



**EUROCHAMBRES**

Connecting **business** to Europe

## **Position Paper**

**June 2010**



# **SMART REGULATION**

**CONTRIBUTION TO THE  
EUROPEAN COMMISSION'S  
CONSULTATION**

## Introduction

EUROCHAMBRES has always been a strong advocate of the Better Regulation Agenda, repeatedly calling for its acceleration and reinforcement. We strongly support, in this respect, the new Barroso Commission's ambition to enshrine Smart Regulation in the EU policy making and make it instrumental in delivering the Europe 2020 strategy.

Similarly, we welcome that President Barroso is taking personal responsibility for this dossier under the new Commission, showing that better regulation is a cross-cutting issue at EU level, and that more has to be done to ease the life of businesses in these times of economic hardship.

A study carried out by EUROCHAMBRES last year<sup>1</sup> reveals that the cumulative cost to businesses of EU legislation over the past 10 years amount to about €1trillion.

This figure confirms the importance of continued common efforts at EU and national level to reduce administrative burdens for businesses in order to cut red tape in a sustainable manner.

EUROCHAMBRES believes that improving the regulatory environment for Europe's businesses and especially SMEs is key to delivering economic growth. We therefore expect all EU co-legislators to take responsibility vis-à-vis their promises to legislate properly and consider the impact of new legislation on businesses through an integrated and cross-institutional impact assessment system at EU level.

This paper outlines EUROCHAMBRES' recommendations for improving the regulatory environment in Europe, with a special focus on SMEs, being the business entities suffering disproportionately from bad regulation and excessive burdens.

### **EUROCHAMBRES' 5 priority recommendations to be implemented by the Commission during its term**

1. Embed the "Think Small First" principle through the systematic use of an SME Test. It should be obligatory that all relevant new and amended legislation affecting business is assessed through a small and medium-sized firms filter. Impact assessments must clearly demonstrate that they have been prepared in accordance with the 'Think Small First' principle, with the SME Test annexed to the impact assessment.
2. Preserve an integral approach to impact assessment based on a quantitative costs-benefits analysis.
3. Encourage the take-up of impact assessments by the Council and the European Parliament through notably the publication of and consultation on the draft impact assessment before the proposal is finalised by the Commission, the production of a 2 page summary of the impact assessment and the support (i.e. advice, training and guidance) for the assessment of the impact of their own amendments.
4. Earlier, better structured and longer consultations (i.e. 12 weeks) with feedback on how the stakeholders' input has been taken into account.
5. Continue the Action Programme for Reducing Administrative Burdens in the EU beyond 2012 applying a net target and extend it to new priority areas and further legislative acts. The Simplification Programme should also be broadened to include the so-called implementation costs which are perceived as a real nuisance by those who must comply with obligations and which amount for the greater proportion of the regulatory burden.

<sup>1</sup> Counting the cost of EU regulation to business, EUROCHAMBRES, May 2009, [www.eurochambres.eu/content/default.asp?PageID=1&DocID=1834](http://www.eurochambres.eu/content/default.asp?PageID=1&DocID=1834)

## Part 1: Improving existing legislation

### Question 1:

**Do you think that the Commission's approach to improving existing legislation is appropriate, or do you believe there are more effective ways of doing so? Could you give us practical examples?**

EUROCHAMBRES welcomes the European Commission's efforts to reduce unnecessary regulatory burdens on business. Recent positive examples include the new Intrastat Regulation<sup>2</sup> and the proposed revision of the VAT Directive<sup>3</sup>, which will lead to more efficient business transactions by putting e-invoices and paper invoices on an equal footing.

However, the feeling from businesses is that, despite such positive measures, companies in Europe still spend too much money and time in dealing with excessive bureaucracy and regulation. A lot of work still needs to be done to lighten the load put on European businesses, especially SMEs which are the most hit by red tape<sup>4</sup>. The Commission's approach should be taken a step further and more efforts are needed from the other EU co-legislators, particularly from the Member States on the ground, for the benefits to be felt at business level.

### EUROCHAMBRES' recommendations

- **Continue the Action Programme for Reducing Administrative Burdens in the EU beyond 2012 and extend it to new priority areas (e.g. R&D) and further legislative acts (e.g. REACH, Uniform Classification of Waste)** on the basis of the consultation of affected stakeholders and on the ex-post evaluation of existing legislation. Our response to question 4 of the consultation presents a number of specific proposals;
- **Apply a net administrative burden reduction target for the complete Community acquis and per policy area.** To be credible as well as genuinely beneficial to businesses, the programme should cover not only existing legislation but also new legislation, as it is the case in some EU Member States. In other words, the administrative burden reduction exercise should aim at a 'net' result, tackling both current stock and new incoming legislation;

*The Netherlands has set a net reduction target of administrative burden of 25% by 2011. In April 2010, they had already achieved 13% reduction and they plan to reach 20-22% in 2011.*

*The German Federal Government intends to reduce the administrative burden of bureaucracy incumbent on the business sector by 25% by 2011 too. As the costs resulting from information obligations are estimated at around € 47.6 billion, the preliminary reduction target amounts to € 12 billion. According to the latest annual report of the National Regulatory Control Council (Nationaler Normenkontrollrat), half of the intended reduction (i.e. € 6 billion) was achieved by the end of 2009. Having recognised that reducing existing bureaucracy is not enough and that administrative burden introduced by new legislation has to be avoided as well effectively, the German government now defines the reduction target as a net target.*

<sup>2</sup> Regulation n° 222/2009

<sup>3</sup> COM(2009)21

<sup>4</sup> A large company spends €1 per employee on regulatory obligations, while a small business might have to spend on average up to €10, according to the European Commission's expert group on the burden of regulation's May 2007 report.

