

# SMART REGULATION

A cleaner, fairer and more competitive EU



## Executive Summary

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# Foreword

At the start of a new decade, facing challenges such as climate change, an economic slowdown and an ageing population, Europe must find a fresh approach to achieving its social, economic and environmental aspirations. It is more critical than ever to choose, design and implement interventions – both regulatory and non-regulatory – in a way that effectively delivers benefits while minimising costs. This report – jointly written by the Division for Better Business Regulation in the Ministry of Economic and Business Affairs in Denmark, the Regulatory Reform Group in the Netherlands and the Better Regulation Executive in the United Kingdom – suggests specific ways to do so.

We believe that putting end-users – those affected by regulation such as employees, consumers, businesses and other organisations – at the heart of the way that interventions are chosen, developed and delivered is key to their success. The EU has made great strides in its better regulation agenda. We welcome Commission President Barroso's decision to build on this foundation and make "smart regulation" a key priority of his second term. We must now seize the opportunity to make into a reality that vision of a cleaner, fairer and more competitive future across the EU.



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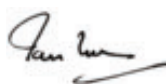
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## Smart Regulation: What, Why and How

- 1. Over the past couple of years Europe has faced unprecedented challenges.**

The current economic, social and environmental circumstances make it more important than ever to ensure that European policy is effective in delivering necessary protections and efficient in keeping costs to a minimum to achieve a good outcome for all those affected.
- 2. In this context, Commission President Barroso's proposal in September 2009 for "smart regulation" as a new approach to European policy-making is a significant opportunity.** It is a chance to rapidly translate the principles of the EU's existing better regulation agenda into tangibly improving the quality of life for European citizens and businesses. And, in these tougher times, smart regulation can be a key vehicle to providing urgent support for economic recovery and growth, while delivering greater fairness and a cleaner environment.
- 3. Achieving this will require an evolution in the way that the European Commission, Parliament, Council and Member States consider regulation, towards an integrated, end-user focused and measurable approach.** This report is our contribution to finding a way to make smart regulation a reality.
- 4. We welcome the progress that the European Commission in particular has made over the last few years to apply the tools of its existing better regulation agenda.** This includes some excellent work consulting on policy proposals, committing to producing impact assessments and establishing a target to reduce administrative burdens on business by 25 per cent by 2012. Now is the time to consolidate this and to consider how the EU can do even better. The effectiveness of this approach also depends on Member States and the end-users of regulations playing their part.
- 5. In particular, we believe there are four key elements that are central to smart regulation for the next phase of reform.** These are outlined below.

- The EU should strive to be 'best in class' in how it deals with regulation. Representing 27 Member States, the EU can be best placed to address such urgent issues as climate change, the quality and safety of food and other consumer goods and the creation of new jobs. But doing so will require regulatory and non-regulatory interventions to be developed and implemented in a smarter way, learning from the very best practice in Member States and countries from around the world.
- We need an approach that embeds the elements of smart regulation in every intervention in every policy area, rather than it operating in isolation. Smart regulation should not only be restricted to supporting business growth. It can also, for instance, be an essential means of finding cost-effective ways to reduce carbon emissions and create a low carbon economy. It can help safeguard consumer rights on products and services by focussing regulatory and non-regulatory interventions where the risk is greatest. And, in the area of the financial services market, while it is clear that further single market regulation is needed, smart regulation tools can ensure that new measures are proportionate, targeted and do not impede wealth-creation.
- Smart regulation should further help EU institutions effectively work together in the development and design of policy: contributing to the development of joined-up decision-making. It can provide a framework for the Commission, Council, Parliament and Member States to make transparent, evidence-based decisions that encourage and deliver democratic oversight in sensitive areas. This is especially significant given the Parliament's new powers, under the Lisbon Treaty, in the area of justice and home affairs.
- Keeping end-users – employees, consumers, businesses and other organisations<sup>1</sup> – in mind during policy-making, is the only way to consistently create smart regulation. End-users are key to highlighting where there is a problem and judging whether an intervention will be effective. Getting them involved at every stage of the policy-making process – from choosing how the Commission should intervene, to

1 Such as charities, social enterprises and voluntary and community organisations.

developing a policy, to the Council and Parliament deliberating upon it and Member States implementing it – means that interventions will be thought through more clearly and better implemented from the beginning. It is the policy makers’ responsibility to involve the end-users, just as it is the end-users’ and Member States’ responsibility to contribute to the process.

