



**European Economic and Social Committee (EESC)
Section for the Single Market, Production and Consumption
Single Market Observatory (SMO)**

**Follow-up of the European Commission – SG – President BARROSO
on the EESC opinion on " Smart Regulation in the European Union**

COM (2010) 543 final – [CESE 984/2011](#) - adopted on 15 June 2011

Rapporteur: [Mr Pegado Liz](#) (Gr. III – Various Interests – Portugal)

Main points of the EESC Opinion

Point 1.5: The EESC deems it crucial that the communication be followed up by a genuine action plan (...) which will require extensive prior discussion with civil society at Community, national, regional and local levels.

Point 1.7: The EESC considers that aspects such as the way in which ex ante impact assessments are carried out (...) the nature and membership of the body responsible for monitoring impact assessments, the parameters used, especially as regards the impact on fundamental rights, and the ways and means of ensuring greater transparency, should be more clearly defined.

Commission Position - SG – President Barroso

In 2009, to ensure maximum political ownership, President Barroso took direct responsibility for smart regulation and in 2010 the Commission presented its smart regulation agenda (COM (2010) 543) drawing on a number of inputs, including the public consultation and intense dialog with stakeholders and experts. The Commission strengthened its simplification programme, the impact assessment process and pursues the ambitious objective to reduce administrative burdens stemming from European law by 25% by 2012. In addition systematic ex-post evaluation of legislation and fitness checks (evaluation of policy areas) are built up.

To date the Commission is the only EU institution which systematically communicates (through 'roadmaps') its planned impact assessment work, carries out impact assessments for all major proposals, and makes the impact assessments publicly available.

Key information concerning the work (annual report and opinions) and the composition of the Impact Assessment Board are also published.

The assessment of impacts on fundamental rights is an integral part of the IA guidelines and additional operational guidance has been recently made available.

Main points of the EESC Opinion

Point 1.9: The area where the EESC considers the communication to be weakest, however, concerns the proper application of Community legislation. The Committee therefore urges the Commission to examine closely the root causes of the universally poor application of the Community acquis (...) which is confirmed anew every year in the reports on this issue. The EESC would also like the Commission to (...) carry out a systematic study of the measures needed to effect a sea-change in the current situation

Point 4.9 to 4.15: "What could be improved" (e.g. stakeholders request of an independent quality control of IA and role of this body; improve the process of consultation disclosing draft IA; improvement of the transparency of the IA process;)

Point 4.16: As regards how it exercises its powers concerning infringements (...) it is suggested that the Commission detail priority criteria, assessment mechanisms, examination of complaints, specific instruments to detect infringements unofficially, means to improve the action of national courts and other complementary instruments

Commission Position - SG – President Barroso

In its 2007 Communication on 'A Europe of results' [(COM(2010)70)], the Commission emphasized the importance of transparency and improved communication.

Summary information on Commission decisions regarding breaches of EU law are regularly published on the Europa website, from the reasoned opinion stage to, in selected cases, the letter of formal notice stage. Press releases are also regularly issued from the reasoned opinion stage onwards.

The Commission attaches great importance to its role of monitoring the timely transposition and correct application of EU law and in its Annual Reports on monitoring the application of EU law, already produces detailed information about the real state of application of EU law, and the 'root' causes of poor application, including priority actions required to correct the main problems encountered.

In relation to the quality control of Commission's IA, the European Court of Auditors found that the Impact Assessment Board (IAB) genuinely contributes to the quality of IAs. The IAB is an efficient, cost-effective and un-bureaucratic structure which has also demonstrated its independence. All IAB opinions are publicly available alongside the final Commission proposal. The Commission sees no evidence for the need for an external quality control for its IAs.

The Commission consults stakeholders at different stages of the policy development process via a broad set of appropriate instruments (e.g. via roadmaps and consultative papers) on all key elements of the IA, to ensure that the analysis is complete, consistent and accurate.

A consultation on a draft version of the IA report at the end of the process would not allow stakeholders the same level of involvement.

In relation to transparency, see point 1.7.

The Commission recalls that the provisions of the EU Treaties and case law of the Court of Justice, confirm that it is for the Commission alone, subject only to the authority of the Court of Justice, to organise the way in which it manages infringement proceedings and related work to ensure the correct application of EU law.

Main points of the EESC Opinion

Commission Position - SG – President Barroso

The Commission remains committed to the continuous follow-up of the communication on 'A Europe of results – applying Community law', whilst emphasising that a new component of its infringement policy, EU Pilot, has been largely implemented. EU Pilot is a method by which Commission services and Member State authorities co-operate to find quick solutions, in compliance with Union law, to problems arising under EU law, including the early resolution of issues arising on the application of EU law that could have led to infringement proceedings. Since its implementation in 2008, EU Pilot has proved very positive and shows how the Commission and the participating Member States are cooperating to find solutions that give full and quick effect to EU law, for the benefit of citizens and businesses. The Commission examines every case and launches infringement proceedings if no solution compatible with EU law is found. With regard to improving the means of action of national courts, the Commission is not well-placed to advise civil society interests on the adequacy of any basis in national law for any individual claim, and therefore it would not seem appropriate to make any communication on proceedings before national courts.

Point 4.17 to 4.22: "What is missing" (e.g. codification and consolidation of legal text; publication of consolidated text; self and co-regulation)

The Commission continues to resort to codification, recasting, consolidation, repeal of obsolete legislation, and to enhancing access to law by developing more state of the art electronic means. It would like to stress that these measures have contributed effectively to better managing the quality of legislation, as in the case of (i) the codification project, completed at the end of 2009 and (ii) the consolidation of the entire acquis, which is now available in EUR-Lex for the in 22 languages, and regularly updated. Furthermore, the new EUR-Lex common portal, scheduled for going on line on 1/1/2012, will significantly enhance access to EU law and related documents, national legislation and Court reports.

In relation to the use of alternative instrument to regulations, the Commission services continue to assess, when appropriate, the relevance of alternative approaches to traditional forms of regulation in their impact assessments. The Commission also continues to cooperate with the Committee as regards the database on Self- and Co-regulation initiatives.

Main points of the EESC Opinion

Commission Position - SG – President Barroso

Points 4.23 to 4.26: "What is missing" (e.g. implementation, transposition and application of community law)

The Commission recalls that the application and implementation of EU legislation is a key part of its smart regulation agenda, although these issues are examined in the annual reports on monitoring the application of EU law (cf. 27th (2009) report (COM(2009) 675)).

With regard to specific training for judges, taking into account the new competences given by the Lisbon Treaty, the Commission is preparing a Communication on European judicial training for 2011, to explore how to enhance European judicial training activities.

The e-Justice Portal also supports the development of European judicial training, with a list of the structures responsible for judicial training at national and European level, which is planned to be further enhanced.