- **Focus the EU Simplification Programme on reducing regulatory burdens.** Simplification should only refer to measures which reduce the regulatory burden. We acknowledge that measures such as consolidation and codification are very helpful for companies since all relevant rules are summarised in a single text. These measures should thus be continued but out of the scope of the Simplification Programme which should focus on reducing regulatory burden.
- **Broaden the scope of the EU Simplification Programme** by targeting burdensome aspects of regulation other than administrative costs, notably implementation costs<sup>5</sup>. These extra costs stemming from legislation are perceived as a real nuisance by those who must comply with obligations and a quantitative reduction target for this category of burden should be set. Given that measuring implementation costs is central to impact assessments on proposed new legislation, this approach should also apply to reducing the burdens on businesses from existing legislation.

*The burden reduction programme in the Netherlands is comprehensive and covers administrative costs (net reduction target of 25% by 2011), implementation costs (reduction target of €544 million by 2011, of which €329 million have been realised so far<sup>6</sup>) and inspections costs (reduction target of 25% by 2011). The Dutch government is also working on measures to reduce administrative burdens for public grants and subsidies<sup>6</sup>.*

*The German government recently decided to integrate implementation costs into its burden reduction programme. The objective is to reduce the so-called total measured implementation costs in 8 sectors<sup>7</sup> by an average of 25% net by 2011. In this respect, the German authorities are at the moment developing a new method to measure implementation costs based on the experience gathered with the standard cost model.*

*In the UK, the government's intention is to base reductions on implementation costs by policy areas, namely: the built environment, company law, consumer issues, employment and skills, health and social welfare, natural environment, and transport.*

- **More open and more transparent High Level Group on Administrative Burdens (HLG).** External expertise and stakeholder input are vital in the process of making European legislation less burdensome for businesses. In light of this, EUROCHAMBRES recognises the important role played by HLG.

Now that the mandate of the group will be extended for a further two years, EUROCHAMBRES emphasises the importance of transparency in relation to the activities and composition of the High Level Group on Administrative Burdens. In particular, we underline the need of involving further SME experts if the exercise is to prove effective and sustainable.

## Question 2:

### **A) What can be done to ensure that businesses feel the benefits from simplification and administrative reduction programmes? Do these programmes focus on the right issues?**

Individual businesses know little about the Better Regulation Agenda but they want measures that have a real impact on the ground. Even though some efforts are made at EU and national levels to reduce the administrative

<sup>5</sup> Implementation costs are the essential costs of meeting or complying with the policy objectives and include all costs which are not administrative costs.

<sup>6</sup> Eindrapportage Regeldruk Bedrijven, Regiegroep Regeldruk, April 2010

<sup>7</sup> The 8 sectors identified by the German government are: planning law and building law in infrastructure projects; tax returns, tax and customs verification obligations; alignment and shortening of retention and investigation periods in accordance with commercial, tax and social law; company representatives; application for legal services, in particular for entrepreneurs and small enterprises as well as in threatened cases of bankruptcy; individuals who are in need of care, chronically ill or acutely ill; families and single parents; simplifying the electronic submission of business registration.

burden, companies do not feel the direct benefits from this work. A recent Czech study illustrates this reality well. According to the report, 88% of Czech companies do not perceive any decrease of paperwork despite the work done by the Czech government to cut red tape by 25% till 2010<sup>8</sup>.

The priority is now that all EU Institutions and the Member States deliver **tangible** results for businesses.

### **EUROCHAMBRES' recommendations**

- **Give priority to the reduction of regulatory burdens that are considered as a real nuisance by businesses**

This can be done by tackling implementation costs and consulting business representatives, who are best placed to indicate the obligations which are the most time consuming, using various formats (online consultations, workshops, etc...).

- **Swift adoption by the European Parliament and the Council of pending administrative burden and simplification proposals**

The overall administrative burden reduction potential of the measures proposed by the Commission in its Action Programme has been estimated at over €40 billion. So far, 48 measures have been adopted representing a reduction of €7.6 billion, while 18 reductions measures, **amounting for a saving to €30.7 billion**, are currently blocked in the European Parliament and the Council. Similarly, 28 simplification initiatives are still pending. These two EU Institutions are clearly failing to deliver, to the detriment of millions of enterprises in Europe.

EUROCHAMBRES calls on the European Parliament and the Council to attach greater priority to administrative burden and simplification proposals. Having committed to the 25% administrative burden reduction target, the European Parliament and the Council have to play their part and handle the Commission's proposals in a timely manner. They must start by swiftly clearing the current backlog.

