

BEUC RESPONSE TO THE STAKEHOLDER CONSULTATION ON SMART REGULATION

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Summary

- BEUC calls for a re-definition of smart regulation to mean fair, transparent, evidence based, accountable, citizen-centred policy making that brings tangible benefits to consumers and improves their quality of life.
- Smart regulation should not only be restricted to businesses benefits but it should be seen as a mean to introduce well thought, effective and proportionate measures to increase consumer protection, improve the quality and safety of goods and services and move faster towards a green economy.
- Impact assessment is a valuable policy making tool, but, to be truly effective, its use should be improved by:
 - giving greater attention to the social dimension;
 - better integrating consumer interests;
 - introducing a specific session on the health impact;
 - addressing the obvious problem of measuring what is very difficult to measure, for example non-economic impacts such as impacts on health, safety or specific consumer rights;
 - tackling the problem of inequality of resources in terms of submitting data for the IA between stakeholders with specific interests and those with more general interests.
- For a smart regulation, policy making methods are equally important as legal procedures. Increasing transparency on how decisions are taken is necessary to gain consumers confidence and trust in policy makers, and in the European Institutions.
- Stakeholders' involvement is a pillar of the smart regulation. A wide and equal access of all categories of stakeholders is a crucial element to ensure a real democratic and legitimate policy making. As stakeholders we welcome this approach as long as a balanced representation of interests is guaranteed.
- The European Commission established the target to reduce the administrative burden on business by 25 per cent by 2012. BEUC supports the simplification of procedures and the reduction of red tape as long as this doesn't undermine consumer protection and the quality and safety of goods and services.
- Proposals which are not delivering for consumers should be reconsidered and amended according to the principles of better regulation. Ex-post evaluation is necessary to ensure that EU policies demonstrably serve the 'needs' and 'goals' of European citizens, and not only the markets.

"Smart regulation to make markets work for people ..."

"Smart regulation should protect the consumer, deliver effectively on public policy objectives without strangling economic operators..."

"The task is to ensure that we effectively apply the concept of smart regulation to ensure that it is effective, proportionate, and comprehensive: effective because it must be grounded in the realities of life on the ground for economic operators and other stakeholders; proportionate because regulation must demonstrate a certain level of positive impact to justify legislation and must take all potential side-effects into account; comprehensive because we must make proposals fully conscious of the range of economic, social and environmental consequences they will have."

President Barroso, Political guidelines

General remarks

BEUC, the European Consumers' Organisation, welcomes the progress made by the European Commission over the last few years in promoting the design and application of better regulation tools, including impact assessment and stakeholders involvement. However, much more needs to be done in the field of "Better regulation" in order to ensure that the new Commission's EU 2020 strategy, as well as president Barroso's guidelines for the new Commission, show the desired results.

First, we would like to raise some issues of a general nature (**Answer to question 1**):

The Commission consults on "smart regulation" without providing a clear concept of what "smart regulation" means. It only refers to president Barroso's political guidelines for the new Commission, which appear to understand "smart regulation" in a very general and broad way as a means to "make markets work for people...". A few areas are then indicated, in which "smart regulation" could be applied to: reducing administrative burden, extending impact assessments to comitology etc....

"Smart regulation" is a pleonasm: of course regulation should be smart, of course rules should be intelligent, as the French term ("législation intelligente") suggests. In the current consultation, "smart regulation" is presented as the Commission's method to cut down red tape and reduce administrative burden for business. This is a very limited view of what the idea of "smart regulation" seems to imply in the President's guidelines.

Smart, inclusive and sustainable growth are the three main headlines of the EU 2020 strategy and in our view "smart regulation" should fully correspond to this vision and should reflect the objectives of the EU 2020 strategy in their entirety.

Consequently, the Commission should re-consider its concept of “smart” regulation and introduce and consult on a new, broader vision of regulation. This vision should fully match the EU 2020 strategy and translate the Commission’s main political aim, namely to put citizens welfare at centre stage, into reality.

BEUC calls for a re-definition of smart regulation to mean fair, transparent, evidence based, accountable, citizen-centred policy making that brings tangible benefits to EU consumers and improves their quality of life. Smart regulation in this sense is inspired, based on and informed by an accurate knowledge of the factors at play and by a sharp awareness of its potential impacts on society. The current economic, social and environmental challenges that we are facing make it more important than ever to ensure that EU policies are effective and efficient in minimising the costs while bringing valuable outcome.

