



EUROPEAN COMMISSION

High Level Group of Independent Stakeholders on Administrative Burdens

OPINION OF THE HIGH LEVEL GROUP

Subject: Stakeholder consultation on Smart Regulation

I. Background

- (1) The High Level Group of Independent Stakeholders on Administrative Burdens (HLG) was set up to advise the European Commission with regard to the Action Programme for Reducing Administrative Burdens in the European Union.¹ The aim of the Commission is to reduce administrative burdens on businesses arising from EU legislation by 25 % by 2012. During its current mandate the HLG has provided the Commission with extensive advice on administrative burden reduction for all priority areas covered by the Action Programme as well as on various aspects of better regulation in the context of administrative burdens.²
- (2) On 23 April 2010 the Commission has initiated a stakeholder consultation on Smart Regulation which aims to collect input for a Communication which the Commission will produce on Smart Regulation in autumn this year. The Communication will present the Commission's priorities for Smart Regulation, as announced in the President's political guidelines of autumn 2009.
- (3) The first part of the consultation is entitled "Improving existing legislation" and deals with the Commission's efforts on reducing administrative burdens for businesses, simplifying legislation and ex-post evaluation. In this part the Commission asks stakeholders for their views on whether there are more effective ways of improving existing legislation, what can be done to ensure that businesses feel the benefits of the current programmes, which good practices of ex-post evaluation they are aware of and which policy sectors should be subject to a pilot policy evaluation?
- (4) The second part entitled "Making the most of new initiatives" deals with the Commission's impact assessment system and states that the Commission considers its integrated approach "the most appropriate way of ensuring the right basis for informed policy making". In this part the Commission asks stakeholders on which specific issues in the impact assessments the Commission should reinforce its analysis, how the assessment of social impacts can be improved, how stakeholders' awareness of and

¹ Cf. Art. 2 of Commission Decision of 31 August 2007 – C(2007)4063

² All documents are published on the HLG's website: http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/high-level-group/index_en.htm

participation in consultations can be improved and how it can be ensured that all institutions and Member States act together.

- (5) The consultation ran until 25 June 2010 as an internet consultation open to all stakeholders. According to a preliminary screening the Commission has received about 70 responses. Of these, about 70 % were submitted by registered or non-registered organisations including business organisations, social partners and non-governmental organisations, about 25 % by public authorities, and about 5 % by citizens. Contributions were received from 17 different Member States as well as from Norway and the US. Among others, contributions were received by the national regulatory control councils³, BEUC, BusinessEurope, the European Environmental Bureau, the European Policy Centre, ETUC and the Swedish Federation of Business Owners (Företagarna); several members (and observers) of the HLG have been involved in some of these contributions. The HLG secretariat provided the group with an overview of the contributions (see annex), which are all published on the Commission's website.⁴
- (6) During its last meeting on 20 May 2010 the HLG decided to discuss the issue of smart regulation on the basis of the contributions received for the consultation. The HLG appointed Mr. Mollerup as reporting member for the discussion and the current opinion.

II. General comments

- (7) The HLG welcomes the consultation of stakeholders by the Commission on its smart regulation agenda. In the HLG's view the significant number of contributions shows that stakeholders appreciate the opportunity to contribute to the advancement of the smart regulation approach. Furthermore, the contributions show that stakeholders feel the imminent importance of smart regulation for their daily business / lives. Therefore, the HLG is of the view that the Commission should continue to attach a high political priority to smart regulation and even intensify its efforts on delivering smart regulation for the European citizens, the public administration and businesses. The feedback to the consultation encompasses ideas on how the current approach can be improved. In the HLG's view the Commission should thoroughly consider these ideas.
- (8) In view of the progress already achieved in reducing administrative burdens for businesses, the HLG is of the view that this issue should remain an important element of the smart regulation agenda. Although a number of significant proposals are still pending in Parliament or Council, and other measures still need to be implemented in the Member States, the HLG calls upon the Commission to step up its communication efforts on this file, in order to show that the EU addresses the stakeholders' concerns about bureaucratic legislation. An important element in intensified communication efforts should be the need for coordinated efforts for a comprehensive and quick implementation of administrative burden reduction measures. In the HLG's view it is

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⁴ Cf. http://ec.europa.eu/governance/better_regulation/smart_regulation/contributions_en.htm

essential to keep up the pressure on all players on the European, national, regional and local level to deliver on their administrative burden reduction commitments within their respective responsibilities.

- (9) Since the consultation is meant to provide input to the Commission's autumn communication, the HLG will focus on some key points that can be found in the stakeholders' contributions. Within the short timeframe after the close of the consultation, it was not possible to deliver a detailed analysis of the contributions. In its previous meetings the HLG has already discussed two papers related to smart regulation with a focus on the reduction of administrative burdens. Both papers, the 'Decalogue for Smart Regulation' prepared by Mr Illy and the 'Administrative Burden Reduction Checklist' prepared by Mr Mollerup and Mr Telicka, are attached to this opinion.

