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NOTE

from:	General Secretariat of the Council
to:	Delegations
Subject:	Advancing Better Regulation in Europe - UK/Austrian/Finnish Presidency paper

Delegations will find attached a discussion paper on "Advancing Better Regulation in Europe" prepared by the UK, Austrian and Finnish Presidencies for consideration at the (ECOFIN) Council on 6 December.

Advancing Better Regulation in Europe

A joint UK, Austrian and Finnish Presidency discussion paper

December 2005

Introduction

Better regulation is central to the re-launched Lisbon strategy for delivering jobs and growth in Europe and is essential to ensure that Europe responds effectively to the opportunities and challenges of globalisation. Businesses, voluntary groups and citizens alike consistently cite 'red tape' as one of their major concerns about the EU, while improvements in the regulatory framework, while respecting legitimate social and environmental objectives, could bring significant productivity benefits for many European countries and provide an important boost to growth and jobs.

As successive Presidencies of the European Union we welcome recent progress and underline our enduring commitment to better regulation and the Lisbon agenda. Significant steps have already been taken to improve the regulatory environment in Europe. For example, over the past year:

- revised impact assessment guidelines have been published by the Commission, including an enhanced competitiveness-testing element;
- the withdrawal of 68 items of pending EU legislation was announced by the Commission in September;
- the Commission have set out a new work programme to simplify 1400 rules and regulations over the next three years;
- agreement has been reached by the Commission and the Council to measure the administrative costs of EU legislation, and Council has invited the Commission to explore ways of integrating this methodology into the simplification initiative and to consider options for setting targets for reducing burdens in specific sectors over time; and
- progress has been made on the inter-institutional agreement on a common approach to impact assessments.

These are welcome and important developments, and stand to make an important contribution to improving the EU regulatory framework in line with priorities established by the European Council and the Six Presidencies' initiative of December 2004. The first priority is for all of the EU institutions to take forward these work programmes so as to

ensure that we deliver tangible results which make a difference to European citizens and businesses. In addition, the UK, Austrian and Finnish Presidencies believe that further work should be taken forward in the following seven areas.

1) Impact assessment

Rigorous analysis of the evidence base is widely recognised as a fundamental discipline for better policy and lawmaking. Business and other stakeholders consistently cite systematic and transparent impact assessment, with comprehensive consultation, as the key to improving the EU regulatory environment.

The Commission has introduced new impact assessment guidelines covering the three pillars of sustainable development. The November Competitiveness Council welcomed these, including the strengthened focus on competitiveness and the commitment to comprehensive and effective implementation for all major legislative and policy defining documents in the annual work programme. This will include thorough analysis of all policy delivery options, including alternatives to regulation.

The Competitiveness Council has also signalled support for the Commission's further commitment to a comprehensive independent evaluation of the implementation of the Commission's impact assessment system, to be launched early in 2006.

The Council has in turn confirmed that it will make full use of the Commission's impact assessments to inform political decision-making and has re-affirmed its intention to undertake impact assessment of substantive Council amendments with a view to developing best practice, in line with the commitment in the Inter-Institutional Agreement on Better Law-Making.

The joint Presidencies welcome the commitment of all the Institutions to developing robust impact assessment discipline across the three pillars, with a strong focus on competitiveness, and undertake to work with the Commission and Parliament to embed its systematic use in the policy and lawmaking process.

2) Simplification and screening of legislation

In June and July this year, Competitiveness Council Ministers from twenty-three Member States responded to the invitation of Vice-President Verheugen by suggesting legislation in need of simplification, as did numerous external stakeholders. The November 2005 Competitiveness Council welcomed the Commission's Communication "Implementing the Community Lisbon Programme: A strategy for the simplification of the regulatory environment", including the incorporation of 15 Council priorities for simplification and its approach based on continuous in-depth sectoral assessment.

A continuing, systematic programme to simplify existing legislation is of prime importance if European legislation is to fulfil its purpose of improving conditions for European citizens and businesses. Simplification allows outdated, overlapping or inefficient legislation to be reformed in order to deliver jobs and growth while respecting the *acquis communautaire*. Such a programme of simplification needs to deliver real reductions in the burdens on business and be supported by a programme of codification.

It is important for the usability of the *acquis* that the process of codification of European law be pressed forward in line with priorities set out in the Commission's Communication to the Laeken European Council in December 2001, on which little progress has been made up till now. The successive Presidencies of the UK, Austria and Finland call on the Commission to accelerate the flow of codification proposals.

The screening of outstanding initiatives also has an important role to play in ensuring that legislation is proportionate and that proposals have not become unnecessary or in need of modification or further analysis since their introduction. The November Competitiveness Council welcomed the Commission's screening initiatives and called on the Commission to continue monitoring pending proposals with a view to withdrawal, replacement or modification where this would be appropriate.

