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Government Legislative
Council of the Czech Republic

Joint Statement of ‘RegWatchEurope’ to the European Commission’s public consultation on the draft Commission Guidelines for Evaluation

Adviescollege toetsing regeldruk (ACTAL), The Netherlands

Nationaler Normenkontrollrat (NKR), Germany

Regulatory Policy Committee (RPC), United Kingdom

Regelrådet, Sweden

Komise RIA / Regulatory Impact Assessment Board (RIAB), Czech Republic

25 February 2014

Joint Statement of ‘RegWatchEurope’ to the European Commission’s public consultation on the draft Commission Guidelines for Evaluation

This input to the public consultation is prepared as the joint statement of RegWatchEurope¹. RegWatchEurope consists of five national advisory boards on reducing regulatory burdens, namely the ‘Advisory Board on Regulatory Burden’ (ACTAL – The Netherlands), the ‘Nationaler Normenkontrollrat’ (NKR – Germany), the ‘Swedish Better Regulation Council’ (Regelrådet – Sweden), the Czech ‘Regulatory Impact Assessment Board’ (Komise RIA/RIAB – The Czech Republic), and the ‘Regulatory Policy Committee’ (RPC – UK). The five boards are independent bodies that advise their respective governments on smart regulation in general and on the overall regulatory burden of legislation. We play an important role in challenging, monitoring and advising our governments within our respective mandates. We have joined forces to address Smart Regulation issues on EU level.

The robust evaluation of existing legislation is an essential component of the policy development cycle. The “evaluate first” principle is key to enabling evidenced-based policy making, and effective legislation, identifying and eliminating unnecessary costs and burdens on business, and providing for a specific checkpoint to ensure legislation is fit for purpose and delivered in the most efficient way. Whereas it is sometimes challenging to direct scarce policy resources to review existing legislation, it is necessary to establish a programme for systematically reviewing legislation. Retrospective, or ex-post, evaluation can only contribute to ensuring the development of quality legislation.

We welcome the European Commission’s (EC) ambition to strengthen the procedures for conducting evaluations at the EU level. We welcome the aims of the EC to improve the transparency of the process, including the public five-year evaluation programme produced for each individual Directorate General (DG) or the publication of the Steering Group’s quality assessments. Furthermore, we support the aim to strengthen the evidence base when reviewing existing legislation, and deduce from the lessons learned which elements should be dropped, developed or improved.

RegWatchEurope supports the five-year evaluation programme - which corresponds to one of our earlier recommendations in response to the EC’s 2012 public consultation on Smart

Regulation². At that time, we called for the EC to “...implement a systematic ex post-evaluation approach in order to monitor the actual costs as well as the actual results of legislation. These evaluations should also analyse the context and interdependences of, and within, relevant areas of legislation. The inclusion of end users in the evaluation process will make it possible to address for example inconsistencies between various existing legislations.”

We welcome the further use of fitness checks in the EC’s evaluation policy guidelines that recommend the evaluation of related and interdependent measures in a coherent manner. This should provide for a holistic approach to the scrutiny of interdependent legislation and overcome the risk of a disjointed approach to scrutiny, and avoid the duplication. Looking at related legislation in this way will allow policy makers to consider how effective the policy goals of a package of measures affecting a particular sector have been in achieving the intended policy goals, the overall impact on business and whether efficiencies can be gained.

Evaluation underpins the COMPETE principles set out in the Business Taskforce on EU Legislation report (October 2013)³. The report demonstrated that evaluation is an important factor in burden reduction contributing to ensuring that new EU legislation is pro-innovation and pro-growth. The Taskforce recommended that “the European Commission should not bring forward any new proposals until the existing legislative framework has been evaluated.”

In relation to the submitted draft evaluation guidelines, we would like to draw your attention to the following elements:

1) On planning/screening

We support strongly that each DG is made responsible for co-ordinating and monitoring its own evaluation activities. Each DG should screen the acquis that falls within its responsibility. Each DG should be required to come forward with proposals for a programme of evaluation in a so called “rolling plan for evaluation”. However, we are concerned that the approach lacks criteria for the selection and scope of evaluation.