III. Key points in contributions to the consultation

- (10) Concerning the simplification and administrative burden reduction programmes, stakeholders generally appreciate the ongoing efforts, but call for further improvements. In this context issues such as speeding up the legislative process for proposals in the context of smart regulation, involving stakeholders more regularly and more systematically in the drafting of regulatory proposals, addressing the irritation factors, extending the partial measurement to a full scale measurement of administrative burdens, adopting a net reduction target and including compliance costs are frequently mentioned in the contributions. On the other hand, some contributions argue that the current approach would sometimes put too much emphasis on a healthy business environment at the expense of social, environmental or other key objectives.⁵
- (11) With respect to the question on how it could be ensured that businesses feel the benefits of the programmes, an enhanced focus throughout the policy-making process on the end-user as well as systematic "reality checks" with a number of companies on whether the reductions obtained will make everyday life easier are suggested. Likewise it is argued that an extension to compliance costs would make it easier for businesses to feel differences. Moreover, it is suggested to invite stakeholders to name their top-irritant legal obligation and how to simplify it. Further suggestions concern sunset clauses, common commencement dates and the aim of legal certainty. In addition, a sound public relations strategy both quantifying the cost savings for small businesses and explaining how future legislation undergoes rigorous assessments is recommended.
- (12) A more practical suggestion is that the Commission should send MEPs a list of proposals drafted in the framework of the Action Programme to reduce administrative burdens, together with an explanation of what this programme is and what it means for small businesses.
- (13) Concerning new initiatives, stakeholders likewise appreciate the essential improvements implemented by the Commission's impact assessment system. In this

⁵ Cf. submissions by EEB, ETUC and national trade unions, Smoke Free Partnership, ECL, EPHA.

context issues such as the call for more independence of the Impact Assessment Board (IAB) or an increased use of external expertise, the potential for improving the quality of impact assessments (e.g. with respect to administrative burdens, the SME test, social or environmental impacts), the possibility to consult on draft impact assessments, the need for an update of impact assessments throughout the policy-making process when substantial amendments are proposed in Parliament and Council as well as the format and timing of consultations are mentioned.

- (14) A contribution by the Danish government calls for tougher consequences of negative opinions of the IAB, e.g. that negative opinions would necessitate oral procedure in the College of Commissioners. The same contribution also emphasises the importance of strengthening ownership for the smart regulation agenda across the Commission and across the different Council formations.
- (15) Some suggestions for policy sectors that could be subject to a pilot policy evaluation refer in a rather general way to areas such as tax law, company law, internal market, pharmaceuticals, financial services, statistics, transport, structural funds, the agri-food sector, employment or environment. More specific proposals include waste requirements and waste shipment, water quality, habitat and bird protection, emissions trading, biotech industry, car industry, high-tech consumer electronics industry, audio-visual media services, the services directive, capital market regulation or chemicals regulation. With respect to the latter, it is worth mentioning that contributions both from environmental⁶ and health organisations and from the chemical industry suggest REACH as a policy sector for a pilot policy evaluation.
- (16) Stakeholders acknowledge that the Commission has made progress with informing registered stakeholders automatically, and suggest that the Commission representation in the Member States could develop their own lists including automatic alerts as well. Stakeholders also emphasise the importance of feedback on consultations. In this respect they suggest an automatic transmission of the Commission's summary report and response. They call for clear and neutral questions within the consultation documents. There is no general agreement on the best way of consulting stakeholders. Some argue that stakeholder meetings and public hearings are sometimes more efficient and interactive than internet consultations; however, this also depends on the planning stage of proposals. Many contributions welcome internet consultations at an early stage. The Enterprise Europe Network as well as the European Business Test Panel are quoted as positive examples for consultation of stakeholders.
- (17) The UK government points out that while individual legislative proposals may look desirable from the narrow perspective of solving a particular problem, collectively they could stifle the smart, sustainable and inclusive growth that are the objectives of the Europe 2020 strategy. The government thus urges the Commission to take a robust approach in questioning legislative proposals that impose burdens on business, with a presumption that they should not be pursued unless there is an overwhelming case for them.

⁶ Cf. contribution by EEB, response to question 4, http://ec.europa.eu/governance/better_regulation/smart_regulation/docs/fed_environmental_citizens_organisations_eeb_en.pdf

- (18) The HLG endeavours to have a closer look at all contributions before its autumn meeting, in order to see, if some of the contributions can provide additional input for the HLG's work. In particular, the HLG will examine whether some of the suggestions for the administrative burden reduction programme or best practice examples provided in the contributions can be taken up for its work.