- **Set up "perceived targets" for EU regulatory burdens**

There is frequently a discrepancy between the quantitative results of burden reduction programmes and the perceived burden reduction by businesses. For instance, administrative burdens, while costly in terms of time, can often be less noticeable than significant implementation costs. EUROCHAMBRES recommends the Commission to formulate "perceived targets" for each category of burden based on a European poll of entrepreneurs, as it is currently implemented in the Netherlands. This would be a mean to check that the quantitative results are converted into tangible results. The Dutch government has indeed set up the following "perceived targets" further to a poll of 1.200 entrepreneurs<sup>9</sup>:

% of entrepreneurs that indicates not or barely to be hampered by:

- Administrative burden: 40%
- Implementation costs: 45%
- Inspection burden: 60%
- Continual changes of legislation: 55%

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<sup>8</sup> AMSP ČR survey , June 2009, AMSP ČR (association of small and medium-sized enterprises and crafts)

<sup>9</sup> Regiegroep Regeldruk, Eindrapportage Regeldruk Bedrijven, april 2010

- **Rigorous ex-post evaluation to determine any discrepancy between claimed and actual burden reduction**

The majority of national administrative burden programmes register a reduction of burdens at the moment that the policy decision is taken to simplify the legal framework. However, it remains to be seen if this “claimed reduction” will be actually implemented in such a way that businesses will benefit from it. Experience has shown that it often takes a long period of time before changes are implemented. In some cases the implementing agencies are quite autonomous and do not pass on the burden reductions in the way they were originally intended. Policy-makers must therefore make the distinction between claimed burden reduction and actual burden reduction, prioritising on the latter one as the benefit of the simplification and administrative burden reduction programmes will only be felt once proposals are implemented.

- **A coherent approach between the European Union and Member States’ actions**

Continued joint efforts at EU and national level will be a critical success factor to realise sustainable reduction. While the European Commission has taken a strong lead in trying to reduce administrative burdens since 2007, the Member States have largely been lagging behind.

Some countries have only just set burden reduction targets at national level<sup>10</sup>, although they had originally agreed to do so by the end of 2008. For over 40% of the Member States, the burden reduction target which has been set is not comparable or in line with the EU target of -25% by 2012<sup>11</sup>.

Several Member States have started to implement better regulation measures, but the picture remains very mixed. Over 45% of the national Chambers of Commerce rate their national government’s efforts to meet the 2012 administrative burden reduction target as good, whereas over 35% rate them as average<sup>11</sup>.

If the Simplification Programme is to tangibly improve businesses’ lives, a more committed engagement from all Member States is necessary. EUROCHAMBRES calls, in particular, for the national administrative burden reduction targets to be implemented strictly by 2012 and for Member States to be as active as the Commission and not add additional burdens (i.e. gold plating).

Furthermore, we believe that the Commission plays a pivotal role in maintaining the momentum. First of all, the Commission should regularly monitor the progress made by the Member States and clearly identify the ones lagging behind. Secondly, the Commission should set up a mechanism to disseminate good practices and share successes to create “peer group pressure” and emphasize quantifiable benefits.

- **Streamline public administrative procedures**

The perception of burdens by businesses is closely linked to the level of quality of the public services. The way government agencies deal with the applications for licenses for instance (i.e. problem-solving instead of procedure-focused and responsive instead of defensive) is equally important for cutting red tape for businesses.

Administrative burden reduction must thus also focus on unnecessary information requirements and, as such, EUROCHAMBRES fully supports the “only once” principle set out in the Small Business Act for Europe, which means that businesses should not be obliged to provide all over again information that the public authorities have already received through a different channel. This should apply at all levels - European, national, regional and local.

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<sup>10</sup> By October 2009, all Member States have set national targets

<sup>11</sup> EUROCHAMBRES survey on the implementation of the SBA, [www.eurochambres.eu/content/default.asp?PageID=1&DocID=2169](http://www.eurochambres.eu/content/default.asp?PageID=1&DocID=2169)

Currently, efforts to implement the 'only once' principle are weak. Only 15% of EU Chambers of Commerce rate their government's action in this field as significant. In about two in five of EU countries, the efforts are seen as negligible, while in about half, they are perceptible<sup>11</sup>. At EU level, the Commission announced in April this year the simplification of the participation procedures in EU financed research projects<sup>12</sup> but no similar measures seem to be in the pipeline.

The 'only once' principle should be progressively and swiftly applied by public administrations in all Member States and by the Commission, as it is one of the 'irritation burdens' most felt by businesses, particularly SMEs.

National databases should be coordinated more effectively and the degree of electronic interoperability and accessibility greatly increased.

## **B) How can stakeholders, including SMEs, better indicate which pieces of legislation should be simplified? Could you give us practical examples?**

As Chambers, we appreciate that gathering specific suggestions from individual businesses on administrative burdens that could and should be avoided is not easy. Nonetheless, it is vital to engage businesses and representative business organisations in this process. We believe that this requires a proactive and dynamic approach.

### **EUROCHAMBRES' recommendations**

- **Open the HLG to more SME experts.** The HLG would benefit extensively from the expertise of SME experts, who are dealing with the EU legislation in their daily work and are best placed to indicate the obligations which are the most time consuming.
- **Support stakeholders' initiatives to fight against administrative burdens, such as the "Low" Level Group.** On 5 June 2008, the SME "Low" Level Working Group to Fight Administrative Burdens (LLG)<sup>13</sup> presented 21 proposals for the reduction of administrative burdens. 3 suggestions have been implemented (i.e. revision of the EU Battery Waste Directive, adoption of the Small Business Act for Europe with the Think Small First principle and the Emission Trading Directive), 2 proposals have been partially implemented (i.e. suggestions to cut red tape for structural funds and the Eco Management and Audit Scheme) and 11 other proposals are being examined at EU institutional level. The LLG proposals bear an estimated saving potential for companies of approximately € 2.5 billion to € 3.5 billion.
- **Good practices and on-going consultation forum.** A permanent 'Good Practices and on-going consultation Forum' should be created in which Commission, Member States and business organisations, such as Chambers of Commerce, would specifically identify and disseminate good practices for cutting red tape at European, national, regional and local levels. In the context of this forum, business representatives would also provide the Commission with feedback on the impact of major pieces of legislation on enterprises, particularly SMEs.

