



Russian-European Centre for Economic Policy (RECEP)

Российско-Европейский Центр Экономической Политики (РЕЦЭП)

**Increasing the efficiency of state regulation
of the Russian economy with the help
of experiences in the EU
and selected EU Member States**

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Introduction

The purpose of this research study and policy advice is the identification of a methodology of making current Russian legislation concerning state regulation of economy and its development future oriented, predictable, certain, coherent, and non-controversial and compatible with European Union and selected EU member states (Germany, UK, Sweden, and etc.) practice in establishing "rules of the game" in this field. This work is conducted under the responsibility of the 'EU-RF relations group' of RECEP. The background of this research study and policy advice is the a request received from the Analytical Department of the Council of the Federation to provide it with an analytical report on increasing efficiency in the regulatory system of state involvement in the national economy with an extensive study of EU member states systems, notably there request with regard to the "systematization (hierarchy) and codification of legislation about the state regulation of economy." More specifically, this report aims at:

- analyzing the EU and member countries experience in developing appropriate methodology of coherent state regulation of economy
- make an analyses of the EU and member countries legislation and practice concerning development of state regulation of economy
- provide an analyses of prerequisites needed to make current Russian legislation concerning state regulation of economy and its development future oriented, predictable, certain, coherent, and non-controversial
- provide an analyses of prerequisites needed to make current Russian legislation concerning state regulation of economy compatible with European Union and its member states practice in this field and to proceed with drafting of appropriate normative acts.
- develop or identify methodology, to be applied to legislative process, of efficient state involvement in the economy
- elaborate suggestions concerning eventual legal instruments to be used to put such a methodology into practices.

The issue of making the regulation of the economy more efficient is receiving wide attention in the EU and in its Member States, but also in many other countries and organizations. It is recognized that an efficient system of state regulation of the economy contributes to the performance of the economy, notably by eliminating unnecessary obstacles to competition, innovation and growth. In other words: bad regulation obstructs the economy. Costs of administrative burdens on individual enterprises in the EU have been calculated at between ECU 180 and 230 billion per year, representing 3 to 4 percent of the European Union's. Such figures demonstrate that administrative hurdles ('red tape') are of a considerable influence to enterprises and economic growth.

Within the EU, the so-called Lisbon Strategy has set as a goal for the EU to become a more competitive and dynamic knowledge-based economy, capable of sustainable economic growth with more and better jobs and greater social cohesion. Similar to the goals set out by the Russian government with regard to doubling GDP by 2010, the EU needs to intensify its efforts in order to attain its goal, as became clear from the mid-term review published on 3 November 2004. Fair and uniformly applied competition and state

aid rules are regarded as essential for ensuring that EU businesses can thrive and operate effectively on a level playing field in the internal market. Barriers to services are to be removed, liberalisation in areas such as gas, electricity, postal services and transport is to be speeded up. A strategy for further coordinated action to simplify the regulatory environment, including the performance of public administration, was developed at both the national and the Community level.

Outline

This paper will concentrate first of all on the EU state of affairs, and after that on some of its individual Member States. In the EU part, after an introduction, first of all the subsidiarity principle will be discussed which helps deciding at which level regulatory action is to be taken. Secondly, the role of the proportionality principle in choosing the appropriate scope and content of legislation to deal with a specific issue is discussed. After that, attention turns to improving the quality of EU legislation, notably with the help of Impact Assessments on financial and administrative consequences of regulatory initiatives. Fourthly, the involvement of stakeholders and public consultations on proposed legislation are dealt with. Fifthly and finally as far as the European level is concerned, the issue of simplification of legislation is turned to. The national part, after a general introduction, will deal first of all with the Dutch state regulatory system. In the Netherlands, attention focuses first of all on the so-called Directives for the regulator, than turns to the large-scale operation aimed at improving existing and proposed new initiatives. The policy goal of reducing administrative burdens with 25% by 2010 will be discussed next, as is the Dutch national impact assessment system aimed and the war on red tape, i.e. reducing administrative burdens. Attention then focuses on the Swedish impact assessment system,. The Swedish part ends with a description of the efforts on improving the abilities of companies to comply with regulation. The third country discussed is the United Kingdom. After describing the organisations involved in regulating economic life there, the UK regulatory impact assessment and legislative system are turned to. Then, improving the abilities of companies to comply with UK regulation is described. Finally, impact and visibility of the efforts on improving the regulatory system are discussed. Where possible, throughout both the European and the national parts, indications for useful elements as regards Russia's efforts to improve its regulation of the economy will be identified. The last part of this paper is devoted to possible lessons for Russia from experiences in the EU and its Member States.

