

INTRODUCTION

Smart Regulation is a top priority for the UK Government. Well-designed legislation helps businesses to operate effectively in the market in order to create jobs and growth. We have taken a number of steps in the UK in order to cut red tape for business and stimulate growth. The UK Government has taken a radical approach, being the first UK administration to commit to end its term with less regulation on the statute book than was there when it came in. We have taken steps to address both the stock of existing legislation (through the Red Tape Challenge¹ process) and the flow of new legislation (through our One-In, One-Out² policy) and we have taken specific steps to help SMEs (through our moratorium on new legislation affecting Small Businesses).

The current economic climate makes Smart Regulation even more important. National efforts to lift burdens on businesses in order to encourage private sector-led recovery risk being undermined unless policy-makers take a similarly bold approach at EU level to minimise unnecessary costs on businesses.

We welcome the positive steps that have been taken by the Commission and the other EU Institutions in recent months. In particular:

- The Commission's Administrative Burden Reduction programme which seems set to deliver 25% savings for businesses by the end of 2012;
- The Commission's commitment in November 2011 to exempt micro-businesses from new legislation unless their inclusion can be justified, and to seek lighter regimes for SMEs³;
- The Commission's recent 'Competitiveness-Proofing' toolkit and 'fitness checks'. The former should improve ex-ante analyses of the impact of policy proposals on competitiveness. The latter should give a more strategic view across the legislative portfolio and help assess whether the stock of existing legislation is fit for purpose across regulatory frameworks;
- The European Parliament's creation of an Impact Assessment Unit to evaluate Commission Impact Assessments (IAs) and to assess the impact of the Parliament's own substantive amendments.

We want to see the Commission and the other EU institutions build on their progress to date. The European Council called in June for a reduction in the overall regulatory burden at EU level. The Commission's upcoming Smart Regulation Communication must deliver against this agenda, and propose concrete actions to help reduce burdens, and our response to this consultation makes a number of proposals which we believe would help to further embed Smart Regulation principles in EU legislative processes to stimulate growth. A summary of our key recommendations is given below.

¹ <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>

² <http://www.bis.gov.uk/policies/bre/one-in-one-out>

³ COM (2011) 803. Report from the Commission to the Council and the European Parliament. Minimising regulatory burdens for SMEs: Adapting EU regulation to the needs of micro-enterprises

UK Government Priorities for EU Smart Regulation

- a. An ambitious new Commission programme to reduce unnecessary cost to business by addressing the overall burden of EU regulation, concentrating on those areas which business find most burdensome. The Commission's current administrative burden reduction programme is due to finish at the end of 2012. It is essential that there should be a successor to this programme, which should be broadened to cover compliance costs so it reduces the total policy cost and not just administrative burdens. And it should include sectoral targets to minimise burdens in those sectors that are vital for EU growth, as called for by the European Council in March 2012.
- b. An independently verified annual statement of the total net cost to business of regulatory proposals issued by the Commission. Improved Impact Assessment quantification should be used to extend transparency and enable informed debate on overall impacts. The statement should also report key changes to policy proposals introduced as a result of Impact Assessments, including due to the SME Test and Competitiveness-Proofing. Where new proposals impose costs for businesses, the Commission should commit to find other costs elsewhere which can be reduced in order to offset this burden.
- c. Further specific proposals to reduce unnecessary EU regulatory costs on small businesses. This builds on the Commission's November 2011 commitment to reverse the burden of proof when considering whether micro-businesses should be included in new EU regulations, and to develop lighter regimes for SMEs, including by screening the acquis.
- d. Strengthening the role of the Commission's Impact Assessment Board (IAB). In particular there should be a requirement for new regulatory proposals to have a positive opinion from the Commission's IAB before they can emerge from the Commission.
- e. The introduction of a standard template for Commission IAs to improve their comparability and transparency.
- f. Improvements to consultation, for example through the publication of "consultation stage" Commission IAs, to give business and other stakeholders the opportunity to feed in their views earlier in the Brussels policy-making process.
- g. A commitment to conduct more reviews of the stock of existing EU legislation (for example, through extending the current programme of fitness checks), focusing on minimising unnecessary burdens on business, particularly those in high-growth sectors.
- h. A commitment to give more serious consideration to alternatives to regulation, in particular at consultation stage, and to ensure that innovative techniques (such as behavioural economics) are used to ensure that regulation is developed in the least burdensome way.
- i. Establishing Common Commencement Dates, so that EU legislation comes into force on a limited number of specific dates each year. This would enable businesses to better understand, prepare for, and adapt to new or changed EU regulatory requirements.

