

## *The European Union's Action Plan on Regulatory Quality*

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Let me first start by thanking the organisers of this workshop for giving me the opportunity to explain the regulatory reforms that are currently taking place in the European Union. The subject is both well chosen and timely in the European Commission's perspective.

In my contribution to this session I intend to briefly address two subjects, namely:

- The shift in emphasis on regulatory reform priorities that has occurred in the European Union over the recent years and
- The action plan that is being launched to simplify and improve the Community's regulatory environment.

I will then conclude by a few thoughts on the lessons that we have learned through years of regulatory assessment activity.

These topics may sound slightly different from the scope of this session, but you will soon see that, in reality, they both relate to governance and enhanced transparency.

### **Shift in emphasis on reform priorities**

There should be no surprise to anyone if I start by saying that regulatory reform issues have always been at the heart of the EU's political, economic and institutional agenda. The reasons are to be found:

- In the unique and evolving sharing of legislative and executive powers existing in the EU's institutional system of government,
- In the fact that the EU is an economic and political, but also if not mainly a regulatory space, that functions under a mixture of both national and Community rules and where the source of new legislation is increasingly coming from in the Union itself,
- And, in the fact that, taken in its broadest sense, EU legislation does not only govern the functioning of the Internal Market but also its economic behaviour (for example through the growth and stability pact) and its external participation in international rule-making (for example by shaping and implementing the Kyoto protocol or the WTO trade round).

Considering this background, no one will be astonished if I also say that the ordinary European citizen is increasingly concerned with the role played by the European institutions in shaping his daily life. In particular as the European regulatory processes are often perceived as being intricate and difficult to understand, if not autocratic.

Let me say right away that these views carry a certain dose of exaggeration. Indeed, compared to many other public administrations our record in terms of easiness to get to, willingness to listen and concern about the overall wellbeing of the European society is unquestionably not unfavourable.

However, one cannot refute that the European Union's institutional order is complex and that the issues at stake are increasingly technical. In addition, the European Commission, which has the sole right of legislative initiative, has so far not been very successful, for all sorts of reasons, in explaining that its legislative initiatives are not the result of a discretionary behaviour; but rather the consensual outcome of objective requests from a large number of stakeholders. For the ordinary European citizen there is therefore a problem of transparency with the European institutions, not so much on the substance of what they do but on the way they operate and explain to the public the reasons of their actions.

Fortunately, cultural change is beginning to take place. This is reflected, on the one side by the increasing political commitment to the implementation of a regulatory quality strategy and, on the other hand, by the work currently ongoing in the European Convention on institutional reforms.

Let's see how all this fits together.

In the late 1980's, the Community's legislative priorities concerned market reforms under the '1992 Single Market programme', which implied a significant effort to enact harmonised legislation promoting competition and facilitating intra-community trade. The overall objective here was not to create new legislation per se, but more pragmatically to replace existing national rules, through harmonisation, in areas where differing national laws did not allow the proper functioning of the Internal Market.

In many sectors, this effort resulted in privatisation and deregulation policies as it would not have been possible, while fully complying with the Community's competition rules, to meet the objectives of increased competitiveness set for the European economy without substantially modernising the industrial structures in several sectors.

There can be little doubt that the implementation of this agenda, which was largely of a political nature, has greatly contributed to improve the functioning of the EU's single market, with positive effects on growth and, particularly, on the competitiveness of European firms. Without this intermediary step, it would neither have been possible for the EU to serve as a model for regional integration across the world, nor would it have been possible for it to achieve further progress in the areas of economic and monetary integration.

With the internal market objectives now largely accomplished the emphasis of regulatory reform is now definitely shifting to what one could call "knowledge-based decision-making", in short: towards 'improved regulatory quality' that meets evolving needs.