European Union level

Within the European Union, an extensive debate has been and is still being conducted about increasing the efficiency in the regulatory system and specifically the legislation to regulate the economy. The debate on and actions with regard to improving the regulating of the EU economic policy take place under the headings of 'European governance' and 'Better lawmaking', and since a short while the slogan 'Less is more'.

'European governance' is defined by the Commission as the rules, processes and behaviour that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence. These five 'principles of good governance' are said to reinforce those of subsidiarity and proportionality.

The 'Better lawmaking' aspects of the 'European governance' White Paper were worked out in a communication and in the document 'Simplifying and improving the regulatory environment - an action plan. Together with the efforts in the fields of consultation and regulatory impact assessment, the action plan envisages the EU legislature to produce better laws, resulting in a basic legislative framework which is simpler, more effective and better understood. In this respect, the main issues that have crystallized so far concern:

1) choosing the appropriate regulatory level of legislation with the help of the subsidiarity principle;

2) choosing the appropriate scope and content of legislation to deal with a specific issue with the help of the proportionality principle;

3) improving the quality of EU legislation, inter alia via impact assessments, notably identifying financial and administrative consequences of European legislation (with specific attention for the consequences for SMEs, small and medium size enterprises);

4) involvement of stakeholders and public consultations on proposed legislation;

5) simplification of legislation, including codification of the 'acquis communautaire' in order to make it better accessible.

Ad 1) Subsidiarity

Introduction

The subsidiarity principle is applied to each new legislative proposal launched within the European Union in areas where either the EU and/or the Member States are allowed to take legislative steps (i.e. the so-called mixed competences). It obliges the legislature to ensure that legislative proposals are only launched by the European Union if the Member States themselves cannot achieve the objectives of the proposed action and that the legislation does not create unnecessary burdens for economic development. The subsidiarity test could be useful for the Russian Federation where it concerns the issue of division of powers between the Federal level and the regions, and as such features already in the Russian draft law "On the specifics of decision making in the sphere of public regulation of the entrepreneurship activity".

The proportionality test seems a very useful instrument for improving the way in which the Russian legislature regulates economic life, as it can help reduce the 'red tape' for economic operators.

Subsidiarity principle

The subsidiarity test is prescribed by Article 5 EC Treaty and is mentioned also in the preamble and Article 3 of the EU Treaty. Article 5 EC Treaty reads as follows:

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

This provision aims at ensuring that decisions are taken as closely as possible to the citizen in accordance (preamble EU Treaty) or, in other words, to ensure that the European Union does not interfere unnecessarily with the economy of the Member States. The main reason that the subsidiarity principle was introduced in European Community law was at the instigation of the United Kingdom under Prime-Minister Margaret Thatcher. The aim was to counter 'Brussels bureaucrats' usurping too much power and introducing unnecessary legislation. It first featured only in the part dealing with European environmental legislation but later on was upgraded to a general principle for all policy areas. The exact meaning of the principle and its judiciability were extensively debated. In order to clarify the situation, in 1997, at the occasion of the adoption of the Treaty on European Union, Protocol (30) on the application of the principles of subsidiarity and proportionality was adopted. In this document, practical guidelines are laid down for the use of these two principles. Where subsidiarity is concerned, the document explains *inter alia* the following:

The subsidiarity principle applies to situations where the EU shares the competence to legislate with the Member States (i.e. the 'mixed competences'). In areas where the EU

has exclusive legislative competence the principle does not apply, as the question whether the matter should be left to the Member States does not arise here. The principle of subsidiarity provides a guide as to how those powers are to be exercised at the Community level. Subsidiarity is a dynamic concept and should be applied in the light of the objectives set out in the Treaty. It allows Community action within the limits of its powers to be expanded where circumstances so require, and conversely, to be restricted or discontinued where it is no longer justified. For any proposed piece of Community legislation, the reasons on which it is based shall be stated with a view to justifying its compliance with the principles of subsidiarity and proportionality; the reasons for concluding that a Community objective can be better achieved by the Community must be substantiated by qualitative or, wherever possible, quantitative indicators. For Community action to be justified, both aspects of the subsidiarity principle shall be met: the objectives of the proposed action cannot be sufficiently achieved by Member States' action in the framework of their national constitutional system and can therefore be better achieved by action on the part of the Community. Still according to the Protocol (30), the following guidelines should be used in examining whether the abovementioned condition is fulfilled:

- the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States;
- actions by Member States alone or lack of Community action would conflict with the requirements of the Treaty (such as the need to correct distortion of competition or avoid disguised restrictions on trade or strengthen economic and social cohesion) or would otherwise significantly damage Member States' interests;
- action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States. Protocol 30 adds that the "reasons for concluding that a Community objective can be better achieved by the Community must be substantiated by qualitative or, wherever possible, quantitative indicators."

