and coherence'. The term is used in this document to refer to governance at all levels of government: national, local and, at times, at the level of specific economic sectors.

'Legislation' means Acts enacted by a parliament.

'Principles of Better Regulation' includes principles to be applied in the making of regulations such as necessity, transparency, proportionality and accessibility.

'Regulatory Management capacity' means the capacity to regulate by means of the formulation of policy and its implementation through regulation.

'Regulatory Management policy' means a specific policy on Regulatory Management: that is, a policy which has as its object the improvement of regulatory quality and is driven politically and

¹ (2002)278 final, *ibid.* – See also Communication from the Commission 'European Governance: Better Lawmaking', COM (2002)275 final, http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002_0275en01.pdf

² COM(2001)428 final, *ibid.*: The aim of the European Commission initiative on European Governance is to develop a new common 'legislative culture' in Europe by improving current procedures, widening the breadth of policy tools employed and simplifying existing legislation.

³ COM (2005) 97 final, http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0097en01.pdf

⁴ COM (2006) 689 final, http://ec.europa.eu/enterprise/regulation/better_regulation/docs/docs_admin_b/en_689.pdf.

by appropriately staffed structures.

'Regulation' means any legal norm and includes an instrument by which governments set requirements on enterprises and citizens and includes all laws (primary and secondary), formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers.

'Regulators' means any personnel in government Departments and other agencies responsible for making and enforcing regulation.

'Regulatory Impact Analysis/Assessment (RIA)' means the systematic process of identification and quantification of economic, social and environmental impacts likely to flow from adoption of a proposed **regulation** or a non-regulatory policy option under consideration. May be based on benefit/cost analysis, cost effectiveness analysis, etc.

A broader definition of RIA would distinguish between the **ex ante** RIA which relates to likely impacts of a regulatory proposal and the **ex post** RIA which relates to the actual impacts of an existing regulatory measure.

'Regulatory management' means the management of policy-making by a country so as to achieve an equitable society, sustainable development of its economy and protect its environment.

'Regulatory Reform' means changes that improve regulatory quality, that is, enhance the performance, cost-effectiveness, or legal quality of **regulation** and formalities.

'Secondary regulation' means regulation which can be made by a person (a Minister) or a body (an independent local authority).

'SIGMA' (Support for Improvement in Governance and Management in Central and Eastern European Countries) means the joint OECD/EU initiative launched in 1992, coordinated and principally financed by the European Commission which aims, amongst other objectives, at assisting the new EU Member states and candidate countries in modernising and strengthening their policy-making capacities.

'Soft law' means administrative circulars and administrative discretion.

'Sunsetting' means the automatic repeal of regulations a certain number of years after they have come into force. This will usually trigger a review of the regulation just before repeal occurs.

¹⁶⁰ COM (2002)278 final, *ibid.* – See also Communication from the Commission 'European Governance: Better Lawmaking', COM (2002)275 final, http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002_0275en01.pdf

¹⁶¹ COM(2001)428 final, *ibid.*: The aim of the European Commission initiative on European Governance is to develop a new common 'legislative culture' in Europe by improving current procedures, widening the breadth of policy tools employed and simplifying existing legislation.

¹⁶² COM (2005) 97 final, http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0097en01.pdf.

¹⁶³ COM (2006) 689 final, http://ec.europa.eu/enterprise/regulation/better_regulation/docs/docs_admin_b/en_689.pdf.