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<sup>12</sup> Simplifying the implementation of the research framework programmes, COM(2010) 187

<sup>13</sup> The "Low Level Group" was created at the end of 2007 to support and encourage the European Commission's "High Level Expert Group" to fight against administrative burdens. It was set up by the SME UNION of the European People's Party, EUROCHAMBRES and JADE (the European Confederation of Junior Enterprises). It is made up of seven SME entrepreneurs from the grass root level and seven SME experts providing background support.

- **Coordinate national feedback mechanisms.** The input gathered at national level through various initiatives (see below some examples) should be passed on to the Commission when it relates to EU legislation.

Kafka initiative (Belgium)

With its motto “la simplification fait la force”, the Belgium government launched an innovative initiative for cutting red tape called “Kafka” ([www.kafka.be](http://www.kafka.be)). By collecting suggestions to simplify the administrative rules from the citizens and the enterprises, the website already led to the repeal of 130 Belgium laws and to a good number of administrative simplifications.

Absurdity of the Year Award (Czech Republic)

Launched in 2007, the Czech “competition” for the most ludicrous entrepreneurial duty called “Absurdity of the Year” points out absurd administrative burden and requests its abolition. Competition is launched every year by the Czech Newspaper *Hospodářské noviny*, under the auspice of the Czech Chamber of Commerce, Czech Association of SMEs with the cooperation of the State Agency CzechInvest (Ministry of Trade and Industry), Confederation of Industry CR, Union of builders CR, Union of Czech and Moravian crafts, Association of logistics and transports CR, Association of Czech cabinetmakers and Association of Czech travel agencies. The absurdities are nominated by businesses and business organisations. The organiser chooses seven most absurd duties imposed on businesses. The election of the absurdity is happening on-line on [www.firmaroku.cz/absurdita](http://www.firmaroku.cz/absurdita) or on [www.iHNed.cz](http://www.iHNed.cz) (only in Czech). The announcement is made publicly in the centre of Prague.

This initiative has already led to a series of successful outcomes such as:

- Duty imposed on self-employed persons to inform the Licensing Office three days in advance that they are leaving with their own stand to a fair (Absurdity 2007) was abolished.
- Duty on entrepreneurs to inform the Labour office their employee has left on a business trip longer than a week but shorter than a month was also abolished (one of the seven finalists of 2007).
- Duty on entrepreneurs to use environment-friendly and clean soil as a waste does not appear in the amended act anymore (Absurdity of 2008).
- Duty to keep a journey log was abolished last August (finalist of Absurdity 2008). The Ministry of Trade and Industry indicated that abolished journey log means a reduction of 850 million CZK a year.

WebSKM (Germany)

In Germany, the authority for statistical data (Statistisches Bundesamt) runs a web database, called “WebSKM” ([www-skm.destatis.de/webskm/online](http://www-skm.destatis.de/webskm/online)), which gathers all existing information obligations. Via WebSKM, every stakeholder can obtain information on the different legal acts and introduce proposals for simplification. The online portal also displays the legal acts, which have been modified in order to reduce administrative burden. WebSKM is effectively used by various stakeholders, including the Association of German Chambers of Industry and Commerce which introduced more than 100 simplification proposals.

Simplifions la loi (France)

The French parliament created in September 2007 a website called “Simplifions la loi” (<http://simplifionslaloι.assemblee-nationale.fr>). It gives the opportunity to the citizens to mention the provisions of a law or a regulation that are not understandable or that depart from the objective of legislative simplification. Citizens can also explain the difficulties they have faced due to a specific piece of legislation. The results of this initiative seem to be positive: the users have reacted positively to such an approach and a lot of contributions are of good quality. Almost 530 contributions have been received so far. Among them, 60 have led to a written question to the government and 3 have been taken up in the proposal “Simplification and Clarification of Law”.

- **Organise national SME workshops:** SMEs often lack the resources, in particular time, to engage in comprehensive deliberations on how to improve legislation. However, well prepared national workshops would allow them to discuss specific questions on simplification and administrative burden reduction. Business organisations would have the task to identify representative SMEs.
- **Extend the “Enterprise Experience Programme” to all Commission’s DGs, not least the Secretary General’s Better Regulation Directorate.** This innovative programme run by DG Enterprise sends senior officials to work in an SME for one-week, shadowing key personnel and experiencing the different functions/departments of the company. The initiative should be extended to all DGs, including the Secretary General’s Better Regulation Directorate, adding a better regulation objective to the officials’ stay – i.e. finding out how SMEs experience a regulation.