6. Commission President Barroso recently set out why this end-user focus is so important:

“Revitalising the link between the peoples of Europe and the EU will make it both more legitimate and more effective. Empowering citizens to be involved in decisions affecting their lives, including by ensuring transparency on how they are taken, will help to achieve these aims.”<sup>2</sup>

### **WHY ‘END-USER’? EMPLOYEES, CONSUMERS, BUSINESSES AND OTHER ORGANISATIONS**

We use the term ‘end-user’ to capture everyone who is affected by regulation – both those who incur costs as a result of compliance and those who receive its benefits. In many cases, these groups can often be the same. People who ‘use’ regulation should be able to understand why it is needed, what its benefits are and that the costs it may impose are necessary and proportionate.

We believe that making end-users central to the policy-making process – by being aware of their needs, seeking their views, using these views and demonstrating the value of their contributions – is the best way to achieve this aim. End-users are best placed to provide relevant, up-to-date information, which can improve the quality of the evidence on which decisions are based.

2 José Manuel Barroso, Political Guidelines for the Next Commission, 2009, p.33

7. Creating and implementing smart regulation effectively for end-users requires three key elements:

- firstly, that there are opportunities for end-users to get involved;
- secondly, that robust governance mechanisms and incentives ensure their contributions are taken into account effectively; and,
- thirdly, that quantitative and qualitative progress is tracked and communicated to end-users in a systematic way.

A number of Member States already have a range of practices in these areas that others and the EU can learn from. We highlight these throughout the report.

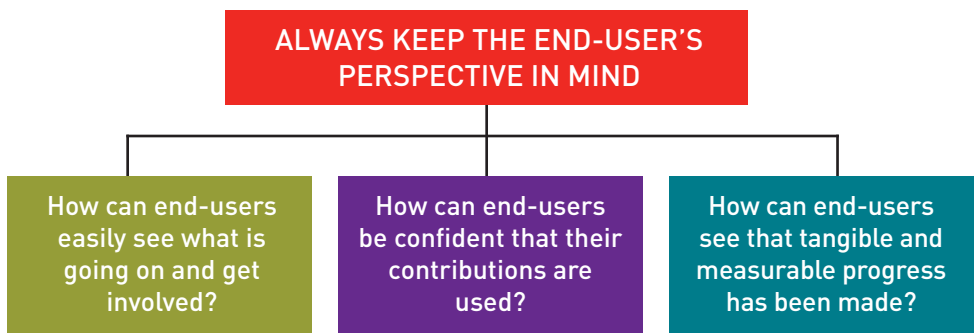
8. This report focuses on how to put the end-user at the heart of European policy-making, towards an integrated approach. It considers how this can be done in three particular areas, as outlined below. We recognise that some of the recommendations may put pressure on institutional resources, but we believe the issues are important enough that a solution must be found. The following outlines our priority proposals:

### “End-user” focused EU legislation

End-users should be at the heart of how European institutions consider interventions...



... to ensure sustainable economic growth, social fairness and a cleaner environment.



