



Regulatory
Impact
Assessment
Board
Government Legislative
Council of the Czech Republic



Common Position Paper
of the five European independent advisory boards
for cutting red tape and better regulation

Adviescollege toetsing regeldruk (ACTAL), The Netherlands

Nationaler Normenkontrollrat (NKR), Germany

Regelrådet, Sweden

Regulatory Impact Assessment Board (RIAB), Czech Republic

Regulatory Policy Committee (RPC), United Kingdom

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Introduction

The *Advisory board on regulatory burden (ACTAL)*, the *Nationaler Normenkontrollrat (NKR)*, the *Swedish Better Regulation Council (Regelrådet)*, the *Regulatory Impact Assessment Board (RIAB)* and the *Regulatory Policy Committee (RPC)* are independent bodies to advise respectively the Dutch, German, Swedish, Czech and British governments on smart regulation in general and the overall regulatory burden, including administrative burden reduction in particular. We play an important role in challenging, monitoring and advising our governments on these issues.

We believe that the EU should continue to reinforce its programmes on smart regulation. As the Action Programme for reducing administrative burdens will end in 2012 a new programme needs to be developed in order to keep the achievements already made as well as to strive for further improvements. A new programme on smart regulation which includes an ambitious aim to reduce the overall regulatory burden should be launched in 2013.

With reference to the consultation document and the questions raised therein we would like to highlight the following priorities:

I. Enhancing the quality of EU legislation

We support the Commission's statement that smart regulation demands a comprehensive approach to all the costs and benefits of legislation and that evaluation must play a stronger role in the policy process. In this respect, the pilot "fitness checks" initiated by the Commission are an important step. There are also indications that the Commission's impact assessments have improved since 2005.

In our view, further efforts with regard to the whole legislative process – from ex ante assessment to implementation and ex post evaluation – are necessary in order to further enhance the quality of EU legislation. In particular:

1. Carrying out impact assessments for every new regulatory proposal

So far, impact assessments are carried out only for some selected legislative proposals. As they are an indispensable precondition for informed decision making, it should be the rule that comprehensive impact assessments are carried out for every new regulatory proposal. They should pay appropriate regard to the special impacts on small and medium-sized companies.

Impact assessments should be standalone documents and have a cover page of 1-2 pages showing the key figures in a standardized form. The overall regulatory costs should be measured and relevant alternatives including cost assessments should be presented.

2. Improving the informative value of roadmaps

The overview of upcoming legislation published by the Commission is an important source of information for businesses, citizens and Member States' governments. Nevertheless, stakeholders are not finding the roadmaps as useful as hoped. In order to further improve their informative value, roadmaps should:

- be carried out for every new legislative (including large comitology) proposal;

- always include a first rough assessment of expected costs in order to allow stakeholders to provide a quality check of the possible impacts;
- also consider non-legislative alternatives; and
- regularly be updated.

3. Making the Commission's Impact Assessment Board more independent

Even though the Impact Assessment Board (IAB) significantly contributes to the improvement of the quality of impact assessments, it cannot – as agent of the Commission – guarantee independent scrutiny. Therefore, the IAB should be enlarged by recruiting independent better regulation experts to ensure independent and fully credible scrutiny and advice. In principle, legislative proposals should not be adopted by the Commission without a favourable opinion from the IAB.

4. Systematic ex post-evaluations from the end users' perspective

The Commission should implement a systematic ex post-evaluation approach in order to monitor the actual costs as well as the actual results of legislation. These evaluations should also analyse the context and interdependences of and within relevant areas of legislation. They should be performed from the end users' perspective, e.g. by perception surveys among businesses or by online platforms (cp. "Red Tape Challenge" in the United Kingdom). The inclusion of end users in the evaluation process will make it possible to also address for example inconsistencies between various existing legislations.