### Question 3:

**Which good practices of ex-post evaluation in the Member States or elsewhere do you consider that the Commission should use in developing the evaluation approach? For example, is there a way to improve the involvement of Member States and stakeholders in the evaluation exercise?**

EUROCHAMBRES believes that making continuous improvements to the legislation is crucial to maximize the benefits while lowering the costs. As such, we welcome the Commission’s intention to strengthen its ex-post evaluation process to check whether existing legislations are functioning effectively.

### **EUROCHAMBRES’ recommendations**

- New legislation should systematically include a **review clause** or, where appropriate, time limited through the use of a so-called ‘**sunset clause**’. In this respect, review clauses should always consider the option to withdraw a piece of legislation if it has not achieved the intended policy objective.
- **The conclusions of the re-evaluation of a legislation should be approved by the Impact Assessment Board and made public.**
- The Commission must **work closely with stakeholders**, in particular with national and European business organisations, to identify problem areas for review or repeal. This problem-oriented approach is essential to identify problems as well as to formulate and implement solutions. Such consultations were carried out under the former Commission regarding whole policy areas (e.g. environment) in order to identify possibilities for improvement and proved to be effective.
- **Local administrations should be given responsibility in the identification of the administrative burdens (i.e. bottom-up approach).** Administrative Burden reduction should not be seen – as at present – as the sole responsibility of the legislative bodies. This reduction should be regarded and organised as the responsibility of all actors in the “supply chain” that is producing, implementing and executing government legislations. As such, local public authorities should play an active role in the monitoring and identification of administrative burdens, as recommended by Mr Jean-Luc Warsmann, a member of the French parliament in his report on quality and simplification of law<sup>14</sup>. The French government is expected to put into practice this proposal soon.

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<sup>14</sup> Rapport sur la qualité et la simplification du droit, Jean-Luc Warsmann, 2009 (<http://www.cnrs.fr/aquitaine-limousin/IMG/pdf/RapportWarsmann.pdf>)

It must however be stressed that there is no point in doing such ex-post evaluation if the system is not fluid (i.e. involvement of all EU institutions).

#### Question 4:

#### **Which sectors do you think should be subject to a pilot policy evaluation?**

EUROCHAMBRES welcomes the planned ex-post evaluation reviews in the fields of environment, transport, employment and social policy, and industrial policy as announced by the Commission in its Legislative and Work Programme 2010.

**Environment** has been subject to a lot of regulation over the last years related to chemicals (i.e. REACH), energy, environment management, waste, green products, etc... It is indeed one of the areas where a lot of national legislation originates from European legislation. We therefore believe that there is a real need for a thorough evaluation in this sector to ensure that the bulk of new legislation forms a coherent framework and delivers effectively on objectives. We would like to point out, in this respect, the problems in the interface between waste legislation and legislation on chemicals. An EU-wide uniform definition of waste is necessary since difficulties arise with regard to REACH due to different definitions of waste in the Member States.

EUROCHAMBRES suggests the following sectors for other pilot policy evaluations:

- Foodstuffs (safety): this sector is subject to substantial regulation;
- Financial market legislation: a lot of directives and regulations overlap in this sector such as the Market Abuse Directive (2003/6/EC) and the Markets in Financial Instruments Directive (2004/39/EC).
- Copyright: different rules in overlapping fields of application coexist, which create an unclear legal situation for businesses. For instance, article 8 of the Directive 2006/115/EC and article 3(2) of the Directive 2001/29/EC.
- VAT: different administrative burden analyses have shown that the area of taxation and especially VAT generates a huge amount of administrative burden.
- Pharmaceuticals

In general, rules which have the same or a similar aim should use the same terminology. Furthermore, the respective legal terms should have uniform legal consequences. *For instance, the information obligations in article 5 of the Distance Contract Directive (97/7/EC) and article 5 of the e-Commerce Directive (2000/31/EC). Coordination also with the article 4 of the Directive on the disclosure requirements in respect of certain types of companies (2003/58/EC) would be useful.*

**Ex-post evaluation reviews should also be carried out across sectors.** *For instance, an alignment of the Markets in Financial Instruments Directive (2004/39/EC), the Transparency Directive (2004/109/EC), the Prospectus Directive (2003/71/EC) and the Consumer Rights Directives (in particular the Directive 93/13/EEC) could be considered. Regarding the prospectus, it is unclear whether the Transparency Directive (2004/109/EC) and the Prospectus Directive (2003/71/CE) apply or the Directive on Unfair Terms in Consumer Contracts (93/13/EEC).*

Finally, the European Commission should apply the same principle of simplification to horizontal funding programmes such as the structural funds, the CIP programme and FP7. In this respect, the planned reform of the financial regulation should enable a reduction of administrative burdens in the Commission funding programmes.

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## Part 2: Making the most of new initiatives

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### Question 5:

**Within the integrated approach, where all relevant impacts are assessed side by side, are there any specific issues on which the Commission should reinforce its analysis? If so, why and how?**

We acknowledge the steps taken by the Commission towards embedding the impact assessment process within its functions, most notably through the recently published revised guidelines and the establishment of the Impact Assessment Board.

The approach should now be taken a step further in order to fully integrate the impact assessment in the policy-making cycle, involving the three EU Institutions.