There are fundamental reasons explaining this shift:

- *Firstly*, European governance considerations are becoming increasingly important in the public opinion. The concept refers to the question of how the EU institutions and national governments use the powers given by their citizens. Behind this issue are the concerns of the European society as regards compliance with the essential principles of transparency, participation, accountability, effectiveness and policy coherence. There are also the concerns on the nature of Community legislation, which is often perceived as excessive, inappropriate and cumbersome.
- *Secondly*, the Union is now facing the challenges of enacting legislation in an increasing number of sensitive areas that cut-across an ever larger spectrum of economic activities and societal needs. In short, it is faced with the need to put in place legal frameworks that promote economic efficiency while ensuring sustainable development trends. This concerns, in particular, areas such as environment, health, safety and consumer protection

where rules do not always exist, knowledge is limited and policy instruments are not necessarily adapted to the rapid changes in technological progress. Moreover, legislative initiatives in these fields cannot reasonably be conceived without taking into account their implications outside the Community and the necessary consensus of the stakeholders that are likely to be affected by the rules. It is therefore vital to adopt adequate mechanisms that guide political decision and optimise public opinion's adherence. This can only be done through improved prior assessment tools, broader consultations, alternative scenarios to achieve policy objectives, complementary actions by all parties involved as well as a constant monitoring of the adequacy between what was meant to be achieved and its effective results. Bearing in mind, obviously, the likely implications of such rules in terms of costs and benefits for the society and for the economic operators.

This is what the European Commission's action plan on regulatory environment is about. In technical terms, a regulatory management scheme, in political terms a method to demonstrate that the European Commission uses its right of initiative with rationality and in compliance with the fundamental principles of subsidiary and proportionality that are enshrined in the Treaty.

### **The 'strategy to improve and simplify the regulatory environment'**

While there was consensus in Europe on the need to launch reforms in this area, two initiatives increased the momentum for action.

- The Lisbon Summit of Head of States (2000) that called the Member States and the European institutions for a co-ordinated strategy to simplify the regulatory environment and
- The European Commission's White Paper on European Governance (2001) that launched a broad debate on institutional reforms.

Both initiatives clearly underline the challenges that I have mentioned as well as the links between the adequacy of the regulatory environment and the European's political objectives of:

- Turning the EU's economy into one of the most competitive in the world,
- Simplifying the community 'acquis' for a successful and easier enlargement of the Union to new members with different political and administrative cultures as well as economic, social and industrial structures, and,
- Further improving the functioning of the Internal Market in areas where it is still impaired by malfunctions and delays. Indeed, with the changeover to the Euro, the fast development of e-commerce and the progress achieved in economic integration, it is becoming evident that further process needs to be achieved, for example in the service sectors. In addition, the principle of mutual recognition – that is the main reference for free – does not always function, Community regulations often remain complex for users, and coherence with national provisions needs to be constantly monitored in order not to create new market fragmentation. In these domains regulatory quality is central to the improvement of economic performance.

In response to the Lisbon Summit call, the European Commission presented a series of documents (to the Stockholm and the Laeken European Councils) setting the conditions for a successful regulatory strategy. In particular, it underlined that the reforms would need, besides strong political support, to embrace the whole life cycle of a Community act: *i.e.* from its initial development and approval by the European institutions right up to its application in the Member States.

All parties concerned and, in particular, the Member States governments (through the so-called Mandelkern Group report<sup>10</sup>) have largely endorsed these views.

For the sake of a good understanding, it is important to stress that in the Commission's opinion:

- Community legislative action should only be taken where deemed necessary,
- Broad consultations and impact analysis should become standard practices as from the early stages of Community intervention and their results be made public to support political decision,
- Each proposal must include the review of alternative scenarios together with an evaluation destined to identify the most appropriate legal/policy approach and instrument,
- The reforms should not lead to delays in the legislative process,
- Rapid and correct transposition and effective application of Community rules must be ensured,
- The effects of enacted legislation should be periodically evaluated, and
- The simplification and codification of the existing 'Community acquis' should be accelerated.

It is under this framework that the European Commission adopted on June 5<sup>th</sup> 2002 the so-called "Better Regulation Package" which was presented to the Seville European Council and which is now being put in place.

