



25 June 2010

Our ref: ICAEW Rep 58/10

Your ref:

European Commission
Secretariat-General
Unit SG.C.2
B-1049 Brussels

By email: sg-smart-reg-info@ec.europa.eu

Dear Mr Watson

ICAEW Response to EC Stakeholder Consultation on Smart Regulation

ICAEW is pleased to respond to your request for comments on *Smart Regulation*.

ICAEW is listed in the European Commission's Register of Interest Representatives (identification number: 7719382720-34).

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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ICAEW REPRESENTATION

Memorandum of comment submitted in June 2010 by ICAEW, in response to the European Commission consultation paper on *Smart Regulation* published in April 2010

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation paper on *Smart Regulation* published by the European Commission.

WHO WE ARE

2. ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, we provide leadership and practical support to over 134,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. We ensure these skills are constantly developed, recognised and valued.
4. ICAEW has been present in Brussels for over a decade, facilitating dialogue among stakeholders on key public policy issues and providing technical advice across a broad range of topics including financial reporting, audit, business law, ethics, corporate governance, financial services, tax, enterprise, skills, regulation and sustainability.
5. ICAEW is listed in the European Commission's Register of Interest Representatives (identification number: 7719382720-34).

MAJOR POINTS

6. ICAEW is a strong advocate of a straightforward regulatory framework which is based on evidence, is clear about what is trying to be achieved and takes into account the impact of regulatory measures on organisations and people. A smart regulatory approach must uphold key societal goals, help safeguard business confidence through the embedding of standards of ethical behaviour and reduce administrative burdens.
7. The key and overriding challenge remains that of bringing about a culture change amongst policy-makers. This requires all policy-makers to pay due regard to regulatory impact, develop real alternative options for how policies might be designed and enacted, minimise negative impacts and engage with stakeholders in a meaningful manner throughout the process.
8. This is particularly important for businesses – especially SMEs – who benefit from an effective and stable regulatory system where legislative changes are limited, simply communicated and easily implemented.
9. The financial and economic crisis has raised serious questions about what constitutes appropriate regulation: it is critical that lessons are learnt and used to improve regulatory approaches. This is particularly important given the pressure on governments to reduce public spending and find new ways of delivering public policy objectives. ICAEW firmly believes that a principles-based approach to regulation – not to be confused with light-touch regulation – combined with appropriate monitoring and enforcement forms the basis of a robust framework. Such an approach would incorporate underlying values into regulation and ensure compliance with the spirit, rather than the letter, of the law.

10. The economic and / or social need for new legislative measures must be clearly articulated. In general, regulatory initiatives should deal with existing market failures whilst taking into account the possible consequences, likely costs and cumulative impact of policy measures on businesses and other organisations.
11. We welcome the new focus on ex post evaluation. Post implementation reviews must be based on the original impact assessments and must consider whether other policy options, including repeal measures, are appropriate. All existing laws must be screened against the *think small first* principle.
12. The impact assessment process could be further improved, including by the introduction of a one-page summary and better top-level cost benefit data. Stakeholders should be able to provide input on draft impact assessments. The composition of the Impact Assessment Board needs to be made more independent of the Commission and greater transparency is needed to show how the Board's opinions are taken into consideration.
13. The reduction of administrative burdens programme should be extended to other burdensome aspects of regulation such as policy and compliance costs. We also call for a comprehensive review of how the legal, tax and regulatory framework across the EU affects support for enterprises.
14. A smart regulatory approach – including impact assessment and ex post evaluation processes – needs to be firmly embedded in the European Parliament and Council.

RESPONSES TO SPECIFIC QUESTIONS / POINTS

I - IMPROVING EXISTING LEGISLATION

15. This stakeholder consultation provides a valuable opportunity to consider how best to improve the existing stock of legislation – work that has concentrated on simplifying laws, cutting red tape and enhancing ex post evaluation. We believe, however, that **a smart regulatory framework must maintain focus on the full cycle of policy design, implementation, enforcement and evaluation.**

Q1: Do you think that the Commission's approach to improving existing legislation is appropriate, or do you believe there are more effective ways of doing so? Could you give us practical examples?