The joint Presidencies give their full support to the Commission's intention to adopt proposals within the rolling simplification programme according to the timetable set out in its Communication, and undertake to give high priority to the adoption of such simplification proposals, including pending simplification proposals.

3) Tackling the administrative burden of EU regulation

The November 2005 ECOFIN Council conclusions¹ welcomed the Commission's proposal to measure administrative burdens in impact assessments of EU regulation. The conclusions also provide a framework for maximising the benefits of such measurement going forward.

A number of Member states have already found *ex post* measurement of the administrative burden allows them to develop an understanding of where the most significant burdens exist and to identify priorities for simplification. Simplification programmes are more effective when they are established on the basis of a systematic measure of the administrative burden, either on a sectoral or thematic basis. Measurement also enables progress to be monitored effectively and demonstrated to stakeholders.

The November ECOFIN Council underlined the importance of taking administrative burdens into account in the simplification initiative and invited the Commission to explore how best to integrate the measurement of administrative burdens into its ongoing work programme and to report on how this is being achieved during the first half year of 2006.

A number of member States including Denmark, Belgium, Sweden, the Netherlands, Czech Republic and the UK are planning to, or have already achieved, significant reductions in administrative burdens. These can bring tangible benefits to European businesses and citizens without compromising regulatory outcomes. The November 2005 ECOFIN Council reiterated its October 2004 call for the development of quantitative objectives for the reduction of the administrative burden and invited the Commission to bring forward proposals by Spring 2006.

The joint Presidencies welcome the commitment of the Commission to integrate a method for measuring administrative burdens into the revised guidelines on impact assessment and to measure the administrative costs of individual EU regulations. Recalling the conclusions of the November 2005 ECOFIN Council, we invite the Commission also to integrate the measurement of administrative burdens into its simplification programme, and to explore options for establishing measurable targets for reducing the administrative burden of EU regulation in specific sectors.

¹ 13989/05

4) Risk-based enforcement

The better regulation agenda in Europe has thus far focused on improving the flow of new regulations and in identifying unnecessary burdens in the stock of existing regulations. However, it is critically important that due consideration is also given, at the earliest possible stage, to how a legislative proposal will be implemented, as enforcement activities can impose significant administrative burdens on businesses, citizens and public authorities.

The use of lighter regulatory approaches, or alternatives to regulation should be considered where it is likely that the burden of enforcement and/or compliance will be disproportionate to the benefit to be achieved by the regulatory proposal. As noted at the October ECOFIN, the financial services sector offers one example of best practice in ensuring that regulators inspect and enforce in a proportionate manner. This approach could, where appropriate, be extended to other sectors.

Enforcement is largely a Member State responsibility. As part of the better regulation agenda, regulators must operate effectively, and use the best evidence to programme their work. The impact assessment process provides an opportunity to consult with regulators and other stakeholders as appropriate, to consider the enforcement, including inspection, costs of any new proposal.

The joint Presidencies underline the importance of enforcement to reducing the administrative burdens associated with regulation. A risk-based approach can help to ensure the burden of enforcement is proportionate to the benefit to be achieved from the regulatory proposal. The joint Presidencies believe there would be a value in further research into enforcement practices in order to share best practice among Member States and promote the use of risk-based techniques.

5) Stakeholder consultation

The Six Presidencies' initiative invited the Commission to strengthen business input into the process of regulatory development and reform. In its November Conclusions, the Competitiveness Council reaffirmed the importance of transparency in policy making and effective stakeholder consultation. It welcomed the Commission's intention to extend the use of Commission-led sectoral stakeholder groups on the CARS21 model to other sectors², and invited the Commission to strengthen the links between sectoral analysis involving stakeholders and the establishment of priorities for simplification.

Business is one of the key stakeholders in the design, implementation and improvement of regulation, and effective consultation and engagement is key to delivering improved regulatory outcomes. The ECOFIN Council in October, for instance, underlined the importance of full and effective consultation with financial market practitioners in the design of financial services regulation.

The Commission already consults widely with business on individual policy measures, including through the European Business Test Panel (EBTP). But there is scope for going further, and ensuring that business has a voice, not just in the design of individual regulations, but in assessing progress across the whole regulatory reform agenda and in identifying priorities for reform. One option would be to consider the establishment of a new task force to achieve these goals.

The joint Presidencies welcome the emphasis placed by the Commission on strengthening stakeholder consultation, including business input, to the process of regulatory design and reform in Europe and invite the Commission to consider options that further enhance business input at a strategic level.

² To include Pharmaceuticals, Mechanical Engineering, Information and Communication Technologies and Energy-Intensive sectors.

