



NOTE

Consultation on Smart Regulation: Response from the Danish Government

The Danish Government thanks the European Commission for this opportunity to comment on the progress made within the Smart Regulation agenda in the EU.

General comments

Overall, the Danish Government supports that there is a high level of ambition within the smart regulation agenda in the EU. It is crucial for growth and employment in Europe that there are good framework conditions for European businesses. Therefore, it is important that the EU works towards making the every-day life of businesses easier. Efficient public service and regulation must ensure that businesses spend their time on running their business and not on unnecessary administrative work and bureaucratic processes. However, burdens on businesses should not be reduced by moving them over onto public authorities. It is important to find genuinely simpler measures for the economy as a whole.

The Danish Government supports that smart regulation efforts are based on a balanced approach and focus on enhancing the quality of regulation. An enhanced quality of regulation provides easy and smooth administration in businesses and increases their compliance which in turn leads to higher fulfilment of policy objectives. The Danish Government emphasises that regulatory burdens should only be reduced in cases where it does not lead to a reduction of the fundamental protection levels in the regulation, especially within the area of occupational health and safety. The Danish Government takes for granted that the role and competence of the Advisory Committee for Safety and Health at Work are not compromised by smart regulation efforts.

The Danish Government supports that the efforts towards reducing regulatory burdens in EU regulation are broadened and encompass a focus on the end-users of regulation and their perceived burdens and that this focus will be the guiding principle for all smart regulation efforts in the EU. The focus on the rules themselves needs to be supplemented with a focus on how the rules are communicated, implemented, enforced and fit into the every-day administrative practices of businesses. These aspects define just as much the businesses' challenges in their relationship with public

authority and have consequences for the businesses' time consumption and thereby their costs. As an example of this broader approach, digitisation should feature much more prominently in smart regulation efforts as smart e-government solutions can make it easier for businesses to comply with and understand rules because ICT systems can be aligned and are flexible to use for the businesses.

The Danish Government supports that the relevant end-users are not only kept in mind but also directly involved in smart regulation efforts so that areas or pieces of legislation are selected for simplification in cooperation with end-users and their representatives.

On November 23, 2011 the Commission presented a report on minimising regulatory burdens for SMEs (COM(2011) 803), the actions of which were endorsed by the European Council in its conclusions of December 9, 2011. The Danish Government will follow with great interest the concrete policy proposals stemming from the new Commission approach presented in the report regarding a reversed burden of proof, especially annex 2 of the report, as well as policy proposals containing exemptions of SMEs or micro enterprises. The Danish Government's initial approach to the suggestions in annex 2 and future policy proposals containing exemptions will be based on the general approach to smart regulation mentioned above.

The Danish Government finds that exemption of certain groups of businesses (e.g. based on size) from pieces of legislation is a relevant simplification tool in certain cases. While fully respecting the Commission's internal working methods and the endorsement by the European Council, the Danish Government, however, finds that in the area of occupational health and safety, keeping end-users (both businesses and workers) in mind and involving them, including the Think Small First principle, is a better point of departure for simplifying regulation for businesses. For the individual worker, health and safety at work is important regardless of the size of the business in which he or she is employed.

Specific comments

Section I: Enhancing the quality of EU legislation

As regards the question of how to monitor results the Danish Government encourages the Commission to ensure that relevant and detailed information on annual progress on the smart regulation agenda is publicly and easily available at a single access point, e.g. a website. In order to ensure tangible results for European businesses it is important that the Commission keep track of the overall progress within the smart regulation agenda, including results of fitness checks, the overall development of regulatory burdens (e.g. based on the quantifications in the Commission's impact assessments) and relevant results on adopted and/or implemented simplifications for businesses.

The Danish Government supports the broadened focus on the entire policy cycle, including ex post evaluations and fitness checks. However, the Danish Government also finds that more can be done to ensure genuine end-user involvement so that evaluations are based more on innovative methods, e.g. field work, than on desk research. Furthermore, The Danish Government would like to see more and quicker progress regarding fitness checks. If the development of a fitness check methodology and the actual selection and production of fitness checks are more transparent and end-user focused, fitness checks hold the potential for delivering positive and tangible results because they cut across different policy areas and therefore have a more holistic approach to simplification. Businesses do not sectionalise rules according to the division between different public authorities and smart regulation efforts should take account of this.

As a good practice example of how end-users can contribute to the definition of evaluation priorities the Danish Government would like to highlight the Burden Hunter project regarding Danish consumer legislation. Standard Cost Model measurements indicated that the legislation caused administrative burdens but there was a lack of knowledge about how consumer regulation actually worked in real life, about the level of compliance and about how the regulation was perceived. Therefore, an open and explorative approach was used wherein 25 different businesses and trade organisations were interviewed about their perception of consumer regulation, their concrete practices and ideas for simplification. Furthermore, the fit between rules and actual practice was investigated through anthropological observations. The information and ideas obtained resulted in concrete simplification proposals. In sum, through systematic and iterative end-user involvement, concrete problem areas and innovative solutions were identified and prioritised in an evaluation of the consumer legislation.