### **EUROCHAMBRES' recommendations**

- **Improving the gathering of data about the impacts on SMEs**

The Commission should work closely with Member States to collect data about the impacts on SMEs, which is based on a standard methodology. For example, size of statistical samples, broad participation by SME associations, impartial and independent management of the data collection process, and extending assessments to determine burdens such as technical capacity or potential impact on personal lives for micro-enterprises. Data should be made available to SME associations especially as impact assessments reach their first draft and are submitted to the Impact Assessment Board.

- **Systematic use of the SME Test**

No one disputes that SMEs, while being the major source of growth and employment in the EU, suffer disproportionately from the costs of regulation due to limited resources and knowledge. EUROCHAMBRES therefore welcomes that the Commission's new Guidelines on Impact Assessment foresee an analysis of the impact of forthcoming legislation and administrative initiatives on SMEs (SME Test) and that the results of this analysis are taken into account when proposals are drafted. However, since then, very few impact assessments actually quantified the regulatory effects on SMEs (11% in 2009, according to a British Chambers of Commerce research<sup>15</sup>).

EUROCHAMBRES calls for the **more systematic** application of the "Think Small First" principle of the Small Business Act when drafting new legislation and administrative procedures with the inclusion of the SME Test in all impact assessments. The Impact Assessment Board should reject any impact assessment failing to thoroughly analyse the costs and benefits for SMEs. Where the test shows that costs to SMEs exceed the intended benefits and that the Commission nonetheless decides to proceed with the proposal, derogations or exemptions for SMEs should be introduced.

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<sup>15</sup> Is Regulation Really Good for Us?, British Chambers of Commerce, April 2010

- **Improved transparency and earlier consultation in the process**

Roadmaps provide businesses with their first opportunities to see the Commission's outline proposals and the likely timing for their development. In particular, they allow businesses the opportunity to understand the options that will be considered and to prepare for upcoming engagement and consultations. It is, therefore, essential that roadmaps are well publicised and that they include more detailed information on each of the analytical steps of an impact assessment, as well as the timing and the justification of EU action.

Furthermore, impact assessments should be published in their draft stage to give the stakeholders and the Member States the opportunity to check the information and offer their views before the final publication of a proposal and the start of the main consultation process. At present, the Commission consults the stakeholders on draft proposals but not on accompanying draft impact assessments. A valuable opportunity to improve the quality of the proposal is lost as a result.

Additionally, there needs to be much better promotion of the channels through which the stakeholders can access the roadmaps and draft impact assessments. For example, it should be possible to sign up for free e-mail alerts when a roadmap or impact assessment changes.

- **Standard format for all impact assessments**

Further improvement is needed in the use of, and adherence to, standard templates. Executive summaries should also respect rigorous template guidelines and always comply with Commission guidelines for translation into all EU working languages. Without exception, all impact assessments and executive summaries must show evidence of what type of EU measure is required and why, clearly presenting alternatives to legislative action, including a 'do nothing' option. Indeed, impact assessments that conclude that no action should be taken at EU level should also be made public, since this is one key indicator of the effectiveness of smart regulation.

Impact assessments must also clearly present quantitative figures for the costs (ideally monetised costs), benefits and administrative burdens of the different policy options and justify those burdens. If the burden falls on business, an SME Test must be systematically carried out, specifying how it will be minimised, together with the rationale for action. Final drafts of impact assessments must properly reflect the evidence gathered from business in the preliminary stages.

- **Produce a two to four page summary of the impact assessment**

Impact assessments and executive summaries often contain a lot of very detailed information necessary for thoroughly informing policy makers and politicians in their deliberations. However, they must be prepared so as to be accessible to a wider audience, too. The preparation of a short summary of the main findings would considerably facilitate this. The Commission should provide systematically a two to four page summary of its impact assessment to the European Parliament and the Council together with the full impact assessment when submitting the legislative proposal.

- **Strengthen the Impact Assessment Board**

The Commission's Impact Assessment Board appears to be having a positive effect. This could be enhanced by involving senior officials from the Council and Parliament in the Impact Assessment Board in some capacity. Among other benefits, this would pave the way to a more constructive attitude to Commission impact assessments and to the completion of additional impact assessments on substantial amendments by the Council and Parliament. Furthermore, subject to the right impartial appointment procedure, there could be value in involving representatives of the SME community, as well as a representative of the SME Envoy's office. The Impact Assessment Board

should also invite more regularly external experts, a possibility stated in the rules of procedure of the board but rarely used.

- **Systematic use of impact assessments in delegated acts and implementing measures**

A lot of measures adopted in comitology have a great impact on businesses. The Commission's Impact Assessment Guidelines foresee an impact assessment for the implementing measures which are likely to have a significant impact. The Commission's Legislative and Work Programme for 2010 also points out that for all Commission initiatives with significant impacts, including delegated acts and implementing measures, an impact assessment should be carried out. With a view to Smart Regulation, the Commission should **systematically** undertake an impact assessment for all comitology decisions and involve stakeholders as early as possible in the process, as was the case for the RoHS Directive (2002/95/EC).

#### Question 6:

**Do you have concrete ideas on how the Commission can improve its assessment of social impacts? Do you have examples of best practice in dealing with this issue in Member States or elsewhere?**

EUROCHAMBRES believes that it is crucial to preserve and reinforce the integral approach to impact assessments. The social, economic (including the systematic use of the SME Test) and environmental effects of legislative proposals should be examined in a balanced manner, based on quantitative cost-benefit analysis.

