

Brussels, 02/03/2011
C/2011/1119

Dear President,

Thank you very much for your letter of 26 November 2010 transmitting the Bundesrat's Opinion on the Commission's Communication on Smart Regulation in the European Union {COM (2010) 543 final}.

The Commission welcomes the Bundesrat's support for its efforts to improve the EU's regulatory framework. As smart regulation is a shared responsibility of the European institutions and Member States, the Bundesrat's broad agreement with our strategy will help achieve the goals of smart regulation.

These continue to include the reduction of administrative burdens which will, however, be sought within a broader analysis of simplification potential and compliance costs, as suggested by many business organisations during the public consultation for the Smart Regulation Communication. The Commission therefore intends to strengthen its comprehensive approach to policy-making which takes into account all factors determining the efficiency and effectiveness of legislation.

For this reason, the Commission is merging and mainstreaming its efforts to reduce administrative burdens and to simplify legislation into its evaluation and policy-making processes; has extended the mandate of the High Level Group of Independent Stakeholders till the end of 2012 and expanded it to provide advice also on simplification issues; is strengthening the voice of stakeholders; is reinforcing the evaluation of the actual benefits and costs of existing legislation; and is continuing to improve its integrated assessment of all benefits and costs of new policy proposals.

The Commission would also like to note that the Special Report by the European Court of Auditors on Impact Assessment in the EU institutions found that the system put in place by the Commission has helped it designing its initiatives better and, more generally, has been effective in supporting decision-making within the EU institutions. The Court's international comparison identified no other system where a similarly comprehensive approach was followed. The Court also found that the Impact Assessment Board has contributed to the quality of impact assessments and has driven culture change within the Commission.

This confirms the Commission's view that the cultural change which is necessary for smart regulation is best driven from within the institution rather than from outside. This also confirms that the Board is independent from the services and delivers a highly effective scrutiny service as shown by the frank nature of its recommendations, which are publicly available, and the frequency with which it requests services to significantly improve their draft analysis. An external body examining Commission proposals, on the contrary, would not be

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compatible with the institutional roles and responsibilities of the Commission, as it would impinge on its right of initiative set-out in the Treaties. It would also not be compatible with the roles of the European Parliament and Council which are the bodies ultimately tasked to assess the quality of what the Commission proposes.

With regard to the identification of initiatives for which impact assessment is necessary, the Commission would like to stress that its services must already determine whether the impacts of any new legislative or other major initiative are likely to be material or not. Roadmaps, informing about the planned impact assessment and policy development work, are prepared and made public for all those cases where likely impacts are assessed as significant (this may include delegated and implementing acts as well). For the limited number of cases where no further impact assessment work is considered necessary, roadmaps provide an explanation of the underlying reasons. The decisions taken throughout this process are transparent and communicated to the public at the earliest possibly stage in the policy-making process.

The measures outlined above as well as the other ones envisaged in the Communication show that the Commission continues to attach a high political priority to smart regulation and is further embedding its principles into its working culture. In this context, the Commission believes an explicit target for the reduction of overall measured compliance costs would be neither appropriate nor cost-effective given the methodological difficulties surrounding such a measurement and the risks of bureaucratization inherent to such a top-down approach.

The Commission believes that - with the active collaboration of the other European institutions and the Member States – existing processes and planned measures will reduce the costs of the existing body of EU legislation, thus extending the progress being achieved under the present administrative burden reduction programme, as well as minimize the burden of any new initiative that may be deemed necessary in full respect of the principles of subsidiarity and proportionality.

In this regard, the Commission would like to remind its calls for the European Parliament and Council to make further progress in their use of its impact assessment reports and in their commitment to assess the impacts of any substantive amendment to Commission proposals. It also would like to recall that it remains ready to respond constructively and on a case by case basis to requests from Parliament and Council to expand on aspects of its original impact assessment.

Finally, with respect to transposition into national legislation, the Commission has asked the High Level Group of Independent Stakeholders to present a report by November 2011 on the best practices of Member States in implementing EU legislation in the least burdensome way. In parallel, the Commission will also analyse further the issue of 'gold-plating'. This will neither aim to focus deregulation activities solely on Member States nor restrict their ability to implement EU directives in the most appropriate way. Quite to the contrary, it will seek to identify those cases where national bodies go beyond what is required by EU legislation when transposing or implementing it at Member States level in order to determine an appropriate attribution of the compliance costs arising from any specific piece of legislation.

I look forward to developing our policy dialogue further in the future.

Yours faithfully,

/-/ Maroš Šefčovič