The Danish Government recognises the progress made in the EU system regarding impact assessments, notably the European Commission's efforts. The Danish Government emphasises that thorough impact assessments are important for evidence-based policies which in turn ensure that the purpose of each policy is fulfilled in the right way, for the right end-users and with the right and proportional level of burdens. However, the Danish Government also finds that, when doing impact assessments, the European Commission could improve on keeping in mind and involving relevant end-users, on quantifying the relevant impacts (not only administrative burdens) and potentials and on systematically investigating digitisation possibilities.

Section II: Ensuring the effective implementation of EU legislation

The Danish Government finds that correct and timely implementation of EU regulation is important for the functioning of the single market and its contribution to growth and employment in the EU. Looking at the entire

policy cycle, effective implementation is also facilitated by a smart regulation focus in the preceding stages of the policy cycle. Consequently, implementation needs to be taken into account from the beginning of a piece of legislation's journey through the policy cycle. Clear and precise language is a prerequisite in this regard.

Assistance from the European Commission in the form of package meetings and workshops in the individual member states could contribute to improving the implementation of EU legislation, especially if the implementing level of public authority is included. The Danish Government also finds that the exchange of best practice is a useful tool for ensuring better implementation, in accordance with the report "Europe Can Do Better: Report on best practice in Member States to implement EU legislation in the least burdensome way" by the High Level Group of Independent Stakeholders on Administrative Burdens (November 2011). Moreover, the Danish Government stresses that application and enforcement of single market legislation and principles are just as important as correct and timely implementation. The Danish Government therefore finds that the informal problem solving network, SOLVIT, and the EU Pilot are important tools for ensuring better application and implementation of EU legislation in the member states.

Systematic monitoring and thorough analysis of how the single market works in the individual member states are useful tools for identifying potential insufficiencies in implementation of EU legislation. The Danish legislative process already ensures widespread transparency of the implementation of EU legislation. The explanatory memorandum attached to each piece of national legislation explains the relation to EU legislation of that piece of legislation. Furthermore, legal texts and explanatory memoranda are publically available on the website of the Danish parliament. The Danish Government therefore remains helpful with relevant information on implementation of EU regulation in Denmark, even if it were decided to introduce a commitment for member states to inform the Commission on how regulations function in the member states, including whether it has required changes in the national legislation.

Section III: Consulting the public

The Danish Government finds that this aspect of the smart regulation agenda is especially important and should be strengthened, e.g. by consulting on draft impact assessments. Involving the relevant end-users through formal and informal consultations is, however, not enough. Keeping the end-users in mind, e.g. by rigorously applying the Think Small First principle, must saturate the entire policy cycle.

More concretely, the interaction with the relevant end-users needs to be of higher quality, not quantity, e.g. through field trips, interviews, observation and by using visualisation tools such as process maps, maps of service trips and story boards. Furthermore, it is important that the Com-

mission informs the end-users (businesses, social partners, interest groups, public authorities) of the consultation results (policy implications) and not just the consultation process.

Member states should play a larger role in alerting the relevant end-users about EU consultations and in conveying information from national end-users to the EU level in relevant cases, e.g. through fora such as the SME Envoy Network. The Danish Government is aware of this role and seeks to fulfil it to the greatest extent possible.

The Business Forum for Simpler Rules, recently established by the Danish Government, is an example of a new and innovative way of involving end-users and stakeholders that goes beyond the traditional one-way consultations. The Business Forum facilitates a more open and direct interaction between regulators, businesses, interest groups and experts as the Danish Government can receive input directly from businesses and/or other stakeholders about problems (unnecessarily burdensome rules, incomprehensible communication, uncoordinated implementation etc.) and ideas for solutions. Furthermore, the Business Forum's website enables the general public to submit input, comment on input submitted by others and even follow the progress of concrete ideas or solutions. In turn, the Danish Government is held accountable through a "comply or explain" principle, meaning that either the Danish Government implements the suggested simplifications or explains publicly why this cannot be done.

Section IV: Progressing together

The Danish Government strongly believes that the Competitiveness and Growth Council conclusions from February 2012 provide a good common platform for the member states regarding the future smart regulation efforts. The Danish Government hopes that the European Commission and the European Parliament will join and base their work on this platform and the guiding principle about end-user focus. The Programme for the Competitiveness of Enterprises and SMEs 2014-2020 (COSME) may also provide a common platform for the funding of smart regulation initiatives.

Based on the views expressed above, the Danish Government supports an ambitious smart regulation agenda and remains willing to contribute to the agenda with any experience and knowledge deemed helpful.

Section V: Open questions

The Danish Government finds that the smart regulation agenda increasingly should be integrated with the agendas on the single market and the digital single market. Smart regulation is also about uniform rules that are easy to comply with. This is something that correct and timely transposition of single market regulation can contribute to. Inharmonious implementation resulting in extra administrative work is of course also a burden for exporting businesses within the single market.

Moreover, digitisation holds great potential for making the every-day life of businesses easier. Therefore, the EU agenda on the digital single market should be coordinated and promoted to a greater extent. The agendas on smart regulation and the digital single market could, for example, be integrated more by applying a more systematic thinking about digitisation possibilities and the resultant costs and benefits in the policy design and impact assessment stages of the policy cycle. A “Digital By Default” principle would, for example, ensure that rules are designed from the very beginning to be implemented, complied with and enforced digitally, unless there are compelling reasons to introduce manual, paper-based processes.