



Mr Jakub Koniecki
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Dear Mr Koniecki,

Re: FEE Comments on the European Commission's Stakeholder Consultation on Smart Regulation

- (1) FEE (Fédération des Experts-comptables Européens - Federation of European Accountants) is pleased to provide the European Commission with comments on the Stakeholder Consultation on Smart Regulation and would like to thank you for extending the time for comments.
- (2) FEE represents 43 professional institutes of accountants and auditors from 32 European countries, including all 27 EU Member States. In representing the profession, FEE recognises the public interest. FEE has a combined membership of more than 500.000 professional accountants working in different capacities in public practice, small and larger firms, business, public sector and education, who all contribute to a more efficient, transparent, and sustainable European economy.
- (3) We believe that the Commission has made important advances in the area of better regulation, but that often it is only some of the member states which are driving forward the agenda (Netherlands, Denmark, UK). FEE acknowledges and welcomes the progress made by the European Commission in recent years. This has created expectations on which it is important to deliver in substance.
- (4) We have always contributed to such initiatives and refer in particular to our letters to Commissioner McCreevy dated 26 September 2007¹ and 19 October 2007² as well as to the FEE publications of 21 March 2007³, 11 July 2007⁴ and 5 February 2008⁵.

¹ <http://www.fee.be/fileupload/upload/McCreevy0709262112007191027.pdf>

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?

- (5) FEE welcomes the Commission's initiatives aiming at better or smart regulation with as aim boosting Europe's economy. This general objective can bring particular benefits to SMEs that often suffer disproportionately from administrative burdens.
- (6) New regulation and changes to existing regulation such as simplification initiatives must ensure balance between the achievement of public policy goals and the creation of real benefits for enterprises whilst minimising burdens. Broad stakeholders' consultation is an essential tool to achieve such objectives, as is proper impact assessment.
- (7) Policy initiatives in all sectors have a significant and lasting impact on the EU economy: for this reason they must be pursued with great care on the basis of a thorough impact assessment. The costs and the benefits of both the current requirements and the envisaged changes have to be assessed.

Question 2: 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? How can stakeholders, including SMEs, better indicate which pieces of legislation should be simplified? Could you give us practical examples?

- (8) Simplification and administrative reduction programmes should be focused on reducing the costs of regulation as a whole, when they are not offset (or balanced) by benefits.
- (9) For that purpose, suitable methodologies need to be developed. For instance FEE has already outlined the weaknesses of the Standard Cost Model (SCM) methodology which measures cost in a rather simplistic way, if not on an arbitrary and speculative basis; in addition, this approach seems to sometimes ignore the benefits of existing public policy measures or the importance of their ultimate goals. While we understand the difficulties of measuring certain impacts and the need to find acceptable proxies, with such an approach the expected benefits will never materialise.
- (10) Furthermore, communication on any administrative burdens reduction programme and simplification should be carefully considered as it is the way to gain (or loose) credibility with stakeholders, including SMEs.

² <http://www.fee.be/fileupload/upload/McCreedy%20071019%20Simplification%20Position1910200723143.pdf>

³ <http://www.fee.be/fileupload/upload/FEE%20Position%20EC%20Simplification%20Project%20-%20Fin%20Rep%20and%20Auditing%200703211072007121539.pdf>

⁴ http://www.fee.be/publications/default.asp?library_ref=4&content_ref=699

⁵ http://www.fee.be/publications/default.asp?library_ref=4&content_ref=777

- (11) On 11 July 2007, FEE gave a series of examples where based on the field experience of accountants it believes that the main burdens imposed on companies are:
- Overlaps and frequency of reporting, filing and other requirements for different regulatory purposes such as tax, incorporation, employment and statistics;
 - Dividend distribution requirements;
 - Implementation of health and safety legislation and returns;
 - Administration of miscellaneous social security programs (calculation, payment and statistical reporting to authorities);
 - The insufficient use of e-Government solutions.

In addition, certain opportunities for further simplification may not be fully exploited as for instance, there is no indication in the EU of a common approach toward XBRL, leading to Member States' piecemeal initiatives and a more complex EU taxonomy.

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?

- (12) Ex-post evaluations of regulation appear to be exercised quite rarely; therefore initiatives to enhance the frequency and quality of such reviews should be encouraged. Impact assessment should equally be carried out when evaluating existing regulation.
- (13) Impact Assessments could set out assumptions on how business will adapt to new regulation and the ex-post evaluation could explicitly address these. This would set up a feedback loop allowing the Commission to learn more about compliance behaviour, enforcement, implementation, behavioural change and whether the policy objectives have been achieved.

Question 4: Which sectors do you think should be subject to a pilot policy evaluation?

- (14) From FEE's viewpoint, it may seem more important to analyse areas of regulation rather than sectors of activity. European trade and sector organisations are best placed to identify relevant sectors and should be engaged into an ongoing consultation. It may also be interesting to target sectors that include many SMEs. It also seems to us that areas such as environment, employment, enterprise and transport may appear relevant for "Fitness checks" and pilot policy evaluations. It should however be outlined that there may be more benefits to achieve in assessing regulations that apply to all sectors
- (15) More generally, accountants working in and with SMEs are often confronted with the complexity of regulation in the field of employment; therefore this area could be the subject of further simplification.