- **We believe that, in order to strengthen the independence and legitimacy of ex-ante as well as ex-post evaluation, independent external experts should be appointed to the cross-DG quality review panel.**

We support fully the “evaluate first” principle. The draft guidelines do not make clear when ex-post evaluation of legislation should be tabled if it is not already planned. Each DG is obliged to have at least one evaluation per year. In accordance with the REFIT ambition we believe more is needed. Evaluations give insight into how effective and efficient legislation is. An evaluation provides a platform for discussion on potential revision of, or even withdrawal of existing legislation. Continuous reflection and assessment of EU legislation is required to

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253943/2012_Reaction_on_consultation_Smart_Regulation.pdf

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/34709/12-1326-10-point-plan-for-eu-smart-regulation.pdf

ensure it is fit for purpose and achieving the intended objectives in the least burdensome way.

- **We believe that besides the “evaluate first” principle, evaluations should also be carried out within a year when stakeholders give clear signals on the complexity of certain legislation.**
- **Criteria for determining when the evaluation of legislation should be undertaken, developed and applied EC-wide. We also believe that the guidelines could be enhanced and go further to ensure robust evaluation:**

Enhancements

- **“Think small first” should form part of all and every evaluation. Each evaluation should include a specific section “impact on SMEs and micro-businesses” to the five key evaluation criteria.**
- **Evaluation must look beyond ‘administrative burdens’ to include an assessment of overall compliance costs to business.**

Criteria

- **Received signals of third parties experiencing a high level of complexity when enforcing or complying to the legislation.**
- **EC’s impact assessments indicated high costs for businesses.** In this context we also would like to draw your attention to practices in Germany where legislation that imposes annual costs on business of €1 million or more should be evaluated. Germany has launched in this context **an expert study on evaluation**⁴.
- **Evaluation activity prioritised to focus on legislation with the greatest potential for removing and reducing burdens on business.**
- **Review of a related legislation is planned.**
- **Where the European Parliament and EU Council has approved a high number of amendments during the legislative process.**

2) On participation

The planning/screening procedure is considered to be a fundamental step within the evaluation procedure. Given its importance, decisions in this phase need to be taken in an open, transparent and comprehensive way and should include soliciting the views of stakeholders at consultation before the scope of evaluation is decided upon.

Evaluation would be improved significantly by the **timely publication of the mandate for evaluation, including consultation timeframes, key milestones and deadlines.** Stakeholders should be made fully aware on **how to provide input to the EC on the scope of each evaluation mandate, and deadlines for responding.** The draft guidelines should be transparent about how the EC will take stakeholder views and contributions into account,

⁴<http://www.normenkontrollrat.bund.de/Webs/NKR/DE/Publikationen/publikationen.html;jsessionid=F1EEC7C6F8EA0C99503185B95008E797.s3t2>

and reflect these in each evaluation plan. The draft guidelines should set out how stakeholders, who have provided contributions, will receive feedback.

Furthermore, it is important to **consider the “end-user” perspective while addressing inconsistencies across existing legislations** as set out in the draft guidelines. We underline the importance of the EC to involve member state authorities proactively as well as stakeholders to solicit feedback to identify and understand where there are inconsistencies due to fragmented legislation at the EU level, or as a consequence of transposition / implementation at the national level.

The draft guidelines indicate that evaluations should be impartial and independent. As noted above, we believe that the independence of any evaluation needs to be reinforced. Internal evaluation alone can only go so far in enduring robust scrutiny and we support and recommend strongly that **each evaluation should be conducted publicly, include an easy to understand, non-technical executive summary (preferably two pages)**.

