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**REGIONAL FLAGSHIP INITIATIVE
REGULATORY REFORM IN SOUTH EAST EUROPE
IN THE FRAMEWORK OF THE INVESTMENT COMPACT
OF THE STABILITY PACT**

**FOUNDATIONS FOR INVESTMENT:
PROGRESS AND CHALLENGES IN REGULATORY REFORM
IN SOUTH EAST EUROPE**

SESSION 1

“Country Experiences with Regulatory Reform”

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Session 1: Country Experiences with Regulatory Reform

Subject: EU's developments - a shift to better regulatory quality

Introduction

Regulatory reform has always been at the heart of the EU's political, economic and institutional agenda.

The reasons are obvious:

- the essence of the EU has always been the construction of a Community that is founded on law and
- its means of action derive above all from its legal framework where regulations play a more important part in the pursuit of common policies than it does, for example, in a Member State, which has a wider choice of instruments at its disposal to implement its policies.

In short, compared to national political schemes, the EU's focuses more on enacting rules than intervening financially in the economy or the society.

Taking into account the unique and evolving sharing of legislative and executive powers existing in the EU's institutional system of government, regulatory issues, with particular emphasis on reform questions, constitute the core of EU's activities.

Shift in emphasis on reform priorities

In the late 1980's, the EU's regulatory agenda concerned primarily market reforms under the '1992 Single Market programme'. It implied a significant effort to introduce competition and facilitate intra-EU market access. This phase, that some

have called ‘regulation for liberalisation’, mobilised massive resources throughout the Community to agree on, enact and transpose into the national legislation of all Member States a sizeable number of European directives and regulations. The overall objective here was not create new legislation per se, but to approximate existing national rules, in areas where differing national laws did not allow the proper functioning of the Internal Market.

In many instances, this effort to open national markets to intra-community competition resulted in privatisation and deregulation programmes for various sectors. The reason for this was that it would not have been possible, while fully complying with the Community’s competition rules, to meet the objectives of increased competitiveness set for the European economy (an objective implied by the completion of the single market) without substantially modernising the industrial structures in several sectors.

There can be little doubt that the implementation of this agenda has greatly contributed to improve the functioning of the EU’s single market, with positive effects on growth and, particularly, on the competitiveness of European firms. Without this intermediary step, it would neither have been possible for the EU to serve as a model for regional integration across the world, nor would it have been possible for it to achieve further progress in the areas of economic and monetary integration.

With the internal market objectives now largely accomplished (but I will come back to this point), the emphasis for regulatory reform has definitely shifted towards an approach that one could call “knowledge-based decision-making”, in short: towards ‘better regulatory quality’ that should ensure economic growth, competitiveness and innovation. Key issues under this topic relate to efficiency, effectiveness and transparency of regulations and related government formalities.

There are various fundamental reasons explaining this trend:

- First, European governance considerations are becoming increasingly important in the public opinion. The concept refers to the question of how the EU institutions and national governments use the powers given by their citizens. Behind this issue are the concerns of the European society as regards compliance with the fundamental principles of openness, participation, accountability, effectiveness and policy coherence.
- Second, the Union is now facing the challenges of enacting legislation in an increasing number of new areas that cut-across an ever larger spectrum of economic activities and societal needs. Indeed, in addition to its already

recognised competencies in areas such as new technologies, environment, health and safety and consumer protection, its agenda now also extends to foreign policy, migration and fight against crime. Under these horizontal topics, rules do not always exist, knowledge is limited, policy instruments are not necessarily adapted to the rapid changes in technological progress and societal needs. Moreover, legal frameworks cannot reasonably be conceived without an international dimension or the direct implication of stakeholders. Prior careful assessment of the likely implications of legislation as well as of the alternative scenarios to achieve policy objectives therefore becomes an essential element of the legislative process to achieve political and social consensus and efficiency.

- Third and more topical, the Lisbon European Council has asked the Commission, the Council and the Member States to ‘set out by 2001 a strategy for further co-ordinated action to simplify the regulatory environment’. Behind this mandate for ‘better regulations’ clearly lies a series of objectives destined to:
 - turn the EU’s economy into one of the most competitive in the world,
 - simplify the community ‘acquis’ for a successful and easier enlargement of the Union to new members with different political and administrative cultures as well as economic, social and industrial structures, and,
 - further improve the functioning of the Internal Market. Although the Single Market is a reality in our daily lives, it is still impaired by malfunctions and delays in several areas. With the changeover to the Euro and fast developments of e-commerce, the service sector is particularly requiring further acceleration of this process. In addition, the principle of mutual recognition - that is the main reference for free circulation - does not always function, Community regulations often remain complex for users, and coherence with national provisions needs to be constantly monitored in order not to create new market fragmentation. In these domains regulatory quality, rather than quantity, is central to the improvement of economic performance.

Regulatory burdens in the EU system

Before reviewing the current thoughts on EU reforms for greater regulatory quality, it is useful to recall the set up of the overall regulatory framework of the Union, in terms of substance, origin and deficiencies.