In addition to these key recommendations, our responses to the detailed questions in the consultation document are set out below.

I. ENHANCING THE QUALITY OF EU LEGISLATION

In the UK we have taken steps to ensure that regulation is fit for purpose, and achieves the desired result in the most efficient and effective way. Under our Red Tape Challenge process we are scrapping or improving hundreds of regulations, to improve the regulatory environment for business. Well-designed and proportionate legislation is crucial to growth, and we therefore need to do all we can at national and EU level to improve the quality of existing legislation and to ensure that new proposals are well-designed, based on sound evidence about the need for intervention and the likely costs.

Collecting evidence and monitoring results (question 1)

In order to ensure that results are monitored and that high quality data is collected over time it is important that the process is organised at project level. The UK Government requires a post-implementation review to be included in all new policies.

The UK's Department for Environment, Food and Rural Affairs (Defra) has undertaken a programme of work to collect evidence on the cost of EU legislation.

Example of good practice: Defra's Regulatory Evidence Plan

Defra's Regulatory Evidence Plan aims to improve evidence about the impacts of domestic and EU-derived legislation for which the Department for Environment, Food and Rural Affairs is responsible. It includes the report "The Costs and Benefits of Defra's Regulatory Stock: Emerging Findings"⁴ published last year.

This work gives Defra a better understanding of the costs and benefits of regulation and is being used to identify opportunities for reforming domestic and EU regulation, including the use of other policy instruments such as voluntary approaches and incentives.

We have found that if data monitoring is considered during policy development this can significantly reduce the costs of gathering data. Monitoring systems should be introduced in advance of policies. The Commission should ensure that some major trends in key outcomes of interest are tracked by Eurostat publications and systems where possible.

Methods for collecting evidence and monitoring results should be discussed with Member States, and aim to make best use of existing processes to avoid duplicating requests for data. Core data should be collected only once in the simplest way possible and shared for use by numerous different people where possible. Eurostat should be proportionate when collecting data direct from businesses, so as to avoid unnecessary administrative burdens. The Commission's ABR Programme identified and removed €329.6m of unnecessary burdens arising from data obligations – but burdens arising from data obligations continue to be significant and it is important to take further action at EU level to address them.

Evaluation (questions 2 and 3)

At the EU level, we welcome the Commission's 2010 commitment that all significant new or revised legislation should be based on an evaluation of what is already in

⁴ <http://www.defra.gov.uk/publications/files/pb13623-costs-benefits-defra-regulatory-stock110816.pdf>

place in that sector⁵. For high-impact legislation, we feel that periodic impact evaluation is important.

The Commission should develop a dedicated webpage for businesses to share their views on specific legislation. The standard inclusion of sunset or review clauses so that legislation is reviewed and amended as necessary following adoption could also help to improve ex-post evaluation. In addition, the Commission should publish its responses to the evaluations it commissions, clearly stating which recommendations it intends to pursue, and why some recommendations have not been taken up.

We would like to see more consideration during evaluation of whether continued intervention is needed at all, whether it might be possible to reduce the stock of regulation in a given sector following ex-post evaluations, and whether alternatives to regulation could be used to achieve the same result. If regulatory intervention is still needed, we would like to see consideration of how it could be introduced in the least burdensome way, e.g. by setting out the desired outcome but leaving more flexibility for Member States to decide how this outcome can best be achieved taking account of national circumstances.

Publishing the evaluation plan on the Commission website is welcome. But there are some steps which could make this tool even more useful for Member States, businesses, and other stakeholders.

- It can be hard to tell when EU legislation is next due for review. It would be helpful if the Commission could indicate when the evaluation plan will be updated (and the frequency of any such updates);
- The existence of evaluation plans could be further publicised if the Commission were to establish an email notification list, where stakeholders could register to receive notifications of updates;
- Publicity could also be increased by better cross-reference between the IA and evaluation pages of the Commission website;
- Evaluation plans could be enhanced by including contact details for the lead policy unit in the Commission, and a brief indication of the evaluation questions;
- The UK Government also makes formal responses to the independent reviews it commissions. These responses contain a clear statement of which recommendations it intends to pursue, and why some recommendations have not been taken up. We would like to see this emulated at EU level;
- The Commission could make further attempts to share examples of good practice in Member States and encourage and assist collaborative working where appropriate, including through its High Level Expert Group on Smart Regulation;
- The key performance indicators for the Enterprise Europe Network should incentivise effective consultation with SMEs, both directly and through other business intermediaries.

