

EUROPEAN UNION



Committee of the Regions

CIVEX-V-013

**6th Commission meeting
13 December 2010**

**WORKING DOCUMENT
of the
Commission for Citizenship, Governance,
Institutional and External Affairs
on
SMART REGULATION**

Rapporteur: **Cllr Lord Graham Tope (UK/ALDE)**
Member of the London Borough of Sutton

This document will be discussed at the meeting of the **Commission for Citizenship, Governance, Institutional and External Affairs** to be held on **13 December 2010**.

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Reference documents

Communication from the Commission on Smart Regulation in the European Union
COM(2010) 543 final
Report from the Commission on Subsidiarity and Proportionality (17th Report on Lawmaking
covering the year 2009)
COM(2010) 547 final

Overview

1. Better, smarter EU regulation will help to improve the efficiency of policies and economic performance, foster creativity and innovation, contribute to growth, the creation of jobs and overall prosperity. Local and regional authorities have a stake in both the design and application of EU law: to a large degree, they are responsible for its implementation and application. The Treaty obliges the EU institutions to take into account the local and regional dimension of new initiatives, notably the financial and administrative burden of new EU laws.
2. The main elements of the EU better regulation strategy have been the following:
 - assessing the impact and improving the design of major Commission proposals;
 - implementation of a programme for the simplification of existing legislation;
 - withdrawal of obsolete legislation or proposals;
 - widespread use of stakeholders' and citizens' consultations;
 - looking at alternatives to laws and regulations (e.g. self-regulation, or co-regulation).
3. "Smart regulation" is a change of terminology. Smart regulation will cover the whole policy cycle – from the drafting of legislation to its implementation and review; it should ensure that stakeholders will increasingly participate in the process leading up to the adoption of legislation. On the political level, smart regulation is placed directly under the responsibility of the Commission President, an indication of its scope and importance.

Smart regulation

4. The European Commission identifies three elements of "smart regulation":
 - 4.1 Whole policy cycle

The European Commission will continue the work on **simplification of existing legislation and administrative burden reduction**.

- "Simplification" does away with duplication of legislation and multiple obligations placed upon business. But simplification can result in significant efficiencies in terms of costs and personnel, not only for business but also for public administrations.
- The reduction of administrative burdens aims to cut red-tape by 25% until 2012. EU laws can be the cause of administrative burdens not only on business, but also on citizens and public administrations; moreover, the reduction of administrative burdens on business should not only be achieved through a transfer of these burdens on to local and regional authorities. Since September 2008, the CoR has been participating as an observer on the High Level Group on Administrative Burdens.

The Commission will step-up the **evaluation of benefits and costs of existing EU law**, not only individual legislative instruments but also entire policies (initially environment, transport, industrial, and employment and social policy). These "fitness checks" will assess whether the regulatory framework for an entire policy area is fit for purpose.

The Commission will continue to conduct **regulatory impact assessments** in preparation of new legislation and major policy initiatives: these look into the possible economic, social and environmental impacts of the policy options. The Commission is also supposed to look at the territorial impacts of its proposals, especially on local and regional authorities, but this is rarely done. The CoR has offered to assist the European Commission in the assessment of the impacts of specific proposals on local and regional authorities: in 2009 the CoR conducted two pilot impact assessment exercises (Health Inequalities; Drinking Water Directive) and an impact assessment exercise on the 2010 EU Biodiversity Strategy which was recently concluded and has been submitted to the European Commission. Although the CoR is not equipped to conduct these exercises on a systematic basis, it is looking into ways to consolidate its cooperation with the European Commission on the assessment of territorial impacts of legislative proposals of significant importance for local and regional authorities.

4.2 Shared responsibility of the EU institutions and the Member States

The European Commission calls on **all EU institutions to step up their efforts to make smart regulation a reality**. Rarely have the Parliament or Council assessed the impacts of their amendments – maybe a lesson here for the CoR in preparing its own opinions.

Member States also have an important role to play in achieving smart regulation. This naturally includes local and regional authorities, in particular - *but not only* - where the latter are endowed with legislative powers under the national constitution. Some Member States go beyond what is required by EU legislation ("gold-plating"). The Commission has called upon the High Level Group on Administrative Burdens to draft a report on "Best Practices in the implementation of EU legislation", and evidently this must involve those who actually implement EU legislation: local and regional authorities.

National parliaments now monitor the application of the subsidiarity principle in legislative proposals and have the possibility to participate in the **Early Warning Mechanism**. This ensures that national and regional parliaments participate in the debate on EU legislation and policy making. However, local authorities are effectively excluded from this process in most countries, their participation being dependant upon them receiving adequate information on the legislative proposals and activity in a timely manner from their national parliament. A benchmarking exercise could be useful.

