



Position Paper

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Stocktaking of the Commission's Better Regulation approach

Since the beginning of its mandate, the Juncker Commission has made Better Regulation central to its approach and committed to increasing transparency, enhancing consultation, keeping existing laws under review and improving impact assessments and quality control. Most importantly for EUROCHAMBRES' constituency, the 2015 Better Regulation Agenda contained a strong commitment to the application of the Think Small First principle, which is crucial for an SME-friendly regulatory environment.

With the end of the Juncker Commission approaching, it is noteworthy to assess which elements of the Better Regulation Agenda worked well and which need improving.

Consultation of interested parties

The consultation of interested parties, notably those that will be affected by a new policy initiative, is a crucial step to deliver high quality proposals as well as to allow for transparency and legitimacy in the policy making process. Failure to adequately consult interested parties can have negative consequences for the whole policy-making process, leading to a substandard outcome and a shortfall in achieving policy objectives in the most effective way (e.g. with minimum additional burdens).

Following the introduction of the Better Regulation agenda, the Commission enhanced the possibilities for interested stakeholders to express their views and provide input throughout the policy-making process. However, flaws in methodology continue to hinder the effectiveness of consultation processes.

In open public consultation questionnaires still remain written largely from the perspective of the policy-maker, not the end user/complier, thereby making it more difficult for a non-expert audience to participate and express their views. More efforts should be made to make the questions easier to understand. Another effect of the way questionnaires are formulated is that they tend to be based more on a specific solution or even a pre-determined outcome, rather than on accurately gauging the nature and cause of the perceived problem. Linked to this aspect is the fact that questions are often biased and not neutral nor open to any possible answer. An independent monitoring of the questionnaire might help improve these aspects. Moreover, in open questions the admitted number of characters is unduly limited.

The 12-week open public consultation is generally - although not always - respected, but consultations still often run over holiday periods without their timeframe being extended. This reduces the possibility for stakeholders participation.

Consultations are often available in English only, or are only provided in other languages after the 12-week consultation period started. The 12-week period should only begin when all language versions are available. Moreover, as indicated in the 2017 Better Regulation guidelines, the consultation documents

related to public consultations for initiatives included in the Commission Work Programme should be made available in all the EU official languages. This is essential to allow a wide participation from interested parties all across the Union.

With specific regard to consultations as part of the SME Test, a EUROCHAMBRES' study¹ revealed that in the vast majority of impact assessments analysed the views of SMEs are not adequately presented. Indeed, most IA reports treat the business community as a whole, homogeneous group, without any distinctions between SMEs and large companies. Worst yet, in certain cases the IAs do not even specify which type of stakeholder (e.g. business community, civil society, public administration) expressed which view, making it impossible to understand the position of SMEs and whether it was taken into consideration. Given the specificity of SMEs and the fact that the costs of the proposed legislation can be much higher for SMEs than for their bigger competitors, the views of SME stakeholders should be clearly reported in the summary of consultation responses and in relation to the various policy options presented in the IA as distinct from the views of large companies or of the totality of respondents. Attention should also be paid to the different size-classes of SMEs (micro, small, medium). This is often not the case.

Consultation responses should be weighted based on the nature of the respondents (e.g. a response from a single enterprise should have less weight than an association representing thousands of businesses).

Feedback from the Commission to the input provided by the various stakeholders would be useful, e.g. in the consultation report.

Time and resources restrictions are routinely cited by Commission officials as a reason for flaws in the consultation process. Nonetheless, if the Commission is genuinely committed to its better regulation principles, adequate time and funding should be ensured: the benefits of good policy making heavily outweigh the costs required to ensure this. Cutting corners is a false economy for policy-makers, the economy and other stakeholders.

Impact assessments

All of the possible options presented in an impact assessment (IA), and not just the preferred one, should be thoroughly examined. In particular, costs should be estimated for each policy option in order to allow an effective comparison between the different options.

The Better Regulation guidelines do not provide comprehensive indications nor a uniform methodology to carry out cost-benefit analysis and cost calculation. This leads to significant differences in the quality of the analysis of the impacts. The standard cost model has proven effective as a cost estimation method.

Assessments of the impacts should be also carried out for amendments to the Commission's proposals tabled by the Council and the European Parliament. Interested parties should be involved in this process.

SME Test

EUROCHAMBRES' SME Test Benchmark revealed several weaknesses in the application of this tool by the European Commission, notably in the assessment of the impact of future legislation on SMEs, which is weakened by the absence of a thorough cost-benefit analysis, a low level of detail and accuracy and insufficient attention to the differences between SME size-classes.

Quantification of the impact is more the exception than the rule, with the costs and benefits regarding SMEs almost never or insufficiently quantified and monetised. The lack of quantification is also rarely justified and is an issue that can be observed throughout the majority of impact assessments, not only the SME test.

Despite the strong emphasis by the current Commission on better regulation and on the economic importance of SMEs, the persistence of serious flaws in the application of the SME tests is detrimental to the policy-making process, as they increase the risk that the Commission tables initiatives which create

¹ EUROCHAMBRES, SME Test Benchmark 2017, p. 17.

excessive and unnecessary burdens for 'the backbone of the European economy'. EUROCHAMBRES' report on the Commission's application of the SME Test provides a number of suggestions on how impact assessments could be improved and their respect for the 'think small first' principle and of the guidelines for conducting an SME Test ensured. Several of these suggestions could be applied more broadly to the impact assessment process as a whole.

Trilogues

As stated by EUROCHAMBRES in a 2016 consultation² lunched by the European Ombudsman, trilogues should be made more transparent and their use should be limited to particularly urgent cases.

Evaluation

The evaluation of existing legislation should be unbiased and independent. Input and evidence from interested stakeholders should be taken into consideration.

New initiatives should be proposed only after evaluation results are available to ensure that they are properly taken into account. Particular attention should be focused on enforcement deficits.

The REFIT Platform

The REFIT platform has the potential to deliver significant legislative simplification and to improve existing legislation. Its objective is laudable and EUROCHAMBRES supported the initiative at the start of the current Commission term. Nevertheless, our perception of the impact is not very positive: the selection of dossiers has been opaque, an excessive amount of time has been wasted on agreeing on the modus operandi of the platform and communication with stakeholders not involved in the platform remains unsatisfactory (e.g. minutes often not available before the date of the following meeting). The latter element has prevented interested parties without a seat at the table to effectively contribute to the work of the platform and provide input and evidence. More transparency and better communication are necessary to help the platform fulfill its potential. Moreover, the revision of legislation under REFIT should be strictly used to make EU law simpler and less costly, not to introduce new obligations.

The Regulatory Scrutiny Board

The Regulatory Scrutiny Board is in principle a positive addition to the Better Regulation agenda and its reinforced independence compared to its predecessor, the Impact Assessment Board, makes it better placed to issue neutral opinions on draft IAs. Nonetheless, the Board should be entirely independent and free to reject any impact assessments on objective grounds, regardless of any potential political imperative at Commission level to pursue a legislative initiative. The Board's rating of legislative proposals should be made more transparent when they are presented to the European Parliament and the Council. Since the SME test is a key element of impact assessments, the Regulatory Scrutiny Board should also more systematically verify that the SME test is properly carried out before issuing a positive opinion.

In conclusion, EUROCHAMBRES applauds Vice-President Frans Timmermans focus on Better Regulation and calls the upcoming Commission to make further efforts to ensure that this commitment is effectively applied and becomes a solid pillar in the Commission's modus operandi.

² EUROCHAMBRES response to the consultation on the transparency of trilogues, <http://bit.ly/1qhGv7q>

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