

Medlemmerne af Folketingets Europaudvalg
og deres stedfortrædere

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Til underretning for Folketingets Europaudvalg vedlægges i forbindelse med Det Europæiske Råd i Stockholm den 23.-24. marts 2001 rapport fra ekspertgruppen med deltagelse fra EU's medlemslande og Kommissionen om bedre lovgivning.

Initial Report of the Mandelkern Group on Better Regulation

Context: Implementing the conclusions of the Lisbon European Council.

- ***A series of European initiatives on regulatory quality***

- Concern on simplifying legislation was first expressed on a European level in 1985, when it was one of the conditions for the formation of the single market. However, investigations into better regulatory quality did not become more structured until the middle of the 1990s, in particular after the adoption of a protocol attached to the Treaty of Amsterdam (1995), which set out the principles of good regulations to be adhered to at European Community level.
- At the same time, the Commission undertook two initiatives designed to improve regulatory quality in the areas within the single market (SLIM), and to improve the administrative environment for small and medium sized companies (BEST).
- It gradually became clear that the best way of improving the "regulatory chain", from the design of the regulation to its final application, was co-ordinated action at both community and national level. The conclusions of the Lisbon European Council "requested that the Commission, the Council and the member states define a strategy by 2001 that would simplify the regulatory environment through co-ordinated action".

- ***The mandate of the High Level Consultative Group is part of the vision of the Lisbon conclusions***

- In Strasbourg, on the 7th November 2000, the Ministers in charge of public administration decided to set up a High Level Consultative Group on Better Regulation. This decision was completely in line with the conclusions of the Lisbon European Council.
- The Consultative Group was given the mandate to "develop a coherent approach and to make proposals" and to produce "an initial report" within four months.

- In this initial report the Consultative Group has started "to identify the areas or actions open to co-ordinated action as regards regulatory quality, by prioritising areas of immediate interest to citizens and businesses". The principles and recommendations that follow represent a summary of the main results of this work to date.

Principles to be considered

Based on the experience of the member states and an analysis of regulatory procedures at national and European level, the High Level Review Consultative Group worked to identify some general principles and to prepare, in priority areas, concrete recommendations to give substance to these principles. It will produce its final report on these and other areas these by the end of 2001.

- ***The objective: To aim for quality whilst helping comprehension and application of the regulation***
 - Regulation is essential to protect the interests of the vulnerable such as workers, consumers and the environment. Better regulation does not mean the unthinking removal of regulation in a given sector; rather it is a question of achieving more effective regulation through a combination of tools such as simplification, codification and impact assessment.
 - The principles of transparency, accountability and proportionality must be applied to the formulation, implementation and monitoring of policy options chosen.
 - The effectiveness of a regulation as a means of implementing public policies does not only depend on clarity, consistency and approval for the application of the regulation. It depends to a great extent on whether citizens, businesses and administrations and other relevant stakeholders can access the regulations, understand and apply them without excessive burdens.
 - To obtain better compliance, the regulatory quality objective requires continuous efforts in terms of user consultation, ease of access to the texts and appropriate reduction of the burden of procedures imposed on citizens, businesses and the administrative services themselves.
- ***The scope: To consider existing regulations as well as new legislation***
 - "Regulation" should be understood to include all rules emanating from the legislative powers, as well as implementation rules for which the responsibility lies with the executive power.
 - New regulations must meet the required levels of quality, but it is not enough to meet the overall objective. Consideration must be given to the number and consistency of existing regulations, which should be tackled in order to reduce cumbersome processes, obsolescence or contradictions
 - The objective of better regulation therefore requires that existing regulations be revised and that consistent sets of legislation be codified or consolidated according to the principles of the relevant legal system.
- ***The method: To introduce more expert opinions and more consultation upstream of the regulatory process***
 - To ensure that the creation of regulations does not become an objective in itself, aimed at underlining the intention to act on the part of the administrations and Governments, effective methods must be drawn up to assess the necessity and impact of the regulations, and also their acceptance by the users involved.
 - These methods have two main functions.
 - An expertise function: designed to measure, as objectively as possible, the impact and costs of the regulation, and also its appropriateness in comparison with other types of action capable of achieving the objectives set (for instance a contract)
 - A dialogue function: to assess whether the regulation meets the needs of the parties concerned and can be applied easily by the bodies involved.
- ***The structures: to ensure the effectiveness of the regulatory quality procedures***
 - Quality of regulation is an important part of public welfare. As well as numerous reasons of utility, it is a democratic virtue in itself and needs to be the responsibility of particular bodies and/or structures that are devoted to better regulation.