Furthermore, the Protocol indicates that the Commission is to justify the relevance of its proposals with regard to the principle of subsidiarity; whenever necessary, the explanatory memorandum accompanying a proposal will give details in this respect. The financing of Community action in whole or in part from the Community budget shall require an explanation.

Justiciability of the subsidiarity principle

The question whether or not conformance with the subsidiarity principle can be tested in front of the European Court of Justice was the subject of an extensive academic debate in the European Union. Protocol 30 simply states that compliance with the principle of subsidiarity shall be reviewed in accordance with the rules laid down by the Treaty. Indeed, the ECJ has tested at several occasions whether the subsidiarity principle has been observed. When considering Community action the ECJ does carry out only a marginal review, since it concerns a matter of complex practical and political circumstances. In other words, the subsidiarity principle needs to be made operational especially during the legislative phase in the interaction between the institutions. In this respect, the yearly reports drawn up by the Commission provide a valuable insight in how the principle developed in practice.

Subsidiarity principle and Russia

For a federal country like Russia, the subsidiarity principle could help *inter alia* in issues where transregional aspects mean that issues cannot be satisfactorily regulated by action by the regions or lower territorial bodies, and where action at the federal level would produce clear benefits by reason of its scale or effects compared with action at a lower level. The idea to make use of the subsidiarity principle in Russia is not new. It already features in the Russian draft law "On the specifics of decision making in the sphere of public regulation of the entrepreneurship activity".

Ad 2) Proportionality principle

Contrary to the subsidiarity principle, the proportionality principle applies both to legislation adopted under the exclusive competence of the EU and under the shared competence. The principle is laid down in Article 5 of the EC Treaty, last sentence:

Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

More detailed explanations are offered in Protocol (30) on the application of the principles of subsidiarity and proportionality. It is pointed out there that the form of Community action shall be as simple as possible, consistent with a satisfactory achievement of the objective of the measure and the need for effective enforcement. The Community shall legislate only to the extent necessary. Furthermore, it is explained with regard to the nature and the extent of Community action that Community measures should leave as much scope for national decision as possible, consistent with securing the aim of the measure and observing the requirements of the Treaty. The Protocol stresses that the Commission should, except in cases of particular urgency or confidentiality, consult widely before proposing legislation and, wherever appropriate, publish consultation documents; take duly into account the need for any burden, whether financial or administrative, falling upon the Community, national governments, local authorities, economic operators and citizens, to be minimised and proportionate to the objective to be achieved; - submit an annual report to the European Council, the European Parliament and the Council on the application of Article 6 of the Treaty (the provision in which the principles of subsidiarity and proportionality are laid down). Naturally, not only the Commission preparing the legislative proposal but also European Parliament and the Council are asked, as an integral part of the overall examination of Commission proposals, to consider their consistency with Article 3b of the Treaty. This concerns the original Commission proposal as well as amendments which the European Parliament and the Council envisage making to the proposal. In the course of the legislative procedures, the European Parliament is to be informed of the Council's position on the application of Article 6 of the Treaty, by way of a statement of the reasons which led the Council to adopt its common position. The Council shall inform the European Parliament of the reasons on the basis of which all or part of a Commission proposal is deemed to be inconsistent with Article 3b of the Treaty.

Justiciability of proportionality principle

The proportionality principle is first and foremost a tool for the legislator and those involved in the legislative process. Still, the justiciability of the proportionality principle is undisputed. The European Court of Justice often is asked to test whether a provision of Community law complies with the principle of proportionality. It does so by ascertaining whether the means which it employs are suitable for the purpose of achieving the desired objective and whether they do not go beyond what is necessary to achieve it. However, where the Community legislature is seeking to regulate an economically complex situation, the ECJ has traditionally been reluctant to substitute its own assessment for that of the

Community legislator. Only when the legislative choices appeared manifestly incorrect or if the resultant disadvantages for certain economic operators were wholly disproportionate to the advantages otherwise offered is the ECJ willing to judge that a violation of the proportionality principle took place.