We welcome the Commission's use of 'fitness checks' to assess whether the regulatory framework for a policy area is fit for purpose and, if not, what should be changed. We look forward to seeing the results of the five pilot assessments, and would encourage the Commission to launch further fitness checks in key areas which we believe are crucial for creating growth and jobs (e.g. Employment, Health and Safety, and Environment) and to publish all conducted and planned fitness checks on the Commission website.

⁵ COM(2010) 534 Commission Communication: Smart Regulation in the European Union. Page 5
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0543:FIN:EN:PDF>

We also propose a cross-cutting fitness check on the EU legislation which businesses encounter when trading across the EU's external frontiers. We estimate that the regulatory burden of such legislation amounts to some €8 billion per year. A 25% reduction would therefore be worth some €2 billion per year across the EU, and would make a significant contribution to the EU's smart regulation, growth, and trade agendas

We urge the Commission to learn from the operation of the current pilot fitness checks. For example, we believe that the fitness check of the three Directives relating to Information and Consultation of Workers has been hampered by a lack of transparency regarding terms of reference and process. Member States were excluded from the design of questions put to stakeholders and there was no standardised methodology for data collection. A particular problem has been a lack of consideration of how the Directives are actually implemented in Member States. Another example stems from our experience of the aviation sector fitness check. In this case, it has been difficult to discern why this sector is being reviewed at all when Member States are already broadly content with the operation of the regulatory framework.

To maximise the impact of future fitness checks, the Commission should:

- Establish a standardised methodology for conducting fitness checks, so that data, analysis and outcomes are as comparable as possible;
- Establish and stick to outcome-focussed, transparent terms of reference;
- Consult with stakeholders in advance in order to better prioritise where fitness checks are most needed;
- Target sectors with the greatest potential for high growth and job-creation, and areas where stakeholders have indicated there are problems with the regulatory framework.

The UK Government provides detailed guidance to policy makers on how to design and implement appraisal and evaluation of policies, programmes and projects.

Example: UK Government Guidance on Evaluation

The Magenta Book⁶

The Magenta Book is HM Treasury guidance on evaluation for central government, but is also be useful for all policy makers, including in local government, charities and the voluntary sectors. It sets out the key issues to consider when designing and managing evaluations, and the presentation and interpretation of evaluation results. It describes why thinking about evaluation before and during the policy design phase can help to improve the quality of evaluation results without needing to hinder the policy process. It is a key reference for all UK policy and analytical professionals working on evaluation within Departments.

The Green Book⁷

The Green Book is HM Treasury guidance for central government, setting out a framework for the appraisal and evaluation of all policies, programmes and projects. It sets out the key stages in the development of a proposal from the articulation of the rationale for intervention and the setting of objectives, through to options appraisal

⁶ http://www.hm-treasury.gov.uk/data_magentabook_index.htm

⁷ http://www.hm-treasury.gov.uk/data_greenbook_index.htm

and, eventually, implementation and evaluation. It describes how the economic, financial, social and environmental assessments of a proposal should be combined, and aims to ensure consistency and transparency in the appraisal process throughout Government.

In addition to the overall framework provided by the Green Book, there is a wide range of supplementary guidance containing more detailed guidance on particular issues and applying the Green Book in specific contexts - for example, valuing environmental impacts, assessing competition impacts, adjusting for risk and optimism bias.

Depending on the type of policy being appraised, the conclusions of the appraisal and the recommendations for decision-makers should be set out in certain documents.

This is the key reference for any analyst working on appraisal within Departments.

Both ex-ante and ex-post evaluation are essential to ensure good policy making and should be seen as complementary. The promise of ex-post evaluation does not negate the need for an IA upfront to avoid the risk of resources being used for little benefit. For example, for the Fuel Quality Directive the UK, other Member States, and business organisations lobbied for ex-ante, as well as ex-post, assessment when our analysis showed the proposal was likely to have significant costs to business.

Impact Assessment (question 4)

We view IAs as a key tool to enable policy makers to make informed decisions based on evidence. It is therefore essential that the Commission produces timely, high quality IAs for all new proposals. We welcome the introduction of the SME Test and the Commission's commitment that all policy proposals with a significant effect on industry will first undergo a thorough analysis for their impact on competitiveness⁸. The Commission should provide guidance to Commission officials to help them better understand how proposals can have a 'significant effect' on business.