Smart regulation should not only be restricted to businesses benefits but it should be seen as a means to introduce well thought, effective and proportionate measures to increase consumer protection, improve the quality and safety of goods and services and move faster towards a green economy. This is clearly what the political guidelines envisage.

Finally, smart regulation can only be delivered if all EU institutions and Member States act together. In order to ensure that this happens, it is important to adopt a more integrated approach applied to all policy interventions and to complement the Commission initiatives with an increased exchange of best practices between Member States.

Below we answer to some of the other questions of the Commission’s consultation.

1. Impact assessment (Answer to question 5 and 6)

BEUC has submitted a detailed response to the Commission’s consultation on the guidelines for impact assessment in 2007. Many of the issues that we raised in this response remain valid. Below, we outline the most important aspects:

Impact assessments are valuable policy making tools but to be truly effective their use should be improved by:

- Giving greater attention to the social dimension by delivering on the commitment to real “social impact assessments” based on the development of more sophisticated methodologies and upgraded statistical information.
- Improving the integration of consumer interests in a more systematic and regular way requires the roll-out of an internal Commission process which reflects the principle of horizontal application as enshrined in Art. 12 TFEU. Dealing adequately with the general and diffuse nature of consumer interests is of key importance for proving tangible benefits to EU citizens; the measures to take should include that a representative from DG SANCO becomes a member of the Commission’s Impact Assessment board.

- Introducing a specific session to measure the health impact. Despite the fact that Article 168 of the TEFU requires that “a high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities”, until now the health impact assessment received very limited attention. A recent review¹ of the 137 impact assessments performed in 2005 and 2006 revealed that the word “health” is mentioned in less than half of the impact assessments (Stahl, 2009). So far, health is incorporated under the social and environmental pillar but we strongly believe that, as an encompassing and overarching principle, it should be assessed separately.
- Addressing the obvious problem of measuring what is very difficult to measure, for example non-economic impacts such as impacts on health, safety or specific consumer rights, like the right to information.
- Tackling the problem of inequality of resources in terms of submitting data, research and other inputs to impact assessments between stakeholders with specific interests (economic operators) on the one hand, and those with more diffuse, general interests on the other (e.g. consumer organisations).
- Ensuring more transparency with regard to sources of data, the selection of external expertise (with a special attention to possible conflict of interests).
- Providing – whenever possible – feedback to those who submitted input;
- Focusing not only on the burdens and costs, but also on the benefits of the legislation.
- Bearing in mind that impact assessment is a policy tool and not a substitute for political judgment.

2. Transparency (answer to question 7)

For a smart regulation, policy making methods are equally important as legal procedures. Increasing transparency on how decisions are taken is necessary to gain consumers confidence and trust in policy makers, and in the European Institutions.

Civil society is an important actor in the governance process, and is an indicator of public participation in the decision-making processes. Consultation process that are transparent, open and sufficient in duration, complement formal mechanisms for input into policy and decisions as well as bring expertise and diverse opinion from the spectrum of stakeholders. A commitment to accountability, involving elected representatives as well as representatives of groups and interests, would bring greater returns in terms of governance as well as contributing to bridging the gap between Brussels and people living in Europe.

Good governance also suggests a demonstrable commitment to regulating in the public interest. Decisions taken under the pressure of lobbying or influences that are not transparent and undermine the general vision of the EU contribute to the gap between political elites and ordinary citizens. Transparency, accountability and regulation to protect the most vulnerable in Europe are cornerstones for the delivery of a strategy for Europe.

¹ Ståhl T (2009) Is Health Recognised in the EU's Policy Process? An analysis of the European Commission's impact assessments. European Journal of Public Health.

3. Stakeholders involvement (Answer to question 7)

Stakeholders' involvement is a pillar of the Better/Smart regulation concepts. A wide and equal access of all categories of stakeholders is a crucial element to ensure a real democratic and legitimate policy making. As stakeholders we welcome this approach as long as a balanced representation of interests is guaranteed.