Ad 3) Quality of legislation

Introduction

In December 1998, the three institutions involved in the legislative process (the Commission, EP and the Council) adopted the Inter-institutional Agreement on common guidelines for the quality of drafting of Community legislation. In pursuance of this agreement, the three institutions have drawn up and published a Joint Practical Guide for persons involved in the drafting of legislation. The Commission's internal procedures have been organized to permit the Legal Service to make drafting suggestions at an early stage in the process. Training in legal drafting has been organized. Besides the departments responsible for ensuring drafting quality in the EP, the Council and the Commission expanded their collaboration. Cooperation with the Member States was also enhanced through seminars on legislative quality.

Following the invitation made by the European Council of Seville in June 2002, the EP, the Council and the Commission agreed on an Inter-Institutional Agreement on better lawmaking. The main objectives of the agreement are to improve the quality of Community legislation and its transposition into national law of the Member States. The agreement entrenches best practices. The main elements of the agreement include improved inter-institutional co-ordination and transparency, and a stable framework for 'soft law' instruments with the help of a common definition of co-regulation and self-regulation.

Already since quite some time, the Commission - the institution that drafts new proposals for new EU legislation - uses so-called impact assessments. The aims of the impact assessment process are to improve the quality of Commission proposals and to improve and simplify the regulatory environment. It should also help ensure consistency between Community policies and contribute to sustainable development by assessing the economic, environmental and social impacts of policy proposals. It should lead to proposals that not only tackle the problem they aim to solve but also take into account side effects on other policy areas. Thorough consultation of experts (discussed further below), of different stakeholders (discussed under ad 4 below) and coordination between the different Commission services are key elements of this process. The assessments used to take place separately with regard to different aspects of these proposals, for instance consequences for SME's, the environment, the EU budget etc. In its Communication on Impact Assessment in the Commission COM(2002)276 final of 5 June 2002, the European Commission established a new, integrated, method for impact assessment.

This new form of Impact Assessment is an action envisaged under the 'Better Regulation Action Plan' and of the 'European Strategy for Sustainable Development' . It contributes to an effective and efficient Regulatory Environment and, with regard to the economic, social and environmental dimension of Sustainable Development, to a more coherent preparation of EU decision-making. More details can be found in the Commission report on Impact Assessment: Next steps - In support of competitiveness and sustainable development SEC(2004)1377 of 21 October 2004, in the Commission Guidelines on Impact Assessment, in the Operational guide containing procedural arrangements and basic information on how to conduct and report on an impact assessment, in a Handbook with more detailed guidance on how to do an impact assessment and in the Technical

annexes to the handbook. Basically, a Preliminary Impact Assessment is made first of all, and for a selected number of significant proposals a more in-depth analysis called Extended Impact Assessment is made. From the Better lawmaking 2003 report it follows that in 2003, only half of the initially planned Extended Impact Assessments were actually completed due to, *inter alia*, overly optimistic planning, lack of resources and political difficulties. These Extended Impact Assessments form a demanding exercise and services have had to adapt to the new procedure. Qualitatively speaking, however, the introduction of the new system of IA was felt to be largely a positive step, contributing to more balanced solutions.

Extended impact assessment in practice

There are two stages in the extended impact assessment process. First, a Preliminary Assessment takes place. The preliminary assessment gives a first overview of the problem identified, possible options and sectors affected. It serves as a filter to help identify the proposals that will be subject to an extended impact assessment. The preliminary assessment is required as a condition for inclusion of proposals in the so-called Annual Policy Strategy, or where an initiative's nature cannot be defined in detail at this early stage, for inclusion in the so-called Work Programme. The Commission decision will confirm the selection of major proposals for extended impact assessments in the Annual Policy Strategy. The first stage assessment results in a short statement focusing on the following key factors: Identification of the issue / objectives and desired outcome; Identification of the main policy options available to achieve the objective, taking into account proportionality and subsidiarity considerations (see ad 1 above), and preliminary indications on expected impact; Description of the preparatory steps already undertaken and foreseen; (consultations of interested parties, studies), and indication of whether an extended impact assessment is needed. The preliminary assessment follows the method outlined in general guidelines; the report replies to the standard questions.

On the basis of the preliminary assessment statement it is decided which proposals will require an extended impact assessment, taking the following criteria into account: whether the proposal will result in substantial economic, environmental and/ or social impacts on a specific sector or several sectors, and whether the proposal will have a significant impact on major interested parties and whether the proposal represents a major policy reform in one or several sectors.