- (16) Regarding environmental legislation, we believe that, while there may be opportunities to simplify requirements, the paramount objective of moving to a sustainable economy should not be undermined and regulatory standards weakened.

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?

- (17) FEE fully supports impact assessments which – as correctly outlined in the second paragraph on page 3 of this consultation – analyse both benefits and costs.
- (18) When assessing existing directives, it should be remembered that at their inception a number of benefits were expected; it is therefore necessary to evaluate whether (a) these objectives are still appropriate, (b) they have been achieved and (c) there are more cost effective ways to achieve them. In the past, the impression has sometimes been created that the public policy objectives were disregarded and that the Commission was focusing on simplistic, superficial and short-term cost cutting.
- (19) Comprehensive impact assessment should not be limited to direct monetary costs but should aim at considering indirect cost to the extent possible, like the impact on business bankruptcies.
- (20) Impact assessments are performed on Commission's proposals. However Council and Parliament often bring significant amendments to these proposals. Such amendments form an integral part of the democratic process. However their impact should equally be assessed so that the legislators are properly informed of the consequences of their decisions.
- (21) This raises however two difficult issues regarding the time required to pass legislation and the independence of the responsible body carrying out the impact assessments. We believe that, in a mature and credible system of impact assessment, the Impact Assessment Board should be independent from all institutions concerned.
- (22) In paragraph 3 of the consultation document it is suggested that impact assessments also cover implementing measures (comitology). FEE fully supports this proposal. This is already current practice concerning IFRS for instance. However, the consultation suggests limiting impact assessments to comitology items with significant impact. This raises the important issue of who would decide on the significance of the item. It seems difficult to take such a decision before an impact assessment is carried out.
- (23) In these times of intense regulatory activity, it is important to ensure coherence between initiatives. Comprehensive impact assessments must address the cumulative and/or systemic impact of different pieces of regulation; so not add-up separate assessments, but assess interactions between different regulatory initiatives including from various units or various DGs.

- (24) To achieve these objectives in a timely manner and to provide the expected level of quality and objectivity, proper resources, both in terms of skills and workforce, must be devoted to such impact assessments.
- (25) Impact assessments often include consultations by the Commission. FEE believes that an independent Impact Assessment Board should prepare guidelines on how summaries of the feedback received in such consultations should be prepared.
- (26) Overall, impact assessments should be initiated or carried out objectively and independently based on grounded needs and robust facts and should not be politicised or pre-empting a certain direction.
- (27) The quality of impact assessments needs to be continually enhanced and proper resources, both in terms of quantity and competences, need to be allocated to impact assessment. Sufficient resources are essential to the depth and quality of the impact assessments: they are also essential to avoid unduly slowing down the legislative process.

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?

- (28) Quantifying social impacts is particularly challenging. Surveys, objective indicators, engagement with stakeholders and ongoing dialogue with experts and NGOs are essential. Considering social, environmental and governance reporting standards could also contribute to the assessment.

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)?

- (29) Consultation is an integral part of better regulation. Sufficient time for the stakeholders to prepare the response to a consultation document is crucial for the quality of such input and thus for all further work on the proposed legislation.
- (30) In general, the deadlines of consultations (e.g. 60 days) are perceived as being too short taking into account that European organisations, enterprises and other stakeholders usually have to (i) involve a number of parties to collect facts and views, (ii) prepare a well-balanced response on the basis of such input and (iii) follow an internal due process before the final response can be filed. It should be noted that such a process in representative organisations is a guarantee of quality, robustness and representativity of the submissions made in the course of the consultation.

- (31) Furthermore, we believe that the input from respondents cannot always have the same weight. For instance the representativity, the European scope and the expertise of an organisation should be taken into consideration into the weighting of the different responses received. Responses from e.g. individual persons or companies can certainly add value to a consultation but may not necessarily carry the same weight than the compromise developed in a European representative organisation following a solid due process. National organisations can also add particular value, for instance where the same organisations will be eventually implementing / dealing with any legislative changes.
- (32) Providing neutral feedback on the outcome of the consultation may be as important as the consultation itself. Stakeholders need to be able to gain an understanding of the feedback provided by others. It would be also a best practice if the Commission would report on how the input it has received has been considered, especially if a point has been disregarded. The process should be open and transparent at all stages.

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?

- (33) New regulation – even if smart – should not be passed before existing regulation has been properly (i) implemented, (ii) enforced and (iii) assessed. It remains vital that the European Commission focuses on its role of Guardian of the Treaties and of the European collective interest.
- (34) Overall, a consistent implementation of Directives is essential to create a context which is conducive to the development of the internal market. Avoiding gold-plating should be an essential part of a fair implementation process.

For further information on this matter, please contact the responsible Project Manager Ms Petra Weymüller (email: petra.weymuller@fee.be, Tel.: +32 2 285 40 75) from the FEE Secretariat.

Yours sincerely,



Hans van Damme
President