Substance of regulations: the hard core of EU regulations remains that related to the free movement of products, services and factors of production such as labour, financial capital and technology. Besides the fundamental principles of free movement, this regulatory framework consists of the following elements:

- a range of prohibitions to regulate in certain areas for Member States,
- the obligation, imposed by case-law, of mutual recognition of national rules (as long as regulatory objectives are equivalent),
- the approximation of national laws by means of Community rules (essentially through directives),
- regulatory frameworks on common policies such as:
 - competition policy, which addresses market failures and market power,
 - agricultural policy, where price and market regulations constrain market functioning, as a condition for free agricultural trade,
 - trade policy, which regulates the terms for market access of third country exporters and ensures that external competitive pressures are uniform over the EU where this depends on market access,
 - and other regulatory guidelines at EU level where competencies are mainly exercised by member states (e.g. most social policy, social security, and taxation matters) or where approximation at the highest level is the usual means (e.g. environment, consumer protection).

The implementation of these elements is made through the adoption of regulatory techniques that comply with the basic principles of subsidiarity and proportionality, as enshrined in the Treaty.

For product regulations, for example, the Community has used the so-called ‘new-approach directives’¹, which imply that:

- legislative harmonisation is limited to essential requirements, focusing on objectives and effects and not on details,
- technical specifications are established by harmonised standards, elaborated by standardisation bodies, under mandates given by the Commission,

¹ Since 1987, some 20 of such directives were adopted

- application of standards remains voluntary and,
- products manufactured in conformity with the harmonised standards are presumed to conform with essential requirements.

Origin of the current regulatory activity: the common perception that a problem or a policy having a European dimension implies Community regulatory action does not correspond to the fact. The Commission's right of initiative includes the right to legislate but also that to decide not to legislate, even where it is under pressure to do so from the other institutions, the Member States or other interested parties.

In reality, the current workload of the Commission's proposals has the following origin:

- international obligations on the part of the Community (for +/- 30%)
- follow-up to Council or EP resolutions or requests on the part of social partners or economic operators (20 to 25 %)
- updating existing Community legislation, mainly adapting it to technical or scientific progress (around 20%)
- obligations under the Treaty or secondary legislation (10 to 15%)

Deficiencies identified in the European system: the most common criticisms relate to:

- weaknesses during the preparatory phase, particularly as regards analysis of the impact of the proposed measures and consultation procedures,
- the volume of legislation² and its accumulation, which can make it difficult to understand the legislative requirements in certain areas,
- the complexity, which results from often difficult drafting compromises in the Council and the EP, an excessive level of details in certain basic acts and the tendency of Member States to add-on requirements (gold plate) during the transposition into national law,
- the length of the process, which is difficult to reconcile with market needs for legislation that needs to be up-to-date³,

² Which, in reality is modest. Current rules and regulations account for some 70.000 pages in the Official Journal and declined significantly over the recent years (from 250 proposals for new legislation in 1990-94 to 96 in 1995-99)

- the application and verification, which can have differing impacts on economic and social operators,
- the access to information on current status of laws, the adaptation and consolidation of rules.

Regulatory quality challenges

Considering what has been said, tackling regulatory quality issues at the level of EU is not an easy task.

Especially as regulation per se is a vast concept that affects products, labour, competition, environment, health and safety. It also includes a large number of instruments that affect markets in diverse forms. Therefore, regulatory quality encompasses a wide range of aspects, leading to regulation that ranges from justified burdens to costly failures.

It also needs to be borne in mind that Community acts are rarely applicable directly to European citizens and economic operators. Improvements can therefore only be sought successfully with the co-operation of all actors involved in the regulatory chain.

In this last area, one of the current challenges that the Commission is facing is to identify when and where it is possible to develop new forms of co-operation between public authorities and private sector actors (such as new forms of self-regulation and co-regulation). Such solutions are worth exploring in so far as they can deliver both flexibility and the necessary degree of legal certainty

Steps taken to tackle regulatory quality

Coming to the practical steps taken by the Commission to tackle both regulatory quality issues and respond to the Lisbon Council mandate, I would like to briefly review the progress achieved so far.

Without entering into details, it is worth mentioning that, since the middle of 1980's, the Commission had already taken initiatives in the area of simplification that represent important moves with encouraging results. This is notably the case of the so-called:

- New, less prescriptive forms of regulation, such as the “New Approach to harmonisation and technical standards” (1985), which has greatly

³ In average, it takes about 20 months for a text to be adopted and a further 18/24 months to be transposed and become effective

contributed to the better functioning of EU's product markets while accelerating decision-making procedures,

- BIA (Business Impact Assessment) system (1986), outlining the impact of proposed measure on SMEs,
- 'SLIM⁴ exercise (1996), which analyses the state of regulations in a number of Internal Market areas and makes proposals for simplification,
- 'Cardiff process' (1998) that has led to annual reports on regulatory reform both at the EU and Member States level. This tool has been instrumental in monitoring economic conversion,
- 'Business Test Panels' (1998) which complement the normal consultation process on legislative proposals with the aim to quantify the compliance costs and assess the administrative burdens for business,
- 'Best procedure' (2000) that follows a large number of benchmarking exercises on business and enterprise environment and,
- the increasing recourse to Green Papers, White Papers, Communications and other forms of consultation initiatives (public hearings, online consultations) that increases input from stakeholders on policy analysis.