The purpose of the extended impact assessment is normally two-fold: to carry out a more in-depth analysis of the potential impacts on the economy, on society and on the environment, and to consult with interested parties and relevant experts according to the minimum standards for consultation following the guidelines given in the Communication on Consultation (see ad 4 below), due account being made of exceptions in case of specific consultation requirements. The main results of this consultation should be summarised in the impact assessment report.

In preparing an extended impact assessment it is important to consider how to assemble the further information needed to answer fully key questions. Where it is not possible to assemble all relevant data within a reasonable time frame, qualitative or partial data will be used. A summary of the main findings should be included in the explanatory memorandum.

The impact assessment will be conducted according to the principle of proportionate analysis, i.e. varying the degree of detail to the likely impacts of the proposal. This means that the depth of the analysis will be proportionate to the significance of the likely impacts. Thus, proposed measures that are likely to have serious negative side effects or particularly affect certain groups in society should be more thoroughly analysed than minor technical changes to regulations. Likewise, the analysis will be adapted to the specific circumstances of the policy domain concerned, to take into account differences between types of activities conducted by services and specific statutory obligations.

While conducting the impact assessment is the responsibility of the services in charge, a Secretariat General co-ordinates the basic support structure for the impact assessment procedures, in particular regarding the selection and monitoring of the proposals subject to extended impact assessment. The Secretariat General will co-ordinate the issuance of guidance documents, organisation of training, exchange of good practice and will monitor the final quality of the impact assessments carried out. The results will be presented in an impact assessment report. This assessment replaces previous assessments, such as regulatory impact assessments, business impact assessments, environmental impact assessment etc.

Impact Assessment is an aid to decision-making, not a substitute for political judgement. As to the policy choice, the final options (i.e. a draft proposal submitted for decision) will emerge through the Impact Assessment process. Sometimes the impact assessment may point towards a preferred basic approach and the optimal policy instrument early in the process. Subsequent analysis will then focus on improving the effectiveness of the proposal in terms of changes introduced to key design parameters or stringency levels. It may also identify accompanying measures to maximise positive and minimise negative impacts.

The reasons for the most preferred policy option is clearly outlined in the Impact Assessment Report. Alternative instruments that meet the same set of policy objective(s) are considered at an early stage in the preparation of policy proposals. Regarding the choice of instruments, not only legal but also other types of policy instruments are considered. The assessment report will justify the chosen policy option, after having examined alternatives. In order to get a better idea on what an Extended Impact Assessment encompasses, the main questions to be answered can be summarised as follows:

Main questions to be answered in an Extended Impact Assessment (Commission Communication)

1. *What issue/problem is the policy/proposal expected to tackle?*
 - * *What is the issue/problem in a given policy area expressed in economic, social and environmental terms including unsustainable trends?*
 - * *What are the risks inherent in the initial situation?*
 - * *What is (are) the underlying driver(s)?*
 - * *What would happen under a "no policy change" scenario?*
 - * *Who is affected?*

2. *What main objective is the policy/proposal supposed to reach?*

- * What is the overall policy objective in terms of expected effects?*
- * Has account been taken of any previously established objectives?*

3. What are the main policy options available to reach the objective?

- * What is the basic approach to reach the objective?*
- * Which policy instruments have been considered?*
- * Which are the trade-offs associated with the proposed option?*
- * What "designs" and "stringency levels" have been considered?*
- * Which options have been discarded at an early stage?*
- * How is subsidiarity and proportionality taken into account?*

4. What are the impacts - positive and negative ? expected from the different options identified?

- * What are the selected options' expected positive and negative impacts, particularly in terms of economic, social and environmental consequences, including impacts on management of risks? Are there potential conflicts and incoherence between economic, social and environmental impacts that may lead to trade-offs and related policy decisions?*
- * How large are the additional ('marginal') effects that can be attributed to the policy proposal, i.e. those effects over and above the "no policy change" scenario? Description in qualitative and, where possible, also in quantitative and monetary terms.*
- * Are there especially severe impacts on a particular social group, economic sector (including size-class of enterprises) or region?*
- * Are there impacts outside the Union on the Candidate Countries and/or other countries ("external impacts")?*
- * What are the impacts over time?*
- * What are the results of any scenario, risk or sensitivity analysis undertaken?*

5. How to monitor and evaluate the results and impacts of the proposal after implementation?

- * How will the policy be implemented?*
- * How will the policy be monitored?*
- * What are the arrangements for any ex-post evaluation of the policy?*

6. Stakeholder consultation

- * Which stakeholders were consulted, when in the process, and for what purpose?*
- * What were the results of the consultation?*

7. Commission draft proposal and justification

- * What is the final policy choice and why?*
- * Why was a more/less ambitious option not chosen?*
- * Which are the trade-offs associated to the chosen option?*

** In the case of poor data or knowledge at present, why is a decision to be taken now rather than be put off until better information is available?*

** Have any accompanying measures to maximize positive and minimize negative impacts been taken?*

The main results of the preliminary and/or extended assessments should be summarised in the explanatory memorandum. The final reports should also be attached to the proposed decision for final adoption.