We have seen a number of good IAs from the Commission (for example on phosphates in detergent⁹). It is important that good practice is shared between DGs and applied consistently across all policy areas.

Further examples: IAs from the transport sector that we have found helpful

- The IA on the Euro VI standards for emissions from on-road heavy duty vehicles provided estimates of the net benefits of a range of options, which gave us the information we needed to understand and discuss the proposals.
- The IA for the Directive amending Directive 1999/32/EC as regards the sulphur content of marine fuels provided good coverage of the expected impact, which policy officials and economists in the UK Department for Transport found helpful.
- The IA for the introduction of the freight wagon entities in charge of maintenance certification regime built on previous material (the concept of an entity in charge of maintenance was introduced by an earlier Directive) and explored some of the

⁸ COM(2010) 614. Commission Communication An Integrated Industrial Policy for the Globalisation Era Putting Competitiveness and Sustainability at Centre Stage.

⁹ SEC(2010) 1277; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2010:1277:FIN:EN:PDF>

finer detail of implementation.

Further steps can be made to improve the transparency and comparability of Commission IAs. In particular we would like to see:

- Transparency earlier in the process: the publication of IAs in the consultation stage of policy development would help stakeholders (in particular business organisations) to give more detailed comments on potential impacts early on in the process. This is what we do in the UK;
- A commitment to produce an IA for all new proposals, or give a reason why an IA has not been done, along with a pledge to produce one if evidence of unforeseen impact is offered by stakeholders during consultation;
- A commitment to update an IA if in a Working Group a blocking minority of Member States call for a specific aspect to be looked at in more detail;
- A standard template for IAs which ensures that all DGs make key information clear upfront, and to allow greater comparability of measures across the Commission. A template is used for IAs for UK legislation¹⁰;
- Further efforts to carefully quantify costs and benefits. In its 2010 report¹¹ the Impact Assessment Board itself states that the Commission needs to make further progress in the quantification of costs and benefits, noting that only 27% of Commission IAs are comprehensively quantified. Consulting on IAs earlier in the process would provide the Commission with additional data in order to help with this quantification;
- Proper efforts to apply the SME test including its new micro-business elements and explicit statements on how it has been applied, showing the Commission's practical efforts match its commitments;
- A commitment to log all consultations on the "Your Voice in Europe" website so all stakeholders can see individuals' replies, and interested parties can get notifications of new consultations.

We strongly support the work of the Commission's IAB. We would like to strengthen the Board's role in evaluating Commission IAs and its ability to hold the Commission to account, in particular through:

- An explicit requirement that proposals receive a positive IAB endorsement before being adopted by the College. This would put into practice the Commission's commitment in its 2010 Smart Regulation Communication "that in principle a positive opinion from the IAB is needed before a proposals can be put forward for Commission decision"¹² which is not consistently followed at present;
- Independent members of the IAB, or the IAB making use of external experts, to provide additional independent scrutiny of Commission proposals and to ensure that the technical merits and limitations of research are properly understood.

We are concerned that some potentially burdensome dossiers have been adopted by the Commission without a positive IAB opinion which could lead to huge costs for businesses. For example, the IAB was clearly critical of the Impact Assessments for the Priority Substances Directive¹³ and the General Data Protection Regulation¹⁴ but

¹⁰ From <http://www.bis.gov.uk/ia>, see the template (<http://www.bis.gov.uk/assets/biscore/better-regulation/docs/i/impact-assessment-template.dot>) and guidance (<http://www.bis.gov.uk/assets/biscore/better-regulation/docs/i/11-1316-ia-template-user-manual.pdf>).

¹¹ SEC(2011)126 Impact Assessment Board Report 2010. Page 22.

http://ec.europa.eu/governance/impact/key_docs/docs/sec_2011_126_en.pdf

¹² COM(2010) 534 Commission Communication: Smart Regulation in the European Union. Page 6
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0543:FIN:EN:PDF>

¹³ http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2012/sec_2011_1545_en.pdf

¹⁴ http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2012/sec_2012_0074_en.pdf

the Directorates-General did not fully address these concerns. Basic Smart Regulation principles, such as robust cost-benefit analysis, proportionality and the SME Test, were inadequately addressed.

Strategy (question 5)

The UK Government is committed to ensuring that no unnecessary burdens are placed on business. To that end, we endeavour to regulate only where necessary, and to try to find intelligent ways to encourage, support and enable people to make better choices, and innovative ways to stimulate growth.