In presenting this package the Commission also announced that, it would subsequently address a number of issues that are related to regulatory quality (in particular on comitology, infringements, non-institutional expert advice and on regulatory agencies). As a first move in the field of alternative policy instruments, the Commission adopted last July a Communication on environmental agreements at Community level, establishing the basic criteria to be followed when considering such regulatory tools. The document also contains interesting considerations on the concepts of co-regulation and self-regulatory schemes to which the Community could have an increasing recourse.

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10. High-level advisory group created in December 2000 by the Ministers for Public Administration from the EU Member States. The group was composed by 16 national experts and the European Commission and was given the mandate to take an active part in the preparation of the strategy demanded by the European Council in Lisbon.

## The “Better Regulation Package”

The recently approved package tackles three complementary subjects:

- The simplification and the improvement of the EU’s regulatory environment through an Action Plan,
- The introduction of a mandatory Impact Assessment system,
- The adoption of Minimum Standards for Consultation.

1. The **Action Plan on simplifying and improving the regulatory environment** includes a number of concrete proposals, with set timetables and objectives. The plan addresses the whole legislative life cycle of a Community act in the sense that it outlines actions that fall under the remit of the Commission as well as actions that would need to be taken by the other institutions and the Member States to achieve concrete results. A proposal for an inter-institutional agreement on several points is also foreseen.

In short, the proposed actions focus on the following:

- **Firstly, well-prepared and more appropriate legislation:** This includes enhanced consultations, systematic ex-ante assessment, making use of the right legislative instrument and the inclusion of revision clauses in relevant proposals (for example in areas subject to rapid technological change).
- **Secondly, simplifying and improving the *acquis communautaire*:** This covers a quantified objective to simplify and reduce the volume of legislative texts (by at least 25% by Jan 2005) through various techniques (such as codification, recasting and simplification).
- **Thirdly, better transposition and application of Community law:** This includes actions destined to support the electronic transmission of national notifications and the promotion of consultative and evaluation practices within the Member States, in particular in relation to draft national rules that are notified to the Commission (under Directive 98/34).
- **Fourthly, a new culture within the institutions:** This includes the establishment of an internal legislative network in the Commission, under the co-ordination of the Secretary General, including all DGs with regulatory competencies. Such network will ensure the monitoring the plan and the follow up of individual proposals of a significant nature. It will also be responsible for an annual evaluation of the regulatory quality. To follow up on the actions aimed at the other Institutions and Member States, the creation of an inter-institutional group is also proposed.

2. The **Impact Assessment** system, which was adopted by the Commission for its proposals, encompasses the main elements of a new, integrated, method for impact analyses that will be gradually introduced in the planning process as from the end of this year.

The new tool will integrate and replace all the partial impact assessments traditionally used by the Commission (such as on Business, environment and trade impacts). The fundamental objective here is to provide policy-makers with more accurate better-structured and coherent information about the likely

positive and negative impacts of Commission proposals. To deliver on the EU's Sustainable Development Strategy agreed in 2001, the integrated assessments will cover, to the extent possible, economic, social and environmental aspects.

Although built around best practices already in use in various OECD Member countries, our plans remain ambitious essentially because the scope of the analyses will be expanded to include areas where there is little experience in measuring and quantifying impacts. In addition, the system foresees a formal two-stage process composed by:

- A **Preliminary Assessment** that will give a first overview, covering the identification of the problem, the alternative policy options, the parties affected, the research already undertaken (consultations, studies..) and the indication of the work that still needs to take place (on a 'proportionate' basis). As the production of such a preliminary review, to be done by the drafting departments, will become a condition for inclusion of proposals in the Commission's Work Programme, we believe that this requirement will positively contribute in launching the cultural change that still needs to take place. We will apply this to all regulatory as well as other policy proposals (such as White papers and negotiating guidelines for international agreements) that are likely to have impacts on the Community.
- For those proposals of a significant nature, an **Extended Impact Assessment** will be done. On the basis of the preliminary assessments, the College will decide which proposals will have to undergo a more in-depth analysis under the supervision of ad-hoc inter-departmental steering groups.

