

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

465TH PLENARY SESSION HELD ON 15 AND 16 SEPTEMBER 2010

Opinion

of the

European Economic and Social Committee

on the

'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Third strategic review of Better Regulation in the European Union'

COM(2009) 15 final

'Commission Working Document — Reducing Administrative Burdens in the European Union — Annex to the 3rd Strategic Review on Better Regulation'

COM(2009) 16 final

'Commission Working Document — Third progress report on the strategy for simplifying the regulatory environment'

COM(2009) 17 final

(2011/C 48/19)

Rapporteur: **Mr CAPPELLINI**

Co-rapporteur: **Ms ANGELOVA**

On 15 July 2009 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Third strategic review of Better Regulation in the European Union'

COM(2009) 15 final

'Commission Working Document – Reducing Administrative Burdens in the European Union – Annex to the 3rd Strategic Review on Better Regulation'

COM(2009) 16 final and

'Commission Working Document – Third progress report on the strategy for simplifying the regulatory environment'

COM(2009) 17 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 July 2010.

At its 465th plenary session, held on 15-16 September 2010 (meeting of 15 September), the European Economic and Social Committee adopted the following opinion by 103 votes with 2 abstentions.

1. Summary of conclusions and recommendations

1.1 Enterprises and civil society need a legal framework that is easy to understand and to apply. Better Regulation helps to increase competitiveness by removing the unnecessary costs and burdens of this legal framework.

The EESC firmly supports this policy and sees Better Regulation as a way to support business during these times of economic crisis without incurring additional costs and investments.

1.2 Better Regulation should enhance the quality, coherence and delivery of a proportionate and targeted legal response to market failures and the EU 2020 agenda. Better regulation can be reached by cutting unnecessary regulation but at the same time it does not mean a complete deregulation⁽¹⁾. It aims to make rules simple, workable and less costly for users and taxpayers. Better Regulation should promote swift and effective decisions, effective implementation, and procedures should be monitored to ensure full accountability.

1.3 Better Regulation should be seen as a single and coherent policy that embodies a full set of principles, such as the 'Think Small First' principle of the Small Business Act SBA, using 'The Small Business Test' more regularly and systematically than at present. The EESC proposes that the policy should be comprehensive and consistent and that it draws more systematically on stakeholders to this end. Consultations should follow transparent priorities and be authentic, inclusive, and consequential.

1.4 Better Regulation would be greatly advanced if it was less technocratic and more informed through broad civil society involvement at all levels of regulatory activity. Impact assessments should be directed to ESCs at the national and EU level in a timely fashion and a full evidence base should be made available. EU regulations would benefit from the innovative solutions, greater awareness and legitimacy derived from these deliberations.

1.5 A shift from Directives to Regulations would greatly improve transparency, implementation and enforcement. Many regulatory problems take place during transposition into national law. Member States should not duplicate or add complexity to EU legislation and they should be closely monitored to this end by the Commission and all social partners⁽²⁾.

1.6 The Committee encourages the Commission to address Better Regulation in the use and administration of European funds by Member States, especially by avoiding unnecessary

or undue national rules and administrative procedures that hinder the proper and swift allocation of such resources⁽³⁾.

1.7 Better Regulation could be supported by the EESC in representing the successes as well as the challenges of the policy to civil society and other bodies. This would provide tangible evidence of the EESC role in the participatory democracy described in Article 11 of the Lisbon Treaty⁽⁴⁾.

2. Introducing Better Regulation

2.1 Regulation is a central instrument of EU policy. The EU's legal instruments have delivered the Single European Market, enhanced competitiveness and wider consumer choice and protection, lower transaction costs, environmental protection and a wide range of other benefits to businesses and citizens of the EU. They have also provided legal certainty in the market place by replacing a wide range of national regulations with clear sets of common rules that businesses can adapt to and comply with and that citizens, employees and consumers can benefit from across Europe.

2.2 The success of regulatory reform has increased the demand for regulation to manage non economic risks. While the use of regulation to achieve social goals is not new in the Member States, the development of EU level regulatory behaviour presents problems of implementation, overlapping, gold-plating and misunderstanding. Regulations may also hinder the use of non regulatory tools. The credibility of the EU depends on the coordinate delivery of its policies so a Better Regulation-strategy is now vital.