## How can end-users easily see what is going on and get involved?

9. The EU institutions and Member States have made progress over the last few years, developing better ways of informing end-users and inviting their views. But some end-users continue to suggest that more should be done to involve and keep them in mind during European policy-making.<sup>3</sup> There is evidence that government openness is positively linked to lower regulatory burden and effective regulatory governance.<sup>4</sup>
10. End-users should be able to contribute to policy-making at each stage of the policy-making cycle. We propose that the Commission should make two-way communication more effective by extending the minimum eight week consultation period and applying the new minimum consistently. Following the Commission's commitment in the *Small Business Act* for Europe, the Commission should quickly introduce common commencement dates for all business-related proposals.
11. We propose that the Commission's forward plan for the year – the Legislative and Work Programme – be strengthened, by defining and publishing what constitutes a 'significant' measure for inclusion and the likely scale of individual measure's benefits, costs and administrative burdens. The Commission should include a two-page executive summary with key estimated costs and benefits in its impact assessments. The Council and Parliament should use these consistently to inform their deliberations and should make more use of the Commission's offer to provide advice and update impact assessments throughout the process. For this to be effective it will be important that end-users are also proactive in providing quality information to inform the process.

<sup>3</sup> See, for example: Response to Third Strategic Review of Better Regulation 2009, Business Europe

<sup>4</sup> Islam, R., World Bank, Policy Research Working Paper No. 3077, Do More Transparent Governments Govern Better?, 2003; and OECD, Policy Brief: Public Sector Modernisation, 2005, p.2

## How can end-users be confident that their contributions are used and produce tangible results?

12. Smart regulation will only be realised if EU institutions proactively take end-users' contributions into account, improving how EU interventions are chosen, developed, deliberated upon and implemented. In turn, better policy-making is associated with improved sustainable economic growth. And, if end-users are confident that this is happening, this should improve their compliance with the legislation and enhance the legitimacy both of the legislation and the EU institutions that created it.
13. We welcome progress over recent years to develop and embed better governance structures, such as the Commission's Impact Assessment Board (IA Board) and the High Level Group of Independent Stakeholders on Administrative Burdens (Stoiber Group). Nevertheless, the integrated approach can be further supported and improved by stronger monitoring and advisory input. We believe that the IA Board should make further use of external experts to ensure rigorous quantification of the costs and benefits of proposals; that it should push for alternatives where feasible; and that its opinions be given greater weight. The remit of the Stoiber Group should be strengthened to examine the role of all three EU institutions in imposing new unnecessary burdens and incorporate policy costs and irritants, while taking real benefits into account.
14. Irrespective of what they are called, we believe that programmes aimed at reducing existing regulatory burdens on businesses, should deliver tangible results on an ongoing basis. The Commission, Council and Parliament should improve the quality of the policy framework by considering alternatives to legislation and systematically checking the relevance of proposals throughout the policy-making process.

## How can end-users see that genuine quantitative and qualitative progress has been made?

15. There are several major better regulation initiatives at the EU level – but it is often difficult for the end-user to assess how effective they have been. For smart regulation to be a success, there needs to be transparent mechanisms across the whole programme to ensure that end-users can clearly see how well the EU is delivering on its promises and provide a clear plan for ongoing improvements.
16. We believe that the Commission and Member States should improve accountability by better monitoring and communicating the quantitative outcomes of smart regulation and how end-users are experiencing improvements.
17. To help create better ownership and accountability of the agenda across all the institutions, Commissioners should have clear responsibilities for delivering smart regulation in their specific policy areas. It is equally crucial that all European Parliament committees and Council formations integrate smart regulation work as part of their oversight and policy-making process. The European Court of Auditors should evaluate the smart regulation process on a systematic basis to enable further reform and improvement.
18. **It has rarely been more necessary or urgent** for the European Commission, Council, Parliament and Member States to successfully deliver their interventions and the aspirations they embody. Smart regulation provides a clear way for them to create well thought-out, practical and proportionate responses to some of the greatest issues Europe faces. We encourage them to seize this opportunity to do so.



Printed in the UK on recycled paper containing a minimum of 75% post consumer waste.  
Published jointly by the Ministry for Economic and Business Affairs [Denmark] the Regulatory Reform Group (the Netherlands)  
and the Department for Business, Innovation and Skills (UK)  
First published March 2010. Crown Copyright. URN 10/521