Stakeholder involvement requires transparency by both sides. Stakeholders should disclose their goals, activities and funding. The EU lobby register is a first step in the right direction, but for it to be meaningful, it should be made mandatory and the information requirements should be stricter. A recent research² published by *Friends of the Earth* clearly demonstrates that, as it stands, the EC register for interest representatives, due to its voluntary character, does not yet include all relevant lobbyists, nor does it provide for the necessary information.

The Commission and the other relevant EU institutions should list in a publicly accessible and user friendly register all their committees and working groups, including the members, the aims and activities, minutes of the meetings and documents discussed in these groups (the Parliamentary Committee websites could serve as an example in this respect). Committees proliferation hinders policy consistency and may work against the full participation of civil society organisations when they have small staff and limited resources. Committees and expert groups which work behind closed doors should at the very least publish their agendas and working documents in advance of the meetings.

In the light of the new Article 11 paragraph 3 TEU, which obliges the Commission to consult broadly on all policy issues³, the Commission should re-consider its own consultation standards. It should start this process with a public consultation on how to best ensure citizens participation in consultations. For example, to increase stakeholders' involvement and allow a broader participation in the policy process, we suggest that the Commission extends the minimum eight weeks consultation period. At the very least, the Commission should better respect its own standards (which was not the case for example with the consultation on the EU 2020 strategy) and should publish an annual report on how it meets its own standards.

Despite the fact that we welcome the now regular publication of policy submissions which the Commission receives during consultations, it should extend transparency by publishing as a matter of principle, ALL policy submissions, regardless of whether they are made in the framework of a public consultation or not.

In case of participation of individual citizens, the Commission should be clear as to the nature of these submissions and differentiate these from submissions of bodies which represent a whole community or a group of stakeholders. Moreover, the Commission should disclose if participating citizens are directly affected by a specific policy which is the subject of the consultation. For example, during the recent consultation on the reform of the CAP (Common Agriculture Policy), the Commission reported that 63% of the participating citizens requested an increase of the EU budget for CAP. In such cases, it would be necessary to know how many of the participating citizens were farmers.

More robust governance mechanisms and incentives are also necessary to ensure that contributions are effectively taken into account.

² Lobbying in Brussels. How much do the top 50 companies in the EU spend? http://www.foeeurope.org/corporates/pdf/Lobbying_in_Brussels_April2010.pdf

³ Art 11 paragraph 3 TEU : "The European Commission shall carry out broad consultations with parties concerned in order to ensure tht the Union's actions are coherent and transparent."

4. Simplification (Answer to question 2)

The European Commission established the target to reduce the administrative burden on business by 25 per cent by 2012. BEUC supports the simplification of procedures and the reduction of red tape as long as this doesn't undermine consumer protection and the quality and safety of goods and services.

While BEUC agrees that unnecessary regulatory hurdles should be removed, in the interest of all economic actors, it is essential not to overestimate what can be achieved. For example the shortcomings of the single market for consumers are much more diversified than what current policy-making by the Commission seems to indicate: the EU concentrates on eliminating regulatory barriers, while consumers increasingly experience new types of barriers to cross-border shopping due to business practices. Territorial licensing, vertical restraints or other practices preventing consumers from making better deals across the border, lack of information on unsafe products, lack of effective complaints handling and redress systems are only a few examples that should also be tackled by the EU in a more consumer friendly way.

Simplification and administrative reduction programme should not turn into more "self-regulation". While BEUC is not against self-regulation in principle, the evidence shows that it is not always the most appropriate tool to protect consumers.

The application of better regulation principles should be focused on putting limited resources to the best possible use, without reducing or compromising health and consumer protection. Ideally, the reduction of costs for companies should be translated in a reduction of costs for consumers and/or in a better quality of products and services.

5. Ex-post evaluation (Answer to question 2)

Smart regulation should apply not only to new proposals but also to the existing ones. Proposals which are not delivering for consumers should be reconsidered and amended according to the principles of better regulation. Ex-post evaluation is necessary to ensure that EU policies demonstrably serve the 'needs' and 'goals' of the people of Europe, and not only the markets.

Transparent mechanisms should be put in place to prove consumers how well the EU is delivering on its promises and provide a clear plan for ongoing improvements. The Commission and the Member States should improve accountability by better monitoring and communicating the qualitative outcomes of smart regulation and how to measure improvements. The European Court of auditors should evaluate the smart regulation process on a systematic basis to enable further reform and improvement.

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