2.3 Better Regulation should enhance the quality, coherence and delivery of a proportionate legal response to market failures, as markets do not always provide optimum outcomes, and often fail to reflect all external costs. The poor allocation of resources that result have to be addressed by effectively protecting the interests of key users (such as consumers, workers, and small and medium size businesses) managing key risks (environmental, health, safety and social needs), while fully preserving competitiveness and the entrepreneurial spirit. Thus, Better Regulation, should never be considered as tantamount to de-regulation, even as it aims to make rules simple, workable and less costly for users and taxpayers. The rule of law is the cornerstone of any organised society but if poorly designed can hinder its proper functioning and lead to unequal treatment for citizens, workers and businesses.

⁽¹⁾ OJ C 175, 28.7.2009, p. 26, point 4.4; OJ C 24, 31.1.2006, p. 39; OJ C 93, 27.4.2007, p. 25.

⁽²⁾ OJ C 277, 17.11.2009, p. 6; OJ C 24, 31.1.2006, p. 52; OJ C 204, 9.8.2008, p. 9; OJ C 93, 27.4.2007, p. 25.

⁽³⁾ For example on State aid or on public procurement applied to undertakings.

⁽⁴⁾ OJ C 354, 28.12.2010, p. 59.

2.4 Proper consultation is vital. A well designed and targeted regulation delivers certainty by ensuring clarity and consistency in the rules as well as facilitating compliance and enforcement. It needs to spell out its objectives and the most effective, least cumbersome and cheapest ways to achieve them. An improved evidence base that draws on a broader range of indicators does help, but most policies cannot be judged on this alone. Broad consultation with stakeholders and experts plays a vital role in striking the balance between attaining policy goals and limiting the administrative burden for businesses and individuals. Failure to strike this balance may lead to complex rules that are difficult to use, comply with or enforce, and involve disproportionate costs. Better consultation will raise awareness and so improve application.

3. The Commission's Actions

3.1 The Commission's Third Progress Report on the implementation of its 2005 Communication⁽⁵⁾ reviews progress to improve existing legislation, to reduce administrative burden for businesses and individuals, and to anchor new initiatives that promote a better regulatory culture.

3.2 The Report shows the performance and new targets for the updating, modernising and simplification exercise⁽⁶⁾. The Communication estimates that simplification in the 13 priority areas identified in 2007 will cut EUR 115-130 billion of administrative costs. SME exemptions from statistical reporting will save more than EUR 200 billion from 2010. Removing barriers to electronic invoicing under the VAT Directive and creating a paperless environment in EU customs will also realise significant savings.

3.3 The Review highlights how integrated impact assessments improve the quality and coherence of the EU's legal framework. This impact assessment mechanism will be further improved and reinforced. The Report underlines the need for Better Regulation to be made a priority at all levels in the EU and across all Institutions and bodies. Cooperation with Member States to improve the application of Community law is also essential, despite limited progress to date. The Report also stresses the need for closer cooperation with EU trading partners and for convergence in setting global regulation by shaping the G-20 agenda in this field.

3.4 The EESC welcomes the Commission's results and its new priorities to enhance effectiveness. The commitment to pursuing this policy contributes to competitiveness and job

creation and so will aid economic recovery but also needs to engage urgently more broadly with those benefitting from these policies.

4. Better Regulation and EU policy making

4.1 Better Regulation is a fully-fledged policy. By acting in a comprehensive and coordinated way its aim is to reduce the burden for businesses and to transform lawmaking into an effective tool to address society's needs in a proportionate and useable manner. It should embody a full set of principles, such as the 'Think Small First' principle of the SBA, choose priorities transparently and in close cooperation and extensive consultation with stakeholders, make swift and effective decisions and monitor implementation and procedures to ensure full accountability.

4.2 Better Regulation needs to be pursued in a more coherent and comprehensive way as isolated initiatives do not add value. The Communication provides a description of its actions and specific plans but fails to provide an overview of how these plans interact and respond to the shortcomings identified in the original agenda⁽⁷⁾. If Better Regulation is to be coherent it must provide more clarity on how it is shaped. The EESC believes that all EU Institutions, and in particular the Commission where performance can be varied, should resolve this issue together.

4.3 Improving existing legislation involves more than cutting the Official Journal and the number of acts. The EESC thus welcomes the Commission's commitment towards a more integrated approach that targets overlaps, redundant legislation, gaps, inconsistencies and above all the reduction of administrative burdens⁽⁸⁾. Key areas in this field are the effective reduction of information or disclosure requirements, in particular for SMEs, in areas like statistics, VAT or company law. The EESC supports the general thrust behind the new steps to simplify, update and improve existing legislation.