4.3 Taking account of the views of those affected

Major legislative or policy proposals are preceded by on-line consultations. A wide variety of actors including citizens, interest groups, NGOs and public authorities participate in these consultations. The European Commission intends to review its **overall consultation policy** building upon its minimum standards for consultation from 2002.

Subsidiarity, proportionality and multilevel governance

5. Both these fundamental principles of EU law are cornerstones of smart regulation.
 - Subsidiarity determines at which level action should be taken when competences are shared between the EU, the Member States and the sub-national level;
 - Proportionality helps define the intensity and scope of the action to be taken.
6. Subsidiarity is linked with "multilevel governance", a concept which implies that all actors concerned along all levels of government and throughout civil society should be involved in the conception, debate and implementation of EU policies. A variety of actors at the regional or local level are involved in subsidiarity monitoring, either through the early warning mechanism put in place by the Lisbon Treaty, or through the activities of the CoR.
7. The 17th report on subsidiarity and proportionality still refers to 2009, i.e. before the entry into force of the Lisbon Treaty and the innovations it brings in terms of subsidiarity.

Possible CoR response

8. The CoR considers that smart regulation should be pursued in the spirit of multilevel governance: through coordinated action by the EU, national institutions and local and regional authorities, based on a partnership and participatory approach.
9. The CoR might:
 - note the increased references to the local and regional dimension of smart regulation and to the related activities and capabilities of the CoR as recognition of the role Europe's local authorities and regions have in EU policy making and the implementation of legislation;
 - encourage the European Commission and other EU institutions to pay closer attention to local and regional government when designing legislation, assessing its impacts or devising ways to implement European policies and objectives;
 - reiterate the significance of *ex post* evaluation and sound impact assessment in policy making;
 - state its readiness to assist the EU institutions these endeavours, if data from local and regional authorities is needed, whilst recalling its limited resources and core mission;

- reiterate the CoR's commitment to continue working together with the European Commission to integrate multilevel governance into the major European strategies and common policies especially as regards the implementation of the EU 2020 strategy;
- suggest that the inter-institutional instruments on better lawmaking be reviewed, including the Cooperation Agreement between the CoR and the European Commission.

PROCEDURE

Title	Smart Regulation
Reference(s)	Communication from the Commission on Smart Regulation in the European Union COM(2010) 543 final Report from the Commission on Subsidiarity and Proportionality (17th Report on Better Lawmaking covering the year 2009) COM(2010) 547 final
Legal basis	Art. 307 (1) TFEU
Procedural basis	Rule 39 (a) RoP
Date of the referral	8 October 2010
Competent Commission	CIVEX
Rapporteur	Cllr Lord Graham Tope (UK/ALDE) Member of the London Borough of Sutton
Background memo	
Exchange of views in CIVEX	13 December 2010
1st reading & adoption in CIVEX	8 April 2011
Vote outcome	
Date of adoption by the plenary session	30 June or 1 July 2011
Previous CoR opinions on this subject	<ul style="list-style-type: none"> – Opinion on the <i>Commission report to the European Council "Better lawmaking 1998 – a shared responsibility"</i> - COM(1998) 715 final¹ – Opinion on the <i>Commission report to the European Council "Better lawmaking 1999"</i> - COM(1999) 562 final² – Opinion on <i>Simplification of the Union's instruments</i> - COM(2001) 428 final, COM(2001) 275 final, COM(2002) 278 final, COM(2001) 728 final, COM(2002) 276 final, COM(2002) 277 final³ – Opinion on <i>Better Lawmaking 2002</i> and the <i>Communication from the Commission Updating and simplifying the Community acquis</i> - COM(2002) 715 final, COM(2002) 278 final, COM(2002) 276 final, COM(2002) 275 final⁴

1 OJ C 374 of 23.12.1999, p. 11.

2 OJ C 226 of 8.8.2000, p. 60.

3 OJ C 73 of 26.3.2003, p. 73.

4 OJ C 73 of 23.3.2004, p. 38.

	<ul style="list-style-type: none">- Opinion on <i>Better Lawmaking 2004 and Better Regulation for Growth and Jobs in the European Union</i> - COM(2005) 97 final, COM(2005) 98 final⁵- Opinion on <i>Better Lawmaking 2005 and 2006</i> - COM(2006) 289 final, COM(2006) 689 final, COM(2006) 690 final, COM(2006) 691 final, COM(2007) 23 final, COM(2007) 286 final⁶- Committee of the Regions' <i>White Paper on Multilevel Governance</i>⁷- Opinion of the Committee of the Regions on <i>Better lawmaking package 2007-2008</i>⁸
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5 OJ C 81 of 4.4.2006, p. 6.

6 OJ C 305 of 15.12.2007, p. 38.

7 OJ C 211, 4.9.2009, p. 1-27.

8 OJ C 141, 29.5.2010, p. 1-4.