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Administrative Simplification through building a culture of, and capacity for, better regulation including regulatory impact assessment.

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Administrative Simplification and building a culture for Better Regulation

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Introduction

This paper is a more detailed statement of ideas to be presented at a seminar in Ankara 8/9 May on Administrative Simplification. It examines Better Regulation policy, the use of the tools of Better Regulation such as impact assessment and considers some of the cultural changes necessary to improve regulatory process and bring about a simplification of the administrative environment and reduce, as far as possible, administrative burdens.

Better Regulation

Better Regulation has developed over the last 15 years. Its origins are to be found in public service reforms and the need to modernise government with such initiatives as 'Reinventing Government' (United States), SMART Regulation (Canada) and Better Regulation (European Union). Its development is also closely associated with regulatory reforms to reduce inappropriate interference by government with the free market. A series of country studies by the OECD one of which was entitled, for example - *Regulatory Reform in Turkey*, identified the need to improve the quality of the regulatory process (how regulations are made) as well as the improvement of the regulatory environment (how regulations affect the functioning of the market).

These OECD studies, together with political developments at the level of the European Union, firmed up the idea that the quality of the regulatory environment and the quality of regulations were key determinants of economic growth. This in turn led to the development of specific policies to improve the regulatory environment and promote competitiveness

As part of the Lisbon and renewed Lisbon Strategy, the Commission has launched a comprehensive policy on Better Regulation to ensure that the regulatory framework in the EU contributes to achieving growth and jobs. The policy also continues to take into account the social and environmental objectives and the benefits for citizens and national administrations of Better Regulation. The EU's Better Regulation policy aims at simplifying and improving existing regulation, to design regulations better and to reinforce the respect and the effectiveness of the rules.

Three key action lines

In the European Union, Better Regulation policy is based on three key action lines:

- Promoting the design and application of better regulation tools at the EU level, notably impact assessment, consultation, simplification and reduction of administrative burdens.
- Working more closely with Member States to ensure that better regulation principles are applied consistently throughout the EU by all regulators.

- Reinforcing the constructive dialogue between stakeholders and all regulators at EU and national levels.¹

Design and application of Better Regulation tools: impact assessment

One of the key tools used in improving the quality of regulation is regulatory impact assessment. Its origins are in cost benefit analysis and its systematic use in government first arose in the White House. President Ford, concerned with the growing costs and impacts of regulations made by regulators, established in the Office of Management and Budget (OMB) a division concerned with assessing the impact of proposed regulations. Regulators were required to assess the costs benefits and impacts of proposed regulations on inflation and were required to prepare economic impact statements. These impact statements were then reviewed in the OMB. President Ford improved these further by Executive Order 12044, dealing with *Improving Government Regulations*. There have been many improvements since.

Impact assessment helps deliver policy based on evidence, as distinct from policy based on political expediency or administrative intuition. The purpose of the tool is to systematise the identification and assessment of the nature of the policy problem under consideration and to clarify the objectives to be pursued in its resolution. In many ways it is a systematic formula for applying common sense.

Impact assessment helps also to identify the main options for achieving policy objectives. It provides a form of analysis to identify the likely impacts of a proposed regulation on the economy, society or on the environment. It provides a methodology for outlining the advantages and disadvantages of each policy option and examines possible synergies and trade-offs.

It consists of a set of logical steps to help structure the preparation of policy proposals. In the case of EU proposals, it provides a method of testing the need for intervention at the EU level and encourages the examination of the potential impacts of a range of policy options. In theory, among other objectives, the use of impact assessment should lead to improvements and simplification of the regulatory environment.

Commentators on impact assessment emphasise that it is an aid to political decision-making, not a substitute for it. Impact assessment informs the political decision-makers of the likely impacts of proposed measures to tackle an identified problem, but leaves it to them to decide if and how to proceed.

The second strategic review of Better Regulation policy in the EU points out how the EU impact assessment system is “sound and has proven its worth as an aid in decision making” The process has been continually improved since its inception and an Impact Assessment Board has been established to assure the quality of the assessments.

Regulatory Impact Assessment and policy making - interlinked

Impact assessment is good policy making by another name. Despite the mystery surrounding the tool, it simply involves:

1. Statement of policy problem and objective
2. Description of policy context, objectives and options (for example, different forms of regulation)

¹ ec.europa.eu/governance/better_regulation

3. Consultation
4. Enforcement and compliance for each option
5. Review.

In cases where there are substantial impacts: financial, social, environmental, an additional exercise is the:

- Identification of costs, benefits and other impacts of each option which is being considered
- Identification and description of options
- Impact analysis including costs and benefits of each option
- Summary of merits/drawbacks of each option and identification of recommended option where appropriate.

