

# Smart Regulation: The European Commission's Updated Strategy

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## I. Introduction

On 8 October 2010, the European Commission issued a communication paper on *Smart Regulation in the European Union*<sup>1</sup>. The paper reports on progress made, future priorities and strategy in the field of regulatory reform, for the information of interested outsiders. It is the latest in a series of such communications, issued on a regular basis since the first major, systematic action plan in 2002.

However, this most recent communication comes at a time when the context has changed noticeably. First, the financial crisis sparked by the credit crunch has altered attitudes to regulation. More attention is now being paid to the effectiveness of regulation and its overall quality than before. The Communication acknowledges this and underlines that regulation is essential to ensure that markets deliver sustainable prosperity for all. Second, a number of the Commission's tools have been in place for some time, allowing it to draw useful lessons from its own experiences as well as from those of other countries. Its impact assessment system recently underwent a major examination by the European Court of Auditors. They confirmed that the system is comprehensive and has been widely used and effective in supporting decision-making within the EU institutions, as well as suggesting certain improvements. Lastly, the Lisbon treaty is affecting European institutions in a variety of ways and has, for example, laid out a new role for national parliaments. In this context, the Commission is more aware than ever of the need to justify its proposals in terms of added value or 'subsidiarity'.

So, what is the strategy described in the *Smart Regulation* communication, and what new features does it have? Three main themes are covered and will be discussed in turn below, (i) smart regulation throughout the policy cycle, (ii) shared responsibility, and (iii) stakeholder engagement. In its opening remarks, the Commission stresses the continued importance of getting legislation right, both to avoid further challenges like the credit crunch, and to help businesses grow and compete. It also emphasises its desire to embed smart regulation approaches in the organisation's working culture.

## II. Smart regulation throughout the policy cycle

The Commission will put a stronger focus on evaluating the laws and programmes it has implemented, as it is increasingly concerned to ensure its interventions deliver their intended benefits or are adjusted if they are not working well. It also wants to better understand the real costs of its interventions. It aims to develop a more effective and systematic approach to managing the existing body or stock of law to complement the impact assessment system it uses to check the quality of new proposals. At other stages in the policy cycle, the Commission plans to consolidate established practices, adapting its approach in the light of experience. It will continue to undertake impact assessment, simplification and administrative burden reduction, and work related to implementation.

With evaluation, the Commission will ensure it becomes standard practice for laws to be evaluated before they are amended. It will also review its guidelines so that these evaluations provide higher-quality benefit and cost data, as well as become more frequent. In addition it is piloting new 'fitness checks' to evaluate the overall impact of multiple EU laws in particular fields, seeking to identify any overlaps, unneeded burdens or gaps. Four 'fitness checks' are currently in progress in policy areas relating to en-

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1 Key publications by the European Commission are available on the Internet at <[http://ec.europa.eu/governance/better\\_regulation/key\\_docs\\_en.htm#\\_br](http://ec.europa.eu/governance/better_regulation/key_docs_en.htm#_br)> (last accessed on 28 October 2010) or can be traced using their code. They include "Smart Regulation in the European Union", 2010, COM(2010)543, and Action plan "Simplifying and improving the regulatory environment", 2002, COM(2002)278.

vironment, transport, employment/social policy and industrial policy. Others will be launched in 2011, building on lessons learned from the first wave.

As its impact assessment system has made good progress, the Commission now aims to exploit its full potential. For example, it is making it easier for stakeholders to comment on planned impact assessments by publishing 'roadmaps' outlining its plans for the broad direction of proposals, the public consultation process and supporting analysis. More attention will be paid to quantification, and to the assessment of social impacts, administrative burdens and fundamental rights. The independent Impact Assessment Board will continue to fulfil its important function of quality control and support.

Reduction of administrative burdens and the simplification of legislative texts will be pursued jointly in future, by integrating prompts and checks related to these goals into broader processes like those associated with evaluation. This mainstreaming will ensure these issues are considered at a suitable time, for all initiatives, and alongside other policy considerations. The Commission believes that administrative burdens can best be minimised when they are assessed as part of the overall impact of a law. This approach should help to address stakeholders' concerns that businesses often do not feel the benefits of administrative burden reductions. The current targeted programme to reduce administrative burdens arising from legislation will be completed, and is on track to deliver more than the pledged 25 % reduction in cost by 2012.

On implementation, the SOLVIT problem-solving service will be maintained, and further attention will be paid to implementation planning.

### III. Shared responsibility

In its communication, the Commission highlights the need for other institutions to actively engage in smart regulation so that this way of working can bring about practical improvements for the groups being protected or regulated. Many of the respondents to the Commission's consultation clearly believe such joint efforts are vital.

While recognising the encouraging progress in certain parts of the European Parliament, the Commission thus calls for further efforts. It suggests that the European Parliament and Council, as co-legislators, should systematically discuss Commission impact

assessments, should uphold their commitment to assess any substantive amendments they make to proposals and could consider faster processing of certain unproblematic proposals. The Commission asks Member States to share national impact assessments or data, and to consult stakeholders as they implement EU law. The Commission also asks Member States to provide an impact assessment with any own-initiative proposals they make in the field of EU judicial cooperation. This would mean impact assessments continue to cover all major EU proposals, even though the proposal-making right has been extended by the Treaty on the Functioning of the European Union.

While the Commission has publicly called for speedy handling of certain types of proposals in the past and has also stated it will help with the assessment of amendments to proposals, it is being newly specific in its other requests. In specifically asking Council and Parliament to assess their amendments, it has been informed by the Court of Auditors study, which found they were inadequately meeting their promise to do so. A recently published assessment of certain European Parliament amendments relating to maternity and paternity leave demonstrates that such changes can have a serious effect on impacts.

### IV. Stakeholder engagement

Through its Smart Regulation consultation exercise, the Commission found that many stakeholders strongly believe its consultations should be made more accessible. As transparency is regarded as a very important issue and stakeholder responses can provide invaluable input in policy-making, minimum consultation standards do already exist. However, it is recognised that certain groups struggle to identify and engage in debates that affect them. The Commission would like to hear all views, including those of SMEs (small and medium-sized enterprises), non-governmental organisations representing vulnerable stakeholders and citizens.

The Commission therefore makes a significant pledge in this communication, to extend its standard consultation period from 8 to 12 weeks from 2012. It has also made a new commitment to review its consultation policy and processes during 2011. The review will consider several questions, including how to raise the quality of its consultation discussion documents, how to make best use of standard Member

State communication channels to disseminate information, and how to make better use of targeted tools such as Business Panels or dedicated websites.

## V. Final reflection

This article summarises the Commission's overarching Smart Regulation strategy. By assessing the impacts of EU law throughout the policy cycle, seeking commitment from the institutions that share responsibility for Smart Regulation's end-results (European Parliament, Council and Member States along with the Commission) and consulting more effectively, this

strategy will contribute to efforts to achieve smart, sustainable and inclusive growth in Europe. The Commission will report on its progress in late 2012.

Several people have enquired about why the term 'Smart Regulation' is now being used to describe EU regulatory reform activities, in place of Better Regulation. Quite simply, it is the term which President Barroso has chosen to use to emphasise the importance of maintaining the momentum and visibility of the European Union's efforts in this area. With his active support, the Commission intends to continue to ensure that regulation is effectively managing markets and supporting public policy goals, without burdening businesses any more than is necessary.