Recommendations

To give substance to the principles outlined, the Consultative Group recommends that the Commission, Parliament, Council and Member States as appropriate should consider the following recommendations.

- ***In the area of simplification***

Simplification should become a general policy in the behaviour of Member State and EU Institutions.

1. Establishment of a rolling and targeted "SimpReg" (SR) programme of simplification of existing European regulation, with measurable results, extended to regulation beyond the Internal Market and to regulation that impacts on citizens and on public bodies that have to implement it as well as on business, therefore covering the entire field of European regulation. The SR program should be articulated into annual steps setting out clear priorities and targets.
1. At the EU level, further work needs to be done to ensure that the process for adopting non-contentious proposals for simplification is effective and carried out in a timely fashion where appropriate, whilst protecting the institutional balance and the democratic process at the national level. This should include the role of the Member States to the extent of their executive responsibilities.

- ***In the area of consolidation and codification***

- Consolidation or codification should be undertaken both at EU and Member State level according to the principles of the relevant legal system. Such work should be informed by, and benefit from, continuing exchange and discussion of best practice, which might work towards identification of a certain number of common principles and methods.

- ***In the area of consultation***

1. A strengthened dialogue at an early stage between the Commission and the interested parties and Member States and consultation on a specific but preliminary text are important to ensure that all the relevant consequences of a legal instrument are established before the proposal is formally considered by the legislative bodies. This dialogue and consultation should also include the existing European consultative bodies.

1. The proposal should whenever possible be accompanied by extensive explanatory remarks, including the regulatory impact assessment performed and the comments made during consultation.

1. In addition to the ordinary consultation, the proposed regulatory act, the regulatory impact assessment and other relevant documents should be made accessible on the Internet, thus enabling interested parties, including vulnerable constituencies such as SMEs and consumers, to make contributions.

- ***In the area of the extent of the impact of the regulation***

1. Regulatory impact assessment is an ongoing, evolutionary process that informs the political choice and is not simply the production of a one-off document. A regulatory impact assessment should follow OECD guidance.
2. A range of options, including alternatives to pure regulation, should be considered for all policy proposals. This consideration should include the views of stakeholders and the principles of subsidiarity and proportionality.
3. The Commission should continue to move rapidly towards undertaking a regulatory impact assessment for all its policy proposals with possible regulatory effects and this assessment should be taken into account by the Parliament, Council and Member States in the development of the proposal.

- ***In the area of structures***

1. Implementing the best regulatory methods requires the involvement of bodies and/or structures that have an appropriate level of autonomy, as well as objectiveness with regards to the authorities that generate the regulations.
1. These bodies and/or structures must also, by virtue of their specific position in the administration, their recognised authority and their expertise in managing regulatory quality tools, be able to ensure adherence to the processes that contribute towards improving regulatory quality.
1. A balanced mix of decentralised and centralised review is recommended within the executive. As a rule, the basic regulatory review should be carried out by the Ministry (the Directorate-General), specifically by the working unit that is mainly responsible for drafting the bill in question. Generally, they have the best know-how and expertise.
1. Qualified and specialised staff is required for regulatory review. Appropriate training needs to be made available to secure the necessary cultural change and development of expertise.
1. Parliaments should be invited to take an interest in the process of better regulation.

Subjects to be examined in the future

- ***Linking European and national procedures***

- The examination of national practices in terms of regulatory quality shows that the member states and also to a certain extent the European Union, in particular the Commission, have undertaken many {{SPA}} often converging {{SPA}} initiatives in this area. We might collect these examples in the final report.

- The Group must carry out an additional exercise to determine under what conditions the methods for ensuring the quality of the regulatory processes should be part of a coherent approach and in what ways co-operation will be required from the structures implemented at national and community levels.

- ***Defining a common method to evaluate regulatory quality***

- On the basis of existing initiatives and examples, as well as its own discussions, this Group has the mandate to develop a coherent approach and to make proposals, in particular on specifying a common method for evaluating the quality of regulation. It is capable of creating greater mutual trust in the implementation of the "regulatory chain" (including the different levels of responsibility, both national and EU) and therefore fewer requirements for the precision, and thus less complexity, of community regulation.

- In accordance with its mandate, and liaising with the group of Directors of Better Regulation, the High Level Consultative Group will formulate proposals on this subject.

- ***Preparation of the final report***

- The Consultative Group will continue to work up the proposals for the areas of better regulation it has identified, with a view to agreeing a fleshed-out report on these five key themes.

- Taking into account discussions at the Stockholm European Council, the Group will make every effort to submit in its final report, before the end of 2001, a consistent set of proposals suitable for short-term implementation in close co-operation with the Commission.