EUROCHAMBRES therefore encourages the Commission to explore methodologies used within and beyond the EU such as the "humanized cost benefit analysis" developed by Mr Cass Sunstein, a University of Chicago law professor, and presented at last fall's Transatlantic Economic Council meeting as well as at the last EU-US High Level Regulatory Cooperation Forum.

#### Question 7:

**What concrete improvements could the Commission make to ensure that all relevant stakeholders are aware of and able to participate in consultations? Are there particular forms of consultation which you found useful when taking part in the Commission consultations (open internet questionnaires, stakeholder meetings, public hearings)?**

EUROCHAMBRES believes that input provided by European, as well as national, stakeholders through public consultations organised by the European Commission is key to ensuring that forthcoming EU policy proposals achieve their objectives and also take into account every potential consequence before their initiation. However, if the Commission wants to show that it takes consultations of stakeholders seriously, it must improve the process.

### **EUROCHAMBRES' recommendations**

- **A more coherent and structured framework**

EUROCHAMBRES acknowledges the Commission's move towards more frequent open consultations and the use of SME panels. Currently a range of different types of consultation are in use, including on-line consultations and consultation via networks such as the Enterprise Europe Network. However, this wide range of tools needs to be

put into a coherent framework to ensure that the results and opinions gathered are genuinely taken into account in a democratic policy-making process.

The quality of the online consultations is not always high with several closed questions (i.e. Yes/No) such as for the Small Business Act for Europe or with no question at all as it was the case for the Europe 2020 strategy. Questions should be clearly and simply stated, in such a way as not to influence the respondent and to maximise the value of the response given. The consultation paper should be available in all EU languages in order to reach citizens and businesses and should only start when all translations of the document have been published. Finally, the minimum consultation period (i.e. 8 weeks) should be applied consistently to all proposals. European Commission continues to launch consultations of an inadequate duration and during holiday periods. The last example being the consultation on the Europe 2020 strategy whose consultation period was 7 weeks over the Christmas break for a so important dossier.

In addition to written consultations, well organised stakeholder meetings offer the possibility to directly discuss with the Commission a specific issue. With regard to the elaboration of comprehensive policies or strategies carried out over years, permanent stakeholder groups consisting of the Commission, Member States, business organisations and NGOs have proven to be extremely valuable. The new EU water strategy “Blue print for EU waters” is, for example, being developed in this way. These two types of discussion forum are important tools to gather information on the impact of legislation on the ground and to test whether the objectives are met. They should be more widely used by the various Commission services.

Regarding SME panels more precisely, this tool should be focused on technical legislation drafts having direct impact on SMEs.

- **Longer and earlier consultation periods**

Inadequate consultation greatly hinders the capacity of all interested stakeholders to react promptly and rigorously to consultations and thus not only reduces the probability of meeting policy objectives, but also increases the likelihood of negative unintended consequences coming to light during implementation.

EUROCHAMBRES advocates that the Commission’s existing consultation period of 8 weeks should be extended to at least 12 weeks, as it is currently the case in some Member States, such as the UK. The minimum period of twelve weeks should not count the holiday period and should start from the date all EU language versions are available. This seems appropriate given the lengthier process necessary for European stakeholders to aggregate and consolidate input from across the EU.

Consultations should also be conducted at a sufficiently early phase in the policy-making process to influence the path chosen, rather than in parallel. Ironically for instance, the Commission has already revealed the areas for the pilot policy evaluations, called “fitness checks”, that it will undertake (i.e. environment, employment, transport and enterprise) even though we have been asked some input in the present consultation.

- **Communicate the outcomes of the consultation**

It is equally important to give feedback to the stakeholders who have contributed to a consultation by publishing for instance a summary of the responses and how they have been taken into account by the Commission. This would foster cooperation and input from the stakeholders and ultimately improve their compliance with the legislation. For instance, DG Enterprise published a report on the results of the open consultation on the Small Business Act for Europe.

**Question 8:**

**Given that smart regulation can only be delivered if all institutions and Member States act together, what steps should be taken to ensure that this happens?**

EUROCHAMBRES expects all EU co-legislators to take responsibility vis-à-vis their promises to legislate properly and consider the impact of new legislation on businesses through an integrated and cross-institutional impact assessment system at EU level.

A crucial weakness in the European policy-making cycle is that impact assessments apply only to Commission proposals, which are often substantially altered by Parliament and Council in the course of the decision-making process. The impact assessment system is incomplete and unable to fully improve the final result: greater benefits at lower costs.

The Interinstitutional Agreement on Better Lawmaking (2003) and the Common Approach to Impact Assessment (2005) should be adapted effecting order to embed the “Think Small First” principle in EU policy-making.

Regulating in a smarter way also means that the Member States have to embark on the road of effective regulatory governance at national level by conducting impact assessments on new national legislation and improving the quality of transposition, implementation and enforcement of legislation.

## **EUROCHAMBRES’ recommendations**

### **1. An integrated and cross institutional system at EU level**

#### **1.1. Routine consideration of impact assessments by the Council and by the European Parliament**

Presidencies should systematically begin negotiations on all new dossiers in all Council working group formulations by providing delegations with the opportunity to thoroughly examine the impact assessment that accompanies a proposal and a review of the opinions of the Impact Assessment Board. This process could be facilitated by the Secretariat General, for example by encouraging successive incoming presidencies to follow this best practice and by organising training and providing tools to help working group chairs to understand this responsibility.