All this analytical evaluations will be made public so that transparency is enhanced and the Commission's political decisions better understood and challenged, if necessary, by interested parties. Technical guidelines for IA will be available later in the year and internal organisational arrangements are being put in place to monitor the process and ensure an adequate representation of the various Commissions departments concerned.

3. The **Minimum Standards for Consultation** that have been adopted for the Commission's services include a number of guiding principles that will help to:

- Improve the participation of stakeholders and other interested parties,
- Make consultations more transparent as regards the way they are conducted and how the results are used by the Commission, and
- Ensure that all Commission departments adopt a consistent and coherent, although non-binding, approach to the consultation processes.

Examples of minimum standards that support these aims are the clear content of the consultations, the adequate publication, sufficient time limits to participate (min. 6 weeks), proper feedback and easier access through a unique web-portal.

### **Lessons from the past**

As a conclusion, I would like to say a few words on the lessons that we have helped shaping what we are now planning to do.

In developing our approach to better regulatory quality reforms the Commission is neither started from scratch or trying to re-invent the wheel. Indeed, we have built on important contributions from the accumulated experience developed in house as well as elsewhere and in particular from:

- The OECD PUMA group work on regulatory reform and management practices that has over time developed considerable expertise in this area and set the best practices that are being adopted by an increasing number of OECD member states.
- The review of existing systems in various European Member States (but also in the USA) who have since long put in place structures, processes and methodologies to improve their own regulatory practices,
- Various valuable contributions from the other EU institutions, from think tanks and professional associations.

As regards internal expertise, it is worth remembering that the Commission, and in particular its Directorate General Enterprise, has since the late 80's (1986) developed expertise in carrying out **Business Impact Assessments (BIA)** that have to be attached to all Commission's proposals with a significant impact on business, and in particular on SME's. Similar expertise is also developing in the area of environmental assessments.

However, over the time it has become widely acknowledged that these existing partial assessment tools have not always worked as originally intended. In a Pilot Project BIA carried in 2001<sup>11</sup>, we looked into the in-house practices to identify its major weaknesses and make recommendations for improvements.

During the exercise, we discovered, for example, that BIAs were becoming an administrative 'paper requirement', sometimes carried out on nearly finalised proposals, whereas they should have intervened already during the early drafting process. Moreover, there was too much discretion on how to carry them on, the guidelines were not mandatory, the costs of the proposals for business were rarely quantified and there was no data quality standards. Benefits were often overstated and cost underestimated. In addition, the conclusions were not always supported by objective information, there was little evidence of an institutional learning process from the previous analyses and no requirements to update the assessments to take account of amendments during the legislative process. But, above all, the BIA system was only providing a partial assessment making it difficult for policy makers to get a complete and equitable picture of all the potential impacts of a proposal upon which to base their decisions. In particular as the complexity of the topics to be addressed by the Community is growing.

Our recommendations for improvements are largely reflected in the Commission's regulatory reform package.

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11. The final report of this pilot project, which can be found in all EU languages on DG Enterprise's web-site, draws conclusions on how to improve the analysis of the impact of legislation on business.

## **Conclusion**

As a final word, I would say that the regulatory reform package that European Union intends to bring forward cannot be considered as revolutionary since most of the processes that it advocates have since long been in practise by many in the Commission and fairly well established in several Member States.

However, it remains ambitious because it implies a fundamental change in culture towards co-operation, evaluation, consultation and communication of results. Streamlining different administrative traditions into a more coherent, integrated and efficient approach towards regulatory quality is a major challenge. In particular, as this cannot be achieved without institutional learning in terms of changing the system of interaction between the society, the stakeholders, the public administrations and the decision makers.

As usual, the Commission remains convinced that by reforming its own practices in this area, it will positively contribute in launching the required cultural changes in the Community's institutional order.

I will be happy to answer questions that you may have.