As regards the current developments, more directly linked to improving the regulatory environment, the Commission has submitted a first report to the Stockholm European Council of March 2001, which took stock of the situation and described its initial thoughts on a possible and coherent future strategy.

It has also adopted in July 2001 a White Paper on Governance, which is now open to a consultative process that will run until March 2002. By the end of 2002, the Commission will report on the progress made on the proposed actions and draw the lessons from the consultation.

In the meantime, it will submit an action plan to improve regulation to the European Laeken Council in December this year, presenting its views on the political objectives (is this so? I thought it would include concrete action proposals), which should be pursued by the Union and on the institutional framework necessary to achieve these aims.

⁴ Simple Legislation for the Internal Market

This effort is being complemented by various formal (as well as informal) initiatives on the same topic, taken by stakeholders directly interested. This is the case, for example for the Member States that have created a high-level advisory group of officials (the Mandelkern group) that will also present a report to the Laeken Council on improving the regulatory environment.

The way forward: the Commission's strategy

To conclude, I would like to briefly review the Commission's current thoughts on an overall strategy to address regulatory quality and simplification. The basic approach has been underlined in the Commission's report to the Stockholm Council and further developed in the White Paper on European Governance⁵. Although the proposed changes will not bring in any major novelties into current practices in the Commission, it puts emphasis on the need to streamline the regulatory management process to make it more methodical, responsive and coherent, while ensuring an acceptable level of discretion, consistent with the Commission right of initiative.

As for most countries currently implementing reforms in this area, the basic principles that will be followed are very much in line with the OECD guidelines (PUMA work) on best practice. They embrace the whole life cycle of a Community act and include:

1° Improved analysis of the regulatory problem and possible solutions

For the Laeken action plan, the Commission is considering clearer internal rules for legislative action (on the basis of subsidiarity and proportionality principles), ex-ante regulatory impact assessments (RIA) and examination of the most appropriate regulatory techniques and instruments. This is a fundamental part of the improvements foreseen, that will allow the Community to maximise the net benefits to society. Procedures for qualitative and quantitative integrated impact analysis need to be strengthened, for example, by drawing upon existing good practice and the lessons learned in on-going pilot projects such as the one on business impact assessment (BIA) in the Enterprise Directorate-General.

This approach was underlined in the recent Commission strategy (June 2001) for sustainable development that states that "all the potential benefits and costs of different regulatory options should be evaluated and compared in order to choose the highest quality regulation". For this purpose, mechanisms will be elaborated in the Laeken action plan to ensure that major legislative proposals include an assessment of the potential economic, environmental and social benefits and costs

⁵ Also see the interesting contributions of the Working Groups 2b (on Evaluation and Transparency) and 2c (on Better Regulation) available in the Commission's Europa Plus web site (Governance)

of action or lack of action. Internal structures and resources will also be improved to ensure coherence and follow up. It is also the Commission's intention to propose, through some sort of inter-institutional code, that the Council and the EP pay the same attention to regulatory quality when proposing amendments to legislative proposals.

Finally, increased attention will be paid to alternative and complementary approaches to achieve policy objectives (co-regulatory mechanisms, framework directives, voluntary agreements...).

2° Increased transparency in the regulatory process

Guidelines for minimum standards on consultation process will be adopted before the end of the year (including up-to-date on line information on preparation of policy). They will focus on what to consult on, when and how to consult. These rules will not only improve the representativity of stakeholders in the policy debate but also reduce the risk of political or sectoral pressure on policy makers.

3° Better implementation and enforcement

Action will be proposed to streamline the institutional procedures with the Council, the EP and Member States. It will cover issues such as the complexity of the regulatory process (timing, methods), the transposition into national law (deadlines and gold plating), the delegation (to the Commission or to specialised agencies) of powers for adopting implementing provisions for achieving the objectives of legislative acts.

4° Rapid progress in simplification and codification

Initiatives will be pursued to assess the feedback on complex rules as well as to lay down multi-annual programmes for simplification, periodic reviews of existing rules, codification, recasting and consolidation.

As you can see, the Commission is determined to improve its part of the input into the regulatory chain so that the process becomes more efficient, coherent and transparent. But it cannot make all the necessary changes on its own as this also requires efforts from all other actors. Especially for what concerns the critical phases of institutional approval as well as implementation and enforcement by the Member States.

The Commission, however, cannot avoid being held responsible for the behaviour of others as it represents the common interest and has the exclusive right of initiative. One consequence of this, is that the Commission must have the courage to use, if necessary, all its legal means to block national initiatives or Council decisions that are not in the interest of all European citizens.

(ms: OECD Thessaloniki Seminar 2/3/10/01)