The draft guidelines state that follow-up to the evaluation should be given within 6 months. **We believe it to be essential that third parties are involved in the process of the follow-up.**

3) On data

Each evaluation exercise will require differing and specific data. It is essential that **the evaluation mandate sets out clearly the data needed and the procedures that will be applied** in order to provide for the basis of analysis. Member States may have reporting obligations for example, and could provide information that will enhance an evaluation. Prior to evaluation, the reporting obligations explaining what is required should be addressed systematically. **Unnecessary reporting obligations lead to unnecessary costs for all parties involved.**

The draft guidelines (page 15) state that in most cases the initial post-implementation report is usually requested 3-5 years following implementation. The draft guidelines also state that this is however often too early for sufficient data. We do not agree with this. It is essential for maintaining fit for purpose legislation to have the opportunity to review the early assessment of the effects of legislation in order to address the most burdensome elements that are imposed on business.

- **We recommend that evaluation and subsequent initial post-implementation review should focus on areas with the greatest scope for potential removal of unnecessary burdens on business.**

4) On quality

For each ex-post evaluation of legislation, it is necessary to be clear in advance on the intended objectives of the legislation, intended effects, and the expected outcome. It is only against this backdrop that policy makers are able to assess whether the legislation was successful in achieving the envisaged objectives.

- **All new legislative proposals should set out criteria against which ex-post evaluation will be assessed, including key dates when the legislation will be evaluated.**

Parameters such as targets and what success looks like, in addition to the intended behavioral effects, **should be clearly defined in the ex-ante impact assessment.**

- **In our view, the preconditions for a proper evaluation and monitoring of the intended outcomes should be derived from objectives and expected results during the ex-ante phase of policy development. Ex-ante impact assessments should set out the policy targets, the criteria and the evaluation methodology (when, by whom and how) for the ex-post evaluation.**

Setting the success criteria for evaluating the effectiveness of legislation is an important element of any ex-ante impact assessment. For evaluation in itself to be successful, a key element is to obtain the necessary data on the real impact of legislation. In many cases, information on the impact of EU legislation can be best obtained from member states.

- **It is important to work with member states in ensuring that relevant and robust data can be obtained during ex-ante policy development to ensure an effective ex-post evaluation.**

To ensure uniformity of methodology, it needs to be standardised. The EU Standard Cost Model could form the basis of standardisation in the case of regulatory burden evaluation. This model is already used widely by EU member states in calculating administrative burdens. At the moment **the OECD is developing guidance on calculating overall regulatory compliance costs.** This guidance provides the opportunity to establish a standard on these costs in the near future.

The draft guidelines address the issue of good evaluation questions. Given the context of these guidelines, i.e. promotion of smart regulation principles across the EU institutions, we believe a standard set of questions should be identified and correlate with the EU's smart regulation ambition. These questions should include, for example, what is the cost on business of complying with the requirements of the legislation, and how can this burden be reduced? While legislation can have overall benefits for society that may be difficult to quantify – and it is not clear that legislation that cannot demonstrate an overall net benefit should be taken forward – unnecessary costs should always be avoided and eliminated where possible, whatever the benefits of the regulation under consideration. We therefore question the suggestion made in the draft guidelines (p.35), namely that *“Although an analysis of costs can be very important, in terms of efficiency analysis, it only provides half the story.”*.

- **The EC should pay greater attention to overall regulatory costs on business considering the current economic environment.**

5) On the follow-up of evaluation

It is expected that the EC's future proposals for legislation will mainly consist of reforms to the acquis. **The principle of “evaluate first” is essential in this context. However, the timing of evaluations must enable the results to be fed into ex-ante impact assessments. Evaluation results should not be “used” primarily as the basis for developing new legislation. We strongly support that this approach is enshrined in the guidelines.** Focus should be placed on the continued need for the legislation, and the consideration of alternative and non-legislative approaches.

A consequence of evaluation is that an assessment is made on whether the appropriate policy instrument has been used. The draft guidelines should make it implicitly clear that **the “do-nothing” option should always be considered.**

- **The “do nothing” options should be assessed fully in evaluations for ensuring that legislation that is not fit for purpose imposing unnecessary and high regulatory burdens on business is avoided.**

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