Design and application of better regulation tools: consultation

An important component of the impact assessment process is consultation. However consultations are an essential tool for good governance generally. Consultation is a structured public engagement which involves seeking, receiving, analysing and responding to feedback from stakeholders. There are a number of reasons why consultation is a worthwhile exercise:

- To ensure that the operations of Government and bodies throughout the Public Sector are conducted with greater clarity and openness. By this much administrative simplification can be achieved as problems can be identified through dialogue with the public.
- It recognises that public policy-making can be enhanced through the active involvement and contribution of all stakeholders with an interest in particular policy developments.
- To get buy- in and even compliance
- It assists the decision-making process
- It helps to gather useful information.
- It supports the rationale for a regulatory intervention.
- It helps to inform decisions on strategic planning or investment.
- It strengthens the focus of public bodies on the needs of the public.
- It brings Government closer to the citizen.
- It empowers individuals and communities to strengthen their role in society.
- It contributes to a shared understanding of issues and work towards agreed solutions.
- It can identify the likely pitfalls or possible unintended consequences of a proposal.

Design and application of better regulation tools: simplification

Many OECD countries have developed policies on administrative simplification. These policies take many forms. A number of the more interesting ones are well documented in the OECD publication: *From Smart Tape to Red Tape: Administrative Simplification in OECD countries, OECD, 2003*. It sets out 7 country case studies in administrative simplification.

The EU strategy focuses on simplifying and improving existing regulation and using better regulation tools. Administrative simplification is concerned with reducing administrative costs and making it easier to deal with government obligations. A central feature of this policy is to make sure legislation is accessible and made available in as simple a form as possible.

Most OECD countries have made their legislation available electronically. Many have specific programs to address the stock of legislation so that it is made more accessible for

business interests and citizens. The European Union, as part of its Better Regulation policy, has a policy on improving the management of the stock of legislation. It has a Simplification Rolling Programme. This exercise aims to simplify and modernise EU legislation. It covers 164 measures for 2005-2009 and is now part of the annual work programme. The Commission has already proposed or adopted 91 of these, and will present 44 new measures in 2008.

The simplification exercise brings concrete benefits. Farmers and agricultural companies, for example, now face a much simplified regulatory framework: 21 Common Market Organisations have been brought into a single scheme. Businesses enjoy simpler packaging rules, as pre-packaging requirements on some 70 consumer products have been repealed.

There are three principal ways in which the stock of legislation is managed. In the first instance, there has been a programme of consolidation. This was the task of editing into one coherent text a series of texts that have amended each other.

In the second instance, the texts were codified. For this exercise, the consolidated texts were reviewed by the Commission's legal services prior to their re-enactment. Of some 400 Acts that can be codified, the Commission has finalised 152: 87 have been adopted, and 65 are pending before the Council and Parliament. The codification programme should be completed by the end of 2009. The Commission is also identifying and repealing obsolete Acts that no longer have real effect, but which are still in force.

Finally, in some cases a recasting exercise was necessary. This was the task of redrafting and re-enacting regulations or directives where subsequent amendments made the texts unwieldy or the passage of time had meant that substantive amendments were also needed to bring the laws up to date. The Commission's recasting programme is well underway.

In addition, the Commission regularly screens all proposals pending before the co-legislators to ensure they remain relevant and meet quality standards. 78 proposals have been withdrawn since 2005. A further 30 have been identified in the Commission's Legal and Work Programme for 2008.

Design and application of Better Regulation tools: reduction of administrative burdens.

Administrative simplification is also concerned with making sure that all written communications between government and citizens are as simple and accessible as possible. A further priority is to make sure the cost of administrative requirements (information gathering, complying with regulations) is as low as possible

It is acknowledged by the European Commission and by most Member States that implementing regulations and laws involves costs for businesses, citizens and government itself. Many of these costs derive from obligations under law to provide information either to public or private parties. These are commonly called administrative costs.

Governments and EU requirements impose two types of costs on business and society:

- Substantive costs, i.e., costs induced by obligations for businesses to change their products and/or production processes.
- Administrative costs, i.e., costs incurred by businesses in meeting obligations to provide information on their activities or production, either to public authorities or to private parties.

In recent years, there has been a growing recognition that a number of the legal obligations to provide information have become needlessly time-consuming, excessively complicated or even useless. Examples might include the requirement in Poland to keep cash register receipts for five years, the, now abolished, requirement in Italy to collect up to seven certificates before being able to marry or the obligation to take out a licence to be able to operate a hairdressing business in Slovenia.

Unnecessary and disproportionate administrative costs may hamper economic activity and/or irritate business, citizens and public authorities. A reduction of unnecessary reporting requirements enables businesses to spend more time on their core activities. In theory, at least, this should lead to reduced production or operating costs. In theory also, monies freed up from unnecessary activities should be transferred into investment or passed on as savings to consumers.

In 2006, the European Commission introduced a distinction between **administrative costs** and **administrative burdens**: the latter designate costs specifically linked to information that businesses would not collect and provide in the absence of a legal obligation.

The European Commission, as part of its Better Regulation policy, has developed a strategy aimed at **measuring administrative costs** and **reducing administrative burdens**.