We have found that in some circumstances the desired result can be achieved via non-regulatory means.

Example of good practice: UK Pub ('public house') reform

Following concerns about rent, insurance, training and dilapidations, there were calls on the Government to increase regulation in the pub sector. However, rather than regulating, the Government agreed with the industry to strengthen the Industry Framework Code and make it legally binding by incorporating it into contracts. A Pub Independent Conciliation Advisory Service (PICAS) will be set up to provide mediation and arbitration, and a new Pubs Advisory Service (PAS) will be established to provide free advice to all prospective and current tenants and leasees.

We would like the Commission to explicitly consider whether alternatives to regulation could be used to achieve policy outcomes, and to ensure that innovative techniques (such as behavioural economics) are used to ensure that regulation is developed in the least burdensome way.

II. ENSURING THE EFFECTIVE IMPLEMENTATION OF EU LEGISLATION

As well as ensuring that legislation is well-designed, what often matters most is how the law is applied and interpreted at national level. The UK Government has committed to end the so-called 'gold-plating' of EU legislation – to ensure that we do not impose any additional burdens on businesses at national level. We are also undertaking a review of regulators, to check that rules are being enforced in a proportionate way. These areas have a tangible impact on the way business perceives regulation. If we are serious about encouraging businesses to expand and innovate in order to stimulate economic growth and jobs in the EU, then we need to ensure that we are implementing legislation in the least burdensome way.

Facilitating implementation and compliance (questions 6, 7, and 8)

It is essential that any timeframe for implementation is sufficient for Member States to engage with and consult with stakeholders. Business experience should be taken into account when designing new laws or reviewing existing legislation, and transposition deadlines should be set based on evidence of how long businesses and Member States need to comply, not as the result of political bargaining.

We would also like to see more consideration of what the optimal transposition period is, particularly taking into account the needs of small businesses, when designing and revising legislation, so that businesses have sufficient time to make the changes needed to be compliant and Governments can implement effectively.

We would like the EU to establish twice-yearly Common Commencement Dates (CCDs) for all new EU legislation, so that businesses know that new EU legislation will come into force on certain days per year. Our consultation with business in 1998 suggested that CCDs could help them plan ahead, reduce costs by 10% a year and lead to better compliance. 68% of respondents from across the EU have said they would welcome CCDs. In the Small Business Act¹⁵, the Commission committed to “wherever practical, use common commencement dates for regulations and decisions affecting business and publish an annual statement of such legislation entering into force”.

The UK is in favour of the increased use of national transposition tables. The UK Government regularly publishes transposition tables and guidance documents to help businesses to understand and comply with new legislation. We believe this is good practice and would like to see it emulated at EU level. This would help increase understanding of the approach taken to implementation across the EU.

Informing the public (question 9)

The Commission should consider improving the transparency of information provided to businesses on the implementation of EU law in the Member States.

Improving enforcement (question 10)

Smart enforcement of the law - imposing minimum burdens at the minimum cost required to get the job done – is just as important as timely and correct implementation. The SOLVIT service already goes a long way to addressing cases of mis-application of EU law in individual Member States.

In order to deliver effective results in the least burdensome way, we need to be able to target domestic enforcement regimes in a proportionate, risk-based manner. We would therefore like the Commission to give increased consideration to risk-based approaches to enforcement when drafting legislation, or leaving Member States with the freedom to adopt a risk-based approach to enforcement. For example, an ‘earned autonomy’ model could be used, whereby a Member State that can prove that it is enforcing appropriately could be given more scope to enforce in a risk-based way than those that cannot demonstrate effective enforcement.

As well as the need to bear down on the flow of new regulation and remove unnecessary measures from the statute book, what often matters most to businesses and individuals across the country is their day-to-day experience of the way regulation is enforced.

Example: ‘Focus on Enforcement’ Campaign

UK Government ran a consultation to gather views and experiences on a range of proposals for change to UK enforcement practices. While it is clear that there is good practice in places – regulators working constructively to help business and others comply with the law – there is still considerable scope for improvement. Creating the conditions for a business-led economic recovery means we need to do everything possible to remove all unnecessary burdens on business, whilst ensuring that the important protections provided by regulators continue.

The Government response (linked below) sets out our ambitious plans for reform.