5. Strengthening the role of the High Level Group

The High Level Group of Independent Stakeholders on Administrative Burden (HLG), chaired by Dr. Edmund Stoiber and including representatives of independent European watchdogs, plays an important role in smart regulation. The input received from stakeholders through the years on less burdensome alternatives makes clear that the HLG serves as effective platform and that further improvements of the *acquis* are on going. As it represents the only independent body in the process of reducing administrative burdens on European level, the HLG's mandate should be further extended, reinforced and should continue with a budget to do so. In this respect, *inter alia*

- the HLG should be involved in scrutinising the impact assessments of new legislative proposals;
- the HLG should assess how regulatory burden is addressed in the Commission through a yearly evaluation of published legislative proposals and by assessing roadmaps in regard of the regulatory costs arising and specific burdens for SME;
- the HLG should assess Commission's ex-post evaluations and fitness checks and suggest simplification measures in particular for SME;
- the HLG should have the competence to propose areas for ex post-evaluations and fitness checks;
- the Commission should regularly report on the follow-up of the offline-opinions of the HLG.

II. Ensuring the effective implementation of EU legislation

In order to keep the regulatory costs of EU legislations as low as possible, additionally to the requirement of smart regulation on EU level, the effective implementation of EU legislation on national level has to be ensured. In particular, we would like to highlight the following aspect:

6. Providing a best practice platform for Member States

The Commission should provide a platform for Member States, e.g. as an electronic database, in order to facilitate a regular and structured exchange of best practices regarding the implementation of EU legislation.

III. Consulting the public

We appreciate the Commission's efforts to better involve stakeholders in the legislative process, e.g. by extending the minimum period for public consultation from eight to twelve weeks. In our view, public involvement can be further improved, in particular by:

7. Involving stakeholders

Stakeholders should be involved as early as possible, in particular before the decision of the Commission, i.e. when the working level preparation of the draft legislative proposal and of the impact assessment has been finalised. They should also be consulted when identifying areas for ex-post evaluation and fitness checks.

8. Availability of “consultation stage” impact assessments

The Commission should produce “consultation stage” impact assessments, i.e. draft impact assessments with a preliminary assessment of the expected costs, which should be published – e.g. in form of a standard template – along with the legislative proposals in the consultation process. This would systematically allow consultees to comment on the evidence base, serious alternative options, and assumed costs and benefits and to enable the final impact assessment to be robust.

IV. Progressing together

In late 2005, the three EU institutions – the European Parliament, the Council and the Commission agreed on the “Common Approach to Impact Assessment”. As regards the Commission, impact assessments are an integral part of the legislative process now. In view of the Parliament, we welcome the establishment of a new Impact Assessment Directorate at the beginning of this year. However, only the Council has so far not taken any initiative in this respect. Therefore, in our view, the following aspects are of utmost importance:

9. Common approach of all three EU institutions

It is necessary that all three players of the EU legislative process – the Parliament, the Council and the Commission – are likewise committed to impact assessments. The three EU institutions should follow a common and coordinated approach including a common methodology in this respect.

10. Working towards a common independent impact assessment body

The final goal should be to institutionalise a common independent body which assists the Commission as well as the Parliament and the Council in scrutinising impact assessments from across the institutions.

V. A new ambitious Action Programme is required

The Commission's Action Programme for reducing administrative burdens will end in 2012. It is important that the European institutions work together on new drivers and safeguards to ensure that smart regulation and burden reduction remain key priorities within the EU. A new programme needs to be developed in order to keep the achievements already made as well as to strive for further improvements.

In such a programme, the following aspects should be considered:

- It should not only focus on administrative burdens but on the overall regulatory costs;
- It should include a new net target for the reduction of administrative burdens as well as for the reduction of the overall regulatory costs in euro's;
- It could concentrate on certain (most burdensome) policy areas which should be selected together with stakeholders; the Commission's ex-post evaluations and fitness checks can be another source to identify policy areas to be tackled; fitness checks could also be used to target the reduction of burdens on sectors with high growth potential;
- The special focus on SMEs should be maintained and further reinforced;
- It should include the obligation of the Commission to publish an annual statement of the total net costs to businesses of EU legislation issued by the Commission in the preceding year.
- The above mentioned priorities under points II. – IV. should be taken into account;
- The recommendation of the OECD Council on Regulatory Policy and Governance should be taken into account.

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