According to its estimates, it would be feasible to reduce administrative costs by as much as 25% by 2012. A number of countries, including Austria, Denmark, Ireland and the Netherlands have set similar targets. It is argued that if this target were to be reached, it would have a significant economic impact on EU economy - an increase in the level of GDP of about 1.5% or around € 150 billion. Critics of this policy argue that even if these wholly artificial targets were reached there is no guarantee that the money would be re-invested or that other burdens will be imposed and wipe out the proposed gains.

Change of culture

The reality is that there are costs involved in the implementation of regulations. The change in culture needed is to create a greater awareness on all sides as to what these costs are and to what extent they are necessary for the achievement of a particular policy outcome. One man's burden may be another's benefit. A proper balance is needed. It is said of advertising that 50% of advertising budgets are wasted but the problem is which 50%. The same may be true of administrative costs.

In addition to the technical changes to policy making and law drafting processes brought about by the use of tools such as impact assessment and consultation, further changes in culture are needed. Firstly, officials need to think of business and citizens as customers of government services. In many countries this change has taken place slowly over the last 25 years. It still has a way to go in most OECD countries. Interestingly, in the newer European Union Member States where the public service structures have been reformed and many officials are young this culture change is more obvious and there is a strong sense that government should serve the people's interests and not simply control it.

Public policy remains heavily dependent on regulations and rules to deliver its objectives. The rule and regulation making process is very much dominated by lawyers. The culture of lawyers is to pay attention to due process issues with less attention being paid to the costs and benefits of due process. This culture pervades administrations also. The challenge is to find ways in which due process can be respected in a cost effective and efficient way.

The trend in most OECD countries has been to adjust the culture of the public service away from public administration to public management. However, the change of vocabulary has

not always been accompanied by a change of culture and legalistic and regulation based approaches to delivery of public services and the management of economies remains strong.

However, in most OECD countries and in the EU, both at the level of its institutions and its Member States, there is a definite concern for the need to reduce administrative costs and burdens. Explicit policies to develop high quality legislation have been developed by most EU and many OECD countries. A key feature of this policy is the need to ensure regulatory regimes impose as few unnecessary burdens as possible on businesses and citizens. The development of these policies has resulted in a number of principles emerging about imposing administrative burdens. The most important of which are the need to:

- Consider costs for those who have to comply with regulations
- 'Ask once use many times'
- Consider delivery of government services to reduce burdens on business and citizens
 - Is there an e.government solution?
 - Is there potential for a one stop shop?
- Ensure that if there are forms to be filled in – are they easy to follow?
- Ensure that the administrative costs for the government and those affected by the regulations are in line with the benefits to be gained from the regulations or administrative requirements?

Conclusions

Better Regulation has become part of the landscape of good governance. Better Regulation involves the use of certain tools: impact assessment, consultation and administrative simplification. At the EU level, at least, there is a belief that the development of a Better Regulation policy and the use of these tools brings about specific and tangible benefits.

In recent years, there has been a growing recognition that a number of the legal obligations to provide information have become needlessly time-consuming, excessively complicated or useless. The challenge is to identify those and to remove the ones that are not needed and to make obligations that are needed as streamlined as possible.

This new approach calls for new ways of looking at things and new instincts. Instead of the instinct to make a law every time there is a social problem, policy makers need to become much more astute at identifying the real problem and much more imaginative about developing policy solutions that impose the least costs and the least burdens on the economy and society.

The traditional approach to governments as administrators is evolving towards the approach that the role of government is to manage more than to administrate. It is probably too soon to tell whether this change is permanent or temporary. The rhetoric around Better Regulation and reducing administrative burdens by 25% are both rich and compelling. It remains to be seen also whether their grand promises will deliver or not.

Suggested reading list

On Better Regulation policies in the EU:

ec.europa.eu/enterprise/regulation/better_regulation

Communication of the Commission to the European parliament, the council,

The European Economic and Social Committee and the committee of the regions

Implementing the Community Lisbon programme: Brussels, 25.10.2005

COM(2005) 535 final

A strategy for the simplification of the regulatory environment Brussels, 14.11.2006

COM(2006) 690 final

Commission Working Document: First progress report on the strategy for the simplification of the regulatory environment {COM(2006) 689 final} {COM(2006) 691 final}

Communication from the Commission to the Council, the European parliament, the European economic and social committee and the committee of the regions Brussels, 24.1.2007, COM(2007) 23 final

Action Programme for Reducing Administrative Burdens in the European Union

{SEC(2007) 84} {SEC(2007) 85}

From Red Tape to Smart Tape: Administrative Simplification in OECD Countries, OECD, 2003

Cutting Red Tape: National Strategies for Administrative Simplification, OECD, 2003

Regulatory Management Capacities of Member States of the European union that joined the union on 1 may 2004: Sustaining Regulatory Management Improvements through a Better Regulation Policy, Sigma Paper No. 42 www.sigmaweb.org

Regulatory Policies in OECD Countries – From Interventionism to Regulatory Governance (2002)

The OECD Report on Regulatory Reform: Synthesis (1997)