IV. Conclusions

- (19) *The HLG welcomes the support for the Commission's efforts to reduce administrative burdens for businesses and simplify legislation as evidenced by an overwhelming majority of the contributions to the stakeholder consultation on smart regulation. In addition, it is encouraging that some stakeholders from the industry also provide positive examples for EU legislation or national best practice.*⁷
- (20) *The HLG shares the view that the better regulation approach initiated in particular by the last Commission has been a good start, but more needs to be done on all levels and by the different players. Thus, legislation both at EU and national level (and below) needs to be improved in terms of volume, simplicity, quality and workability.*⁸
- (21) *The HLG is of the view that the European Parliament and the Council should turn particular attention on ensuring that administrative burdens are kept to a minimum and no additional unnecessary burdens are put on businesses in the legislative process. It is essential for businesses that simplification and administrative burden reduction elements are not compromised or even lost in the legislative process. Therefore, the HLG would like to highlight those proposals that stress the need for both Parliament and Council to be aware of the possible negative consequences in terms of administrative burdens when proposing changes to the legislative acts put before them. The HLG would welcome an opportunity to be involved in a direct dialogue with representatives of Parliament and Council about the administrative burden reduction agenda.*
- (22) *In the HLG's view the Commission should thoroughly examine the contributions received via this consultation, and in particular the suggestions for the future development of the simplification and administrative burden reduction programmes. In this context, the HLG calls upon the Commission to closely monitor new developments in Member States to see whether these developments can be transferred to the European level.*
- (23) *The HLG would like the Commission to pay particular attention to a number of the suggestions made by the national regulatory control councils. In particular, a proportional method of measuring administrative burdens stemming from all EU regulation should be developed and the Commission should commit itself to a net*

⁷ E.g. the revision of the Variations Regulation, MindLab-initiative in Denmark (www.mind-lab.dk/en)

⁸ Cf. contribution by Cefic, p. 1.

reduction target⁹ in order to ensure that new burdensome legislation does not nullify the reduction efforts in other areas.

- (24) *Regarding the work of the Impact Assessment Board the HLG would welcome a commitment to carry out proportionate impact assessments in all cases as a matter of principle (including implementing legislation) as well as a commitment to make all impact assessments public – even when a proposal is sent back for further scrutiny. In the HLG's opinion publicity about the impact assessments can have a strong positive effect when it comes to drafting smarter regulation. Finally, the HLG would welcome the use by the IAB of independent external expert scrutiny of some of the legislative proposals, and the HLG would welcome the opportunity to intensify its cooperation with the IAB.*
- (25) *Particular attention should also be turned to the responses as to how it can be ensured that businesses feel the positive effects of the programmes. An interesting idea in this respect is to perform a 'reality check' with a number of companies on whether the reductions obtained will make everyday life easier as intended which could be part of the increased efforts for ex-post evaluation. This might also provide positive examples of how everyday life has become easier that could be used for communication efforts.*
- (26) *Improved communication about the smarter regulation agenda should continue to address the so-called irritants or perceived burdens, as perception - in the view of the HLG - plays a major role in the assessment by businesses of the EU's ability to reduce bureaucracy and red tape.*
- (27) *It is important to note that stakeholders acknowledge that changes take time until they can be felt 'on the ground'. Thus, not only should the EU-level strive for speeding up its procedures and establish a real fast-track procedure, but likewise should Member States strive for fast-track procedures for the transposition or implementation of EU legislation with simplification and administrative burden reduction potential.*
- (28) *For the success of the administrative burden reduction agenda a common commitment to this agenda is indispensable. The HLG therefore welcomes the commitment expressed by some governments to work on strengthening the ownership for the smart regulation agenda for the different Council formations,¹⁰ and calls upon the Commission to continue on working on strengthening the ownership for the smart regulation agenda across the Commission.*
- (29) *In the HLG's view the Commission should review the suggestions for policy sectors that could be subject to a pilot policy evaluation. In particular the more specific suggestions would merit a more detailed examination.*
- (30) *Concerning stakeholder consultations, the HLG supports the suggestion that the Commission's summary report and response should automatically be transmitted to those who have participated in the consultation. Other suggestions such as an extension of the consultation period or newsletter and alert services for new initiatives and consultations should be closely examined.*

⁹ Mr Hontelez disagrees with the net target.

¹⁰ Cf. contribution by the Ministry of Economic and Business Affairs Denmark

Brussels, 8 July 2010

Annexes:

- Decalogue for Smart Regulation

(http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/high-level-group/files/abr_hlg_121109_decatalogue_for_br_en.pdf)

- An Administrative Burden Reduction Checklist

(http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/high-level-group/files/abr_hlg_101209_checklist_mollerup_and_telicka_en.pdf)

- Overview of the contributions to the stakeholder consultation on Smart Regulation, for individual contributions cf. Commission's website:

http://ec.europa.eu/governance/better_regulation/smart_regulation/contributions_en.htm