¹⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0394:FIN:EN:PDF>

These include a thorough review process to drive fundamental reforms in the regulatory landscape; delivery of the Coalition commitment to extend sunset clauses to regulators; improving and broadening the successful Primary Authority scheme to bring more coherence and accountability to local enforcement; and the huge potential we see for Local Enterprise Partnerships to bring regulators and business together.

<http://www.bis.gov.uk/assets/biscore/better-regulation/docs/t/11-1408-transforming-regulatory-enforcement-government-response.pdf>

In order to help businesses to understand new legislation and facilitate compliance and enforcement, the Commission should, where it publishes guidance on given Directives, commit to publishing this guidance in advance of the implementation date.

The Scottish Government's independent Regulatory Review Group's 2011 Annual Report¹⁶ highlights that problems in enforcement can arise because those involved in enforcement are not sufficiently involved in the initial stages of developing legislation and producing guidance.

III. CONSULTING THE PUBLIC

It is vital that stakeholders have the opportunity to be heard at all stages of the policy-making process. Early engagement is crucial for businesses, so that they can share their practical experience whilst policies are still being formulated, and advise on how policy objectives can be achieved in the least burdensome way. But it is equally important that businesses get a chance to comment on the existing regulatory stock, to identify the regulations that impose unnecessary burdens which can stifle growth.

Minimum standards (questions 11 and 12)

In general the Commission's principles and minimum standards set a sensible benchmark for good practice. We welcome the extension of the timing for public consultations from 8 to 12 weeks and call on the Commission to ensure that this is fully respected. We acknowledge that legislative items in the Commission Work Programme already use consultations to inform their IA in almost all cases, but authors of some non-legislative CWP Communications may be forgetting to seek stakeholder views that could bring important insights on costs and benefits.

The high-level Commission guidance on consultations¹⁷ does not consistently produce appropriately designed consultations. We hear regular criticisms from business about the lack of clarity in consultation documents, and about proposals emerging with no consultation on the impact of some of the key elements. As the Commission's standards are not always expressed in operational terms, they provide few grounds for stakeholders to appeal for more information.

In particular, we continue to see a lot of consultations being launched over the summer or Christmas period (including this one), when many Member States and stakeholder organisations are not able to devote as much time as they would like to their responses. We would like the Commission to explore the possibility of clarifying

¹⁶ <http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/RRGAnnualReport2011>

¹⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0704:FIN:EN:PDF>

its broad guidance into an operational standard that ensures extra time is allowed to compensate for this. Whilst we acknowledge that sometimes it is important to get information from key stakeholder groups quickly, we would like to see sufficient time allowed for business groups to formulate accurate and meaningful responses to the important questions posed.

We believe that all public consultations should include a consultation stage IA; so that business groups and other interested stakeholders can better understand the implications of the various options on which the Commission is consulting. This will improve the quality of feedback provided to the Commission on their proposals, and improve the evidence base for policy-making.

Scope (question 13)

There have been occasions where consultation documents have not been sufficiently clear and comprehensive. In particular, they do not always give cost data upfront, and are not always clear on whether alternatives to regulation or lighter regimes for SMEs have been considered. On occasion the consultation on non-legislative and legislative options appears to have been undermined by accompanying press releases and/or roadmaps which appear to indicate that a legislative approach has already been chosen (for example, consultations for the Third Country Procurement Regulation, and the proposed Accessibility Act).

However, we are aware of some good practice in the Commission. We welcome in particular the efforts made in DG SANCO to publish IA studies and discuss them with stakeholders and would encourage other parts of the Commission to take up this approach.

Commission consultations should be as open and involve as wide a range of organisations as possible.

Timing (question 14)

We welcome the publication of Commission Roadmaps and think these are a useful tool for helping policy-makers engage early in the EU legislative process. The Commission should therefore take action to give roadmaps more visibility. The ability to provide feedback on roadmaps should be provided, as well as more detailed (and regularly updated) information on the legislative timetable. However, roadmaps should not be seen as an alternative to a good quality IA, and do not negate the need for businesses to be given an opportunity to comment on the IA for a proposal at the consultation stage.

The quality of proposals is improved through early stage consultation. To this end the UK Government encourages Departments to engage with Commission roadmaps at an early stage.

Example of good practice: Department for Transport (DfT) 'early warning system'

DfT has developed a Department-wide early warning system to assess the regulatory impacts of forthcoming EU measures. Using Commission Roadmaps, DfT gains a methodical overview of EU measures before they are drafted, helping them to set priorities.