16. The sometimes default belief that more regulation is always the solution needs to be offset. We urge the Commission to **look at how regulation can be effectively reversed**, whilst understanding that once regulation has bedded down it can be costly to change, especially for complex matters. **More systemic use of sunset clauses** could help in this respect.
17. The **use of regulatory budgets or a one in, one out approach** to help limit the stock of regulation should be considered. The introduction of such mechanisms would help different Directorate Generals (DGs) (as well as other EU institutions) to focus on priorities. This would incentivise policy-makers to constantly search for cost reductions in order to pay for new regulatory costs.¹
18. We also welcome recent proposals by the UK Business Secretary Vince Cable to **establish a new Challenge Group to come up with innovative approaches** to achieve social and

¹ Our views on regulatory budgets are set out in more detail in a consultation response to the UK Better Regulation Executive (November 2008) available at: http://www.icaew.com/index.cfm/route/161675/icaew_ga/Technical_and_Business_Topics/Consultations_and_representations/ICAEW_representations/Regulatory_budgets/pdf

environmental goals in a non-regulatory way, building on the insights of behavioural economists. We believe a similar structure could be usefully established at EU level.

19. As outlined in question 2 below, improving existing legislation requires a more comprehensive assessment of the information requirements placed on organisations. Greater attention should be paid to the implementation of legislation via improved guidance and a straightforward and simple approach to compliance.

Q2. What can be done to ensure that businesses feel the benefits from simplification and administrative reduction programmes? Do these programmes focus on the right issues? How can stakeholders, including SMEs, better indicate which pieces of legislation should be simplified? Could you give us practical examples?

A BUSINESS FRIENDLY REGULATORY ENVIRONMENT

20. We acknowledge that there have been concerted efforts at European and national levels to improve the business environment for enterprises. Yet our 2009 Global Enterprise Survey indicates that businesses in the EU believe they still struggle against a less business-friendly environment than their peers in the US, Asia and the Gulf.²
21. The Small Business Act and the last review of the Commission's Impact Assessment Guidelines were steps in the right direction, focusing attention on the design of policies according to the *think small first* principle. The next challenge is to **ensure that existing laws are also screened against the *think small first* principle** as part of a standard review process.
22. The introduction of common commencement dates in the Small Business Act is also helpful and should now be extended to all business-related proposals. The dates of changes must be appropriately communicated to the business community by member states as well as the Commission.

REDUCING THE FLUX OF REGULATION

23. Business owners complain about regulation because it involves the diversion of scarce resources away from productive activities. Businesses need to immediately understand the reasons for and requirements of policy changes. Wherever possible they should be granted a greater degree of flexibility in the manner in which they attain the stated aim of regulation.
24. **A better understanding of the flux of new regulation is needed.** The cost of taking on board new regulation can be particularly difficult for businesses that have systems in place to cope with old regulation. Limiting regulatory changes therefore reduces the time businesses have to spend on understanding and dealing with new requirements. In short, it frees them to focus on what they do best. This is particularly the case for SMEs who do not have the resources or established business models of larger companies.

MAINTAINING FOCUS ON THE REMOVAL OF BURDENS

25. ICAEW supports moves to further alleviate administrative burdens believing that these should **focus on the financial and opportunity costs imposed on businesses**, whilst taking into account the economic, cross-border and public interest benefits that may be associated with existing regulation. It is ultimately in businesses' interest that the right balance is achieved between the benefits and costs of regulation. Proportionate public interest safeguards can help enhance business performance, are essential for maintaining

² To compile the 2009 Global Enterprise Survey (www.icaew.com/enterprise), interviews were conducted with 101 businesses throughout the EU, 100 businesses in the US, 280 businesses in Asia (Hong Kong, Singapore and Malaysia) and 62 businesses in the Gulf. Of the 1,000 businesses surveyed in the UK, 635 were globally engaged (figure in small brackets in the table).

business confidence and ensure that the interests of consumers, investors, shareholders, creditors and other stakeholders are protected.

26. The Commission's simplification and reduction of administrative burdens programme should be expanded to **include other burdensome aspects of regulation, such as policy and compliance costs.**