Member States have the responsibility to ensure that there is an improved awareness among delegations in all Council working groups that a preliminary and thorough consideration of the impact assessment, or assessment of impacts on significant amendments, is a necessary step in negotiations. Where impact assessments are considered by delegations to be lacking or inadequate, the Council should be ready to make a formal request to the Commission for further improvement before all negotiations can continue.

Similarly, the Secretary-General of the European Parliament should support all parliament rapporteurs in taking the same steps within committees and commission further work - including consulting with business stakeholders - if the committee considers it necessary. The Commission’s impact assessments should be routinely debated at the first exchange of views on a dossier, as recently pioneered by the Internal Market and Consumer Protection Committee. This will help to focus members on the key issues in any particular dossier and ensure additional scrutiny of the Commission’s analysis and methodology.

#### **1.2. Update of the impact assessment throughout the policy-making process**

It is notable that despite commitments to assess the impact of substantial amendments to proposals, there is little evidence of this actually happening in either the Council or the European Parliament. Whilst a thorough Commission impact assessment should provide evidence for most policy options, it is of considerable concern that this is not always the case. Accordingly, where the Council and Parliament consider tabling further significant

amendments to proposals, there should be agreement by both that these must also be assessed for their impact. The Secretary-General of the Council and the Secretary-General to the European Parliament should take steps to ensure that it is possible to support the Presidency or rapporteur to pursue requests for further cost-benefit analysis to be conducted, or, if necessary, a revised impact assessment should be prepared.

In this respect, EUROCHAMBRES applauds the Women's Rights and Gender Equality Committee's recent decision to carry out an impact assessment on its amendments of the Commission proposal on Pregnant Workers' Directive; thus paving the way to a new working method within the EP.

### **1.3. Harmonisation of the impact assessment guidelines**

The Commission's own internal impact assessment guidelines should be rolled out to the Council and Parliament. This should be supported by the provision of advice, training and guidance to officials in all three institutions and extended, for example, to support to Presidency working group chairs and Parliament rapporteurs for the handling of impact assessments during negotiations. Such support may be externalised, with options including the creation of a new body, or integrating it into the activities of the European Court of Auditors.

### **1.4. Independent annual review of the handling of impact assessments**

For the process to be fully complete, an independent annual review of the handling of impact assessments and cost-benefit analysis by the Commission, Council and European Parliament should be published. The review should build on the Commission's self-evaluation of the impact assessment guidelines.

## **2. National impact assessments**

A quarter of EU Member States seems not to conduct impact assessments on new national legislation<sup>11</sup>. Only in 50% of those countries in which impact assessments are conducted, is an 'SME Test' included. In about 90% of those countries in which impact assessments are regularly conducted, stakeholders are not involved in the impact assessment process.

EUROCHAMBRES expects all Member States to put in place comprehensive, transparent and accessible impact assessment systems at national level, integrating the 'SME Test'.

Member States should adopt a uniform methodology to assess the impact of new legislation, in order to enable cross-country comparisons to be made. The Standard Cost Model (SCM) used by some EU countries as a method to measure the impact of regulation has been recognized as a good practice and could be applied cross EU Member States. The Commission should also ensure a better alignment of Member States and EU impact assessment procedures with regard to the implications for SMEs before new regulation is introduced.

Finally, all national impact assessment systems should be publicly accessible.

## **3. Improved legislative transposition and enforcement**

Overall, the quality of transposition, implementation and enforcement of legislation at national level should be greatly improved. EUROCHAMBRES strongly recommend the implementation of the following measures:

- Common commencement dates (CCD) should be designated each year, at fixed dates, by all Member States when new legislation impacting on businesses is introduced. Among other things, this would make it possible for Chambers of Commerce and other business support networks to brief firms at pre-set times about the new rules affecting their businesses. Common commencement dates were introduced in the UK for domestic regulation in 2005. According to the British government, they have saved UK SMEs between €15-30 million a

year. The figure could be as high as €1 billion a year if savings for large companies were included<sup>16</sup>. This is a visible measure for companies who often do not feel the direct benefits from the work carried out by their government to cut red tape and which would create greater buy-in to the Smart Regulation process. Following the example of the UK, the Dutch government has introduced a CCD system for the entry into force of new and altered legislation (i.e. on 1 January and on 1 July) and a minimum implementation period of two months after publication. Common commencement dates should also be extended to EU legislation as announced by the Commission in the Small Business Act for Europe.

- Each Member State, in close cooperation with the Commission, should establish a permanent ‘contact point for transposition and implementation’ to liaise with the relevant authorities, track developments and fulfill a qualitative control function. However, this should not lead to new administrative burdens and costs to businesses.
- Member States should enhance transparency not only on their transposition record, but also with regard to the actual implementation and enforcement of legislation, which has to be equally applied to public as well as to the private sector. The Commission should fulfill its role as “guardian of the Treaty” and “correlation tables” showing the correctness of the application of Community law, should be created and published<sup>17</sup>. This would certainly encourage peer review.

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<sup>16</sup> UK response to European Commission’s consultation on a Small Business Act for Europe

<sup>17</sup> The 2003 Interinstitutional Agreement on Better Law-Making encouraged Member States to set up tables to illustrate the correlation between the Directives and the transposition measures and to make them public.

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