We would like to see more EU-level consultation with business organisations at an earlier stage in the process. UK business organisations have told us repeatedly that they would like more opportunity to input in the early stages of EU policy development, specifically that they would like to have the chance to feed in their thoughts on the questions for consultation (to ensure the consultation document is properly framed), and also to see a 'consultation stage' IA so that they can comment in more detail on the proposal earlier on in the process.

Outreach (questions 15, 16, and 17)

It is important that steps are taken to ensure that all interested parties are consulted. The recent 'Loftstedt review'¹⁸ of UK health and safety regulations is an example of how a range of approaches can be used in order to consult as widely as possible. Input for the review was sought from stakeholders from a wide range of backgrounds and through a number of different routes to ensure the review's findings were balanced and robust. This included a call for evidence through the Department for Work and Pensions' own website and the Red Tape Challenge website¹⁹, meetings with interested parties including employer representative groups, trades unions, victim support groups, and academics, and visits to gather evidence directly from workplaces.

The Commission should establish a dedicated email notification system, which Member States and other stakeholders could sign up to in order to be notified of consultations and other important developments.

Further use could be made of social media in order to announce and publicise consultations – this would be most useful at DG level rather than for the Commission as a whole, as stakeholders could then sign up for alerts only in those sectors of interest to them.

We welcome the forthcoming DG Enterprise website for businesses to give their views on what they consider to be the most burdensome EU legislation. We would encourage the Commission to expand this initiative to become an ongoing exercise, and to commit to take action on the legislation which businesses identify as most burdensome.

Representativeness (question 18)

Consultation with a representative range of businesses is important to ensure that the potential impact on all businesses – large and small – is fully understood. In some instances, larger businesses and trade associations have more resources to lobby and influence policy makers, and this may be to the detriment of smaller business and new entrants to the market. Commission delegations in the Member States could be well-placed to advise the Commission on the representativeness of national trade associations and other stakeholders.

Feedback (question 19)

¹⁸ <http://www.dwp.gov.uk/docs/loftstedt-report.pdf>

¹⁹ Red Tape Challenge Website: <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>. The Red Tape Challenge has looked at over 2300 regulations so far, and government has agreed to scrap or improve 49% of those – a mixture of substantive deregulation and clearing out dead wood

We welcome the publication of IA reports, and explanatory memoranda. We would find it helpful to have more information about how consultation responses have been used, and detail on why some suggestions are not taken up.

It would be useful if the Commission could indicate when a summary of consultation responses will be published, and it would be helpful if respondents could be automatically alerted when these documents are published.

Results (question 20)

In general the current consultation practices do encourage effective and open participation of most of the relevant stakeholders. However, it can be the case that where a proposal particularly affects a specific sector, it is harder to find a relevant trade association at Member State or EU level to approach for more specialist views. In these cases, a low response rate may reflect inadequate targeting of stakeholders rather than lack of interest on the part of business. The current Commission consultation on Food Contact Materials (Ceramics)²⁰ is a case in point, where only a very specific industry is affected. In these instances the Commission should make further efforts to consult directly with the affected industry, possibly by working in partnership with national governments who might be better placed to contact representatives of the industry in their own Member State.

IV. PROGRESSING TOGETHER (question 21)

All EU institutions must play their part to fully embed smart regulation principles in EU policy-making. An integrated approach is essential to ensuring that better regulatory policy and evidence-based decision-making are embedded across the EU. We therefore encourage the European Parliament (EP) and Council to play a full part in taking forward the smart regulation agenda.

We have been supportive of the significant steps which have been made in the EP over recent years. In particular, we welcome the creation of the EP's Impact Assessment Unit and would encourage individual MEPs and EP Committees to make full and regular use of this important resource to assess proposals throughout the legislative process. We have called regularly on the Council to make better use of Impact Assessments throughout the legislative process, and in particular to take further steps to live up to its commitment to assess the impacts of its own substantive amendments to Commission proposals.

We also encourage the Council and EP to share national initiatives to strengthen the voice of SMEs in the policy-making process, and to encourage the spread of best practice across Member States. The EU SME Envoys have an important role to play in advising the Commission on how to minimise the burdens of draft and existing EU legislation on SMEs.

The Commission should make better use of the High Level Group of Independent Experts on Administrative Burdens (the 'Stoiber Group'). We welcome the fact that the Group's remit has been extended until the end of the current Commission. The Group should play an important role in assisting the Commission with the monitoring of the implementation of its SME policies (in line with the Commission's 2011

²⁰ For consultation documents, see <http://fera.defra.gov.uk/scienceResearch/nationalReferenceLaboratory/chemicalSafetyFood/foodContactMaterials/documents/smePanelConsultationLetter.pdf> (could not be found on Commission website).