4.4 The EESC welcomes the scrutiny undertaken under the impact assessment process as it leads to a more comprehensive evaluation of the need for new rules. The EESC also praises the Impact Assessment Board for the quality of its delivery. Independent scrutiny by this body, coupled with its transparency and wide consultation with stakeholders, are vital for better lawmaking. The EESC endorses the improvements envisaged under this line of action.

4.5 However, the completion of the Commission's screening

⁽⁵⁾ COM(2005) 535 final, 25.10.2005.

⁽⁶⁾ Including the Simplification Rolling Programme, the screening of the acquis, codification and recasting, repeal of obsolete acts among others.

⁽⁷⁾ COM(2005) 535 final, 25.10.2005; COM(2007) 23 final, 24.1.2007.

⁽⁸⁾ COM(2009) 16 final.

exercise clearly demands a political conclusion on this issue⁽⁹⁾. No such mention is to be found in the Communication, leaving doubts as to whether the Commission considers it has already undertaken this task.

5. Better Regulation in Member States

5.1 The EESC notes with some concern that plans to coordinate efforts with Member States are lagging behind. This reduces the effectiveness of the initiative. Member States need to make impact assessments before regulations are adopted, when possible – whenever substantial changes are introduced and their national impact assessment bodies need to be brought more into EU level discussions. The coordination of national programmes to reduce red tape is vital and any delay in realising this threatens the competitiveness of the European economy. Promoting this agenda should be considered as a matter of common interest.

5.2 Better Regulation should not be reduced to improving the production of laws or the prevention of legislative inflation alone. It needs to reflect on alternative ways to reach similar results by promoting co-regulation and the more extensive use of codes of conduct through deliberative methods⁽¹⁰⁾. The standardisation of technical requirements provides examples of good practice in tackling this complex issue without resorting to cumbersome harmonisation directives that do not keep pace with consumer and business needs. The achievements in industrial goods should be mirrored by other activities, in particular services⁽¹¹⁾.

5.3 While the Commission fails to promote such complementary activity the legislative gap is being filled by an increasing number of national rules, and these undermine the coherence of the Internal Market. Ambiguous national legislation should be avoided. The exchange of best practices and benchmarking between the Member States should be encouraged in this respect. Better Lawmaking can only feed into tangible benefits to citizens if national authorities become fully involved in the process. Transposition should preserve the spirit of simplification and enhanced lawmaking by blocking the reintroduction of barriers and burdens through the back door.

5.4 The achievements of the Internal Market are too often offset by barriers raised at the national level. Mapping results show that *'a very significant proportion of administrative burdens appear to be the result of inefficient public and private administrative practices (between 30 and 40 %)*'⁽¹²⁾. Yet no indication on such practices is provided in the Communication nor are measures envisaged to redress such unwarranted moves. The EESC is concerned that the imposition of additional requirements through the transposition of directives into national law may

undermine the enforcement of common rules across the Internal Market. The EESC believes that more should be done at the EU level to reduce the scope of potential burdens from being introduced by national authorities. A more comprehensive approach to Better Lawmaking, closely involving national authorities, private bodies and stakeholders seems essential. Directives should not only target minimum requirements but also the limits of discretionary lawmaking by Member States. Telecom rules provide an example where such limits have been imposed to curb any such unilateral action.

5.5 The EESC also believes that Member States should refrain from transposing EU rules that do not need to be transposed in national law as this introduces uncertainty and leads to potential incoherence. The original 2005 agenda proposed changing Directives to Regulations whenever practical and feasible under the Treaty. This idea has not been developed further and the Communication makes no reference to it. Regulations convey more certainty, create a level playing field and can ensure the simultaneous implementation of measures, which directives often do not. Where Regulations and State aid guidelines are turned into national law but with different words and meaning the Commission should provide guidance to Member States. In some cases the 28th regime could be considered as an option⁽¹³⁾.

6. A greater role for civil society and social partners in Better Regulation

6.1 The EESC has devoted extensive analysis and time to the Better Regulation agenda. It has delivered general and targeted opinions on enhancing EU lawmaking and challenged Commission proposals. It has advanced precise proposals to reinforce the legal framework of the EU on how to improve EU legislative procedures, legislation and implementation⁽¹⁴⁾. It has fostered an integrated approach to lawmaking by emphasising the importance of a proactive approach, of enhanced transparency and consultation, and of institutional accountability⁽¹⁵⁾. It has also extended Better Regulation to cover national law as a necessary complement to the EU level exercise⁽¹⁶⁾.