6) Alternatives to regulation

The Commission's revised impact assessment guidelines require that all non-legislative options, including the "do nothing" option are given equal consideration during the impact assessment process. Early and effective consideration should always be given to alternative approaches to classic regulation, including new approach directives, co-regulation, self-regulation, social partners' agreements, market-based instruments, recommendations, and information or guidance.

While awareness is increasing of the role of alternatives to regulation in the policy-making process, further action can be useful to increase understanding of the options available and to disseminate innovative practice throughout the Community institutions. This could be achieved by setting out examples and the range of factors which contribute to the success or failure of specific options which policy- and decision-makers could draw upon when developing or discussing new proposals. A new report on regulatory alternatives by the UK Better Regulation Task Force, launched on 5 December 2005³, may provide a useful starting point.

The joint Presidencies stress the important role that alternatives to regulation can and should play in the policy-making process, and invite the Commission and the Member States to work together to improve awareness of the different options available.

7) International regulatory co-operation

Globalisation presents important opportunities for the European economy but also creates increased challenges, highlighting regulatory differences between the EU and other world markets. In highly interdependent markets, differing regulatory systems can lead to obstacles in trading with, and investment in, third countries. This results in significant burdens for EU business⁴ and makes it harder to seize the benefits of global markets.

³ *Routes to better regulation, A guide to alternatives to classic regulation*, Better Regulation Task Force, December 2005.

⁴ http://www.europa.eu.int/comm/internal_market/ext-dimension/docs/dialogues/work-doc-reg-dialog-20-05-2005_en.pdf

Some of these divergences will reflect entirely legitimate regional preferences. Others achieve the same or similar outcomes but technical differences in approach add significant costs to business. These costs can be minimised through either comity or convergence of regulations without undermining either side's objectives. Removing these divergences will help boost EU competitiveness, increasing jobs and growth. Intensified cooperation with the relevant third country regulators can help achieve convergence, while protecting key EU policy objectives. A good example of this is the informal EU-US Financial Markets Regulatory Dialogue.

The EU already has the tools to address unnecessary divergences. For new regulatory proposals, new guidelines for impact assessments require that each proposal be tested for its impact on the competitive position of firms in comparison with their non-EU rivals and on cross-border investment flows. In parallel, simplification of existing rules could also identify where unnecessary divergences were damaging EU competitiveness.

The joint Presidencies invite the Commission to intensify international regulatory dialogues such as the EU-Japan Regulatory Reform Dialogue and the EU-US regulatory forum. We encourage the Commission to use existing tools such as impact assessments and the simplification programme in a systematic effort to eliminate unnecessary divergences which hinder EU competitiveness and growth.

Conclusions

The joint Presidencies remain confident that our vision of an effective regulatory framework in Europe, focused on the objectives of the Lisbon strategy, is widely shared within the EU institutions and Member States and among those external stakeholders most affected by regulatory practice. In taking forward this important agenda during our successive Presidencies we:

- welcome the commitment of all the Institutions to developing robust impact assessment discipline across the three pillars, with a strong focus on competitiveness, and undertake to work with the Commission and Parliament to embed its systematic use in the policy and lawmaking process;
- give their full support to the Commission's intention to adopt proposals within the rolling simplification programme according to the timetable set out in its Communication, and undertake to give high priority to the adoption of such simplification proposals, including pending simplification proposals;

- welcome the commitment of the Commission to integrate a method for measuring administrative burdens into the revised guidelines on impact assessment and to measure the administrative costs of individual EU regulations. Recalling the conclusions of the November 2005 ECOFIN Council, we invite the Commission also to integrate the measurement of administrative burdens into its simplification programme, and to explore options for establishing measurable targets for reducing the administrative burden of EU regulation in specific sectors;
- underline the importance of enforcement to reducing the administrative burdens associated with regulation. A risk-based approach can help to ensure the burden of enforcement is proportionate to the benefit to be achieved from the regulatory proposal. The joint Presidencies believe there would be a value in further research into enforcement practices in order to share best practice among Member States and promote the use of risk-based techniques;
- welcome the emphasis placed by the Commission on strengthening stakeholder consultation, including business input, to the process of regulatory design and reform in Europe and invite the Commission to consider options that further enhance business input at a strategic level;
- stress the important role that alternatives to regulation can and should play in the policy-making process, and invite the Commission and the Member States to work together to improve awareness of the different options available; and
- invite the Commission to intensify international regulatory dialogues such as the EU-Japan Regulatory Reform Dialogue and the EU-US regulatory forum. We encourage the Commission to use existing tools such as impact assessments and the simplification programme in a systematic effort to eliminate unnecessary divergences which hinder EU competitiveness and growth.