ASSESSING INFORMATION REQUIREMENTS AND ENHANCING COMPLIANCE

27. The issue of guidance needs to be addressed early in the policy design process rather than as an afterthought once policy initiatives have been adopted. Guidance must not be treated as a form of regulation by a different name. Rather it should clearly set out how policy-makers expect organisations and individuals to implement changes and comply with any new requirements. **Guidance must be simple, comprehensible, consistent and accessible.**
28. As part of our thought leadership programme, ICAEW has published a report on *Information for markets and society*³ which looks at examples of information failure in public policy. The report suggests that **many problems of regulatory overload, especially perceptions of red tape, are attributable to poorly designed information requirements**, which impose excessive systems costs on regulated organisations.
29. Our members frequently tell us that assessments of the impact of legislation generally underestimate the costs on businesses. Estimates of form-filling costs do not take into account the learning costs of complying with legislation in the first place.
30. The information demands placed on businesses, particularly SMEs, need to be better managed. The earlier information requests are formulated, the easier it will be for businesses to comply with. Wherever possible, information should be pulled from existing business processes, rather than having to be manufactured to order.
31. **The overall net impact of compliance costs needs to be taken into consideration.** The public interest benefits of regulation must outweigh any associated compliance costs. Compliance could be improved, particularly with regard to SMEs, by adhering to some key principles of policy design:
- *Simplicity*: ensuring that wherever possible businesses are required to comply with a reduced number of rules which are clearly defined and easily understood, thereby reducing the need for interpretation
 - *Consistency*: compliance requirements and rules should, as far as possible, be the same for different regulatory instruments and be coherently applied across member states
 - *Trust-based*: the vast majority of businesses carry out their activities in good faith and as such should not be subject to compliance regimes beyond the minimum necessary to protect the public interest.

IDENTIFYING BUSINESS IRRITANTS

32. ICAEW regularly undertakes surveys of our members working in business. As part of our annual Global Enterprise Survey we ask whether different aspects of regulation and taxation are seen as a help or hindrance. We suggest similar surveys should be used to inform policy-makers in prioritising their efforts.⁴ The results of our 2009 Global Enterprise Survey indicate that a majority of our members working in business in the EU perceive employment tax and legislation as hindrances to their activities, followed by business tax changes and planning regulations.

³ <http://www.icaew.com/index.cfm/route/112687>

⁴ We refer, for instance, to the annual Burden Barometer carried out by the British Chambers of Commerce.

33. Exchanging best practice from member states should also highlight other initiatives to identify irritant burdens on businesses, such as the *MindLab* initiative in Denmark.⁵

Q3. Which good practices of ex post evaluation in the Member States or elsewhere do you consider that the Commission should use in developing the evaluation approach? For example, is there a way to improve the involvement of Member States and stakeholders in the evaluation exercise?

34. Comprehensive ex post evaluation to assess whether original policy goals have been achieved is vital. **Post implementation reviews should take the original impact assessments as a baseline and assess whether the original assumptions were correct. They must also consider whether other policy options (including repealing the original actions or use of alternative instruments) are necessary.** The data gathered during evaluation must then be used to inform the development of future policy.
35. Ex-post evaluation must be carried out at national and European levels in order to provide an appropriate level of detail.
36. Review exercises need to be, in preference, independent and publicly available. We consider that stakeholder engagement is vital – particularly for business-related initiatives – in order to ensure that the full impact as well as the costs and benefits of measures are understood. Existing mechanisms for stakeholder engagement (formal requests for input, public meetings, etc) could therefore be usefully extended to evaluation exercises.

Q4. Which sectors do you think should be subject to a pilot policy evaluation?

37. As suggested by the results in the table above (question 2), ICAEW believes a comprehensive review or “**health check**” of **how the legal, tax and regulatory framework across the EU affects support for enterprises**, including funding, would help identify inconsistencies or unintended consequences having a negative impact on SMEs.

II - MAKING THE MOST OF NEW INITIATIVES

38. The Commission has focused on improving ex ante evaluation of regulation, via a more systematic impact assessment process. But there is still more that could be done. Above all, we believe **the impact assessment discipline needs firmly embedding in the European Parliament and Council.** Other measures that we would support include increased stakeholder engagement, systematic training of desk officers, clearer responsibilities for the assessments and steps to ensure a sufficient pool of available expertise.
39. An appropriate balance must be found whereby impact assessments are carried out on all significant measures – including delegated acts – but not necessarily on all communications, particularly those that are not accompanied by legislative proposals.
40. The Commission’s **impact assessments should be accompanied by a one-page summary** providing information about the problem, objectives and options – as well as by a single sheet of top-level cost benefit data for each option considered. This would give a more straightforward overview and help policy-makers to use key information throughout the regulatory process.
41. The role of the Impact Assessment Board (IAB) has been a positive innovation. The IAB opinions could be made more visible to stakeholders (ie published with impact assessments on the website of the relevant DG as well as on the IAB website). **The composition of the IAB needs to be reviewed to make the Board more independent of the Commission**

⁵ www.mind-lab.dk/en

and more inclusive of other EU institutions and national administrations. More use could be made of external experts to assist in economic analysis and in the quantification of costs and benefits.