Communication on reducing burdens for SMEs and micro-enterprises²¹): drawing attention to areas of proposed regulatory activity where the burden is high and unnecessary; drawing up a regular scorecard on costs to businesses of new EU regulation; and assisting the Commission with independent external scrutiny of IAs.

The Commission should also make more use of the Group of High Level National Regulatory Experts (HLG-BR) to: provide feedback on business perceptions (in particular from SMEs and micro-businesses) on EU legislation that they find especially burdensome; share and promote best practice on national IAs; improve the evaluation of legislation; and encourage the consideration and use of alternatives to regulation.

V. OPEN QUESTIONS (questions 22 and 23)

In addition to our responses above, we believe that Smart Regulation at the EU level can do more to stimulate job-creation and growth in the current economic climate. We need to encourage businesses to grow and innovate by taking every available opportunity to reduce unnecessary burdens at EU and national level. Now is the time for a concerted effort to embed Smart Regulation principles in all areas of EU policy-making, and to help business to stimulate growth.

Lifting regulatory burdens on business is important in the current economic climate as a low-cost way to boost growth. Analysis conducted by the UK's Treasury on the impact of regulation on growth revealed that the regulatory environment in some EU Member States has hindered EU growth. The Commission should use forthcoming initiatives such as Single Market Act 2 to encourage Member States to undertake structural reforms to encourage cross-border EU economic activity. The growth impacts of regulatory interventions merit especially careful analysis.

In line with repeated calls from the European Council and the European Parliament, the Commission should launch an ambitious new programme to tackle the overall EU regulatory burden. We welcome the Commission's efforts to reduce the EU administrative burden, which is on track to deliver savings of 25 per cent when it finishes at the end of this year. However, administrative burdens are widely acknowledged to comprise only around a third of the total burden imposed on business by regulation – future Commission efforts to reduce the regulatory burden should consider all burdens which could affect businesses, particularly in high-growth, job-creating sectors.

The Commission should adopt sectoral targets to bring tangible benefits to industry, in particular to reduce the burdens that have the greatest impact on high-growth sectors. The Commission should also pay particular attention to reducing unnecessary burdens which arise from horizontal EU legislation (e.g. employment, environmental, or health and safety law), which business consistently tells us they find especially burdensome. We welcome the moratorium on new regulation in the automotive sector recently announced by Vice-President Tajani. Other parts of the Commission should consider adopting this approach as a way to reduce burdens on business in key high-growth sectors.

The Commission should also ensure that specific proposals do not place undue burdens on business. For example, the UK Government wants to see new data

²¹ COM (2011) 803. Report from the Commission to the Council and the European Parliament. Minimising regulatory burdens for SMEs: Adapting EU regulation to the needs of micro-enterprises

protection rules that are not unnecessarily prescriptive, and that recognise existing EU commitments to supporting both SMEs and growth.

The Commission should introduce an independently-verified annual statement of the total net cost to business of new EU regulatory proposals (broken down to show totals for each DG), and report on this statement to Council and Parliament. This would provide, for the first time, a means of systematically and transparently determining the changing and cumulative cost of EU regulation. We would also go further, and suggest that, where new proposals impose costs for businesses, the Commission should commit to find other costs elsewhere which can be reduced in order to offset this burden.

The Commission should adopt further specific proposals to reduce unnecessary EU regulatory costs on small business. This builds on the Commission's November 2011 commitment to exempt micro-businesses from new EU regulations unless their inclusion is justified, and to develop lighter regimes for SMEs. Lighter regimes could include: exemptions from full reporting requirements; risk-based approaches; de minimis thresholds; and longer transition periods. We look forward to the publication of the first annual SME Scoreboard later this year, which will provide details of how Commission proposals over the last 12 months have been modified to help small businesses.

The Commission should conduct more reviews of the stock of existing EU legislation. We welcome the work the Commission has already done in this area through launching fitness checks on five legislative frameworks. We look forward to seeing the results of this work, and would encourage the Commission to launch further fitness checks in key areas which we believe are crucial for growth, and to publish all conducted and planned fitness checks on the Commission website.

The Commission should give more serious consideration to alternatives to regulation, in particular at consultation stage, and ensure that innovative techniques (such as behavioural economics) are used so that regulation is developed in the least burdensome way.