6.2 The EESC's Single Market Observatory (SMO) has channelled stakeholder's views and initiatives to show good practice in better lawmaking. As an institutional forum of expression for organised civil society it has closely cooperated with EU institutions and in particular with the Commission, offering advice

⁽⁹⁾ 6.2 of COM(2009) 17 final.

⁽¹⁰⁾ OJ C 175, 28.7.2009, p. 26.

⁽¹¹⁾ COM(2005) 535 final, 25.10.2005, par. 3d.

⁽¹²⁾ See 2.3 of COM(2009) 16 final.

⁽¹³⁾ CESE 758/2010 (INT/499, not yet published in the OJ).

⁽¹⁴⁾ OJ C 24, 31.1.2006, p. 39, OJ C 24, 31.1.2006, p. 52.

⁽¹⁵⁾ OJ C 175, 28.7.2009, p. 26.

⁽¹⁶⁾ OJ C 277, 17.11.2009, p. 6.

and support on Better Regulation issues. This Opinion builds on previous contributions, day-to-day cooperation and on good practice.

6.3 TEU Article 11 gives a special role for the EESC in the realisation of vertical and horizontal dialogue⁽¹⁷⁾. Consultation with stakeholders for reducing administrative burdens are still not at a satisfactory level. While the High Level Stakeholders group makes a useful contribution the European associations and organisations that represent the major stakeholders - employers, employees, consumers, environmental and other interests - should also be more involved in the consultation process. Only 148 submissions have been made on-line and only 237 ideas for cutting red tape have been submitted in reports and letters⁽¹⁸⁾. Civil society groups need to be more involved in the Better Regulation agenda. They engage more broadly, communicate its value to citizens, businesses and workers and underline Europe's commitment to designing policies that are easy to grasp and to use.

6.4 In this respect, the Communication is too technocratic in its presentation. It does not sufficiently convey the benefits from the Better Regulation drive to Europe's citizens and enterprises. Organised civil society can help here by disseminating results and articulating the demand for a policy that will both monitor and promote implementation of Better Regulation principles at the national and EU levels⁽¹⁹⁾.

6.5 The EESC believes that closer involvement with civil society and social partners should be sought in order to deliver a more balanced overview. All too often, stakeholders represent particular interests that need to be combined with more general ones from civil society as a whole. The SMO and the Committee of the Regions are already playing an active role in this respect and the EESC reiterates its willingness to become more closely involved in the production of a sound evidence base to inform decisions.

6.6 The EESC supports the view that all EU Institutions should coordinate their approaches to Better Regulation. The

swift adoption of simplification measures by legislative bodies is essential, as are amendments to original proposals that clearly spell out their compliance cost and benefits.

6.7 Impact assessments should therefore be carried out on a comprehensive and comparative basis, regardless of the institutions that perform them. They should develop a range of evidence bases to explore the impact of laws across the full range of economic, social and environmental interests.

6.8 The EESC proposes that Better Regulation draws more on the higher education sector to expand its evidence base in making impact assessments. Academics undertake research and educate students to produce high quality objective data that is often validated through peer review. However much of this is not engaged with in policy debates. This would improve the capacity to deliver Better Regulation as well as engaging with a broader section of European society.

7. Specific issues

7.1 Effectiveness in implementing EU funds is often hampered by national rules on State aid or public procurement that go far beyond Community requirements. The EESC invites the Commission to prioritise the improvement of the legal framework governing EU Funds to address this issue. The low absorption rate and poor allocation of resources demonstrate that EU Funds suffer from barriers imposed by national legislation.

7.2 The EESC welcomes the desire to shape global regulation referred to in the Communication and the practical steps taken to ensure better cooperation with our trading partners. Europe should play a leading role in this area by offering its expertise for the development of a more integrated and coherent global regulatory environment. It is exerting a key influence in shaping financial reforms and should pursue efforts in all fields, especially by facilitating trade through common standards and enhancing legal certainty for businesses and direct investments around the world.

Brussels, 15 September 2010.

The President
of the European Economic and Social Committee
Mario SEPI

⁽¹⁷⁾ OJ C 354, 28.12.2010, p. 59. (Article 11).

⁽¹⁸⁾ According to 5.1 of COM(2009) 16 final.

⁽¹⁹⁾ OJ C 204, 9.8.2008, p. 9.