42. To ensure confidence in the process, it is important that policy-makers show that they have taken into account the comments received from the IAB. Greater transparency is needed in this area.
43. We support the joint proposal by the Governments of Denmark, The Netherlands and the United Kingdom (*Smart Regulation Report*, 2010) that **the Commission should publish an annual progress report setting out the aggregate benefits and costs of legislation that has come into force during the preceding year.**

Q5. Within the integrated approach, where all relevant impacts are assessed side by side, are there any specific issues on which the Commission should reinforce its analysis? If so, why and how?

44. The Commission's impact assessment approach calls for a number of different impacts to be considered and addressed. This is welcome but must be undertaken in a manner which does not overload impact assessments. As a rule of thumb, we believe that all relevant impacts must be considered: **it is the decision *not* to assess the relevant impacts which should be justified.**
45. It is vital that in addition to comparing the different impacts, the identified policy option is the most cost-effective of all the available alternatives. If at any time, the costs are found to exceed the estimates, a re-evaluation should be carried out.
46. Regulation must be based on **a better understanding of acceptable levels of risks as well as the consequences of failing to avert those risks.** Since regulatory intervention cannot remove all risks, policy-makers must better appraise risks so as to determine which measures can limit risks in an efficient way.

Q6. Do you have concrete ideas on how the Commission can improve its assessment of social impacts? Do you have examples of best practice in dealing with this issue in Member States or elsewhere?

47. ICAEW believes that improving the assessment of social impacts – both in ex ante and ex post evaluations – is extremely important. The Money Laundering Directives provide an interesting example, in that they are very costly and burdensome to implement. Whether or not they are worthwhile depends on whether the system results in correspondingly high benefits in terms of reduced crime – in particular terrorism and organised crime, which have very high social and business costs.

Q7. What concrete improvements could the Commission make to ensure that all relevant stakeholders are aware of and able to participate in consultations? Are there particular forms of consultation which you found useful when taking part in the Commission consultations (open internet questionnaires, stakeholder meetings, public hearings)?

48. A smart regulatory approach must go hand-in-hand with better stakeholder engagement throughout the policy cycle. We are strongly of the opinion that, in most circumstances, policy-makers will not be able to appreciate the full options for change without engaging with those who will have to implement change. It is also essential for the consideration of different options, such as the development of principles and guidance or the use of self- or co-regulation.
49. **During the impact assessment process, stakeholders and experts should be used to test and rank specific assumptions and policy options.** Wherever possible, draft impact

assessments should be posted online (on the relevant DG and / or IAB website) to keep stakeholders informed and to allow them to provide input on an ongoing basis.

50. The publication of all stakeholder consultations on the *Your Voice* website is helpful. More should be done to highlight this website. Member states should ensure that EU consultations are also highlighted on similar, national websites. The *Your Voice* website could be expanded to include a list of all the stakeholder meetings taking place across the different DGs. Consideration could also be given to making the *Your Voice* website inter-institutional, allowing for, for instance, parliamentary hearings to be similarly signposted.
51. We continue to call for **an increase in the minimum consultation period from 8 to 12 weeks for formal consultations**: 8 weeks does not allow for sufficient preparation time – particularly where technical expertise is required or where membership bodies need to undertake internal consultation processes.
52. ICAEW frequently attends stakeholder meetings, public hearings and responds to public consultations. We believe the three formats are all of use, but must be accompanied by informal and transparent dialogue with stakeholders.
53. With regard to the use of internet questionnaires, we welcome the move away from a closed question format which does not allow stakeholders to express more nuanced views.

Q8. Given that smart regulation can only be delivered if all institutions and Member States act together, what steps should be taken to ensure that this happens?

54. Strengthened interaction between all institutions – whether at EU, national, regional or local level – is necessary to deliver a smart regulatory approach. We strongly **encourage greater coordination between national administrations and EU institutions to strengthen the scrutiny of legislative initiatives, impact assessments and post-implementation reviews**.
55. A more independent IAB should allow for enhanced engagement with representatives of the European Parliament and member states, as well as with stakeholders, to help the definition of workable legislation.
56. Committees in the European Parliament should be encouraged to consider impact assessments – including the IAB opinion – as part of their first exchange of views on any legislative proposal. This has been introduced by the Internal Market and Consumer Protection Committee and could be usefully replicated across the other committees.
57. The Council and European Parliament must be encouraged to undertake regulatory impact assessments for substantive amendments to legislative proposals.
58. The establishment of a dedicated committee in the European Parliament to promote smart regulation and review simplification, reduction of administrative burdens and similar programmes should be considered (as suggested in the *Smart Regulation Report*). Likewise the role of the European Court of Auditors could be enhanced, undertaking ‘value for money’ assessments of legislative initiatives.

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