Business impact

Although now a part of the extended impact assessment, the experiences gained with business impact assessment remain of particular importance when it comes to regulating economic life. DG Enterprise, the Directorate General in the Commission responsible for businesses, for some time already set out to ensure that consultations take place with business organisations, particularly small and medium sized enterprises (SMEs) in order to obtain different views and opinions. The instrument of business impact assessment, in use since 1986, formed a comprehensive analysis of the impact of a legislative proposal on business with particular reference to SMEs. These tend often to suffer disproportionately from legislation, both in terms of compliance costs and administrative burdens. With the help of the business impact assessment, decision makers can see to it that the concern of business, notably of SMEs, is properly taken into account.

The Directorates-General planning new initiatives are required to detail specific compliance costs and administrative burdens that are likely to arise from their proposal. This includes both recurring costs, for instance in respect of annual administrative procedures, and non-recurring costs, for instance where new equipment needs to be obtained in order to meet the proposed legislative requirements. Reporting, monitoring and enforcement costs also need to be taken into account. If a legislative proposal entails product specifications then the Commission should consider the appropriateness of conformity assessment, including testing and certification requirements, as such requirements cause particular burdens for SMEs. In this respect, finding out the compliance costs for a typical business type can be of help.

As SMEs have particular needs when it comes to adapting their regulatory environment, the concept of "Think Small First" was developed in the EU. SMEs tend not to be good at making their concerns known, maybe because they feel that they have more pressing concerns than talking to policy makers. As a result, in spite of the efforts of the Commission, consultation of SMEs remained low. The "Think Small First" concept tries to accommodate for this fact by a range of initiatives. Notably, DG Enterprise appointed a SME Envoy, acting as a facilitator between SME representatives and the Commission services seeking to ensure that SMEs' needs are taken into account in Community policies and initiatives. He can play an important role in increasing the awareness of SME issues inside the Commission, in fostering dialogue with business organisations and in promoting the "Think Small First" concept.

Another EU initiative is stimulating learning from good practices. Efforts to exchange good practice must be stepped up, it is felt, as differences between Member

States and notably between the old and new ones are considerable. There is a risk that the best may be getting better and the worst performers not progressing. There is also a clear need for candidate countries to close the gap that separates them from EU frontrunners. Only by increased attention to learning from good practices the EU will be able to bridge performance gaps, particularly in the context of an enlarged Europe. The EU itself is also closely cooperating with individual Member States, notably with the UK Deregulation Unit, where it comes to improving its own practices.

Since almost every Community policy has an SME dimension, SMEs' special needs and concerns are incorporated into most Community policies and programmes, as presented in the report on the activities of the European Union for SMEs. For example, the Structural Funds are spending some €6 billion¹⁹ on SME-targeted projects in the period 2000-2006. Approximately one third of this Community aid to SMEs is dedicated to advisory services and to shared business services, such as incubators, networking, and clusters. In addition, this Community aid is triggering large matching support from national funds. Also the Multi-annual Programme for Enterprise and Entrepreneurship and in particular SMEs and its financial instruments, is geared towards improving the business environment of small and medium sized enterprises. All of these efforts are aimed at providing a constantly improving environment for the EU's small businesses and stimulate and exploit their entrepreneurial potential, in order to better assure the future competitiveness of the EU.

In Russia, the development of SME is known to suffer from bureaucratic burdens. The EU experience with business impact assessment of new legislation, but perhaps more importantly applying a similar test to existing legislation, might open new possibilities for the development of Russian SMEs.

Principles and guidelines on expertise

After having examined the instrument of impact assessment as a means to improve the quality of legislation, it is now time to turn to another way of improving legislation, i.e. the use of expertise. Expertise is employed in different stages of economic policy-making and is intended to contribute to the quality of regulation, which in its turn contributes to the efficiency of state regulation of the economy. In the White Paper on European Governance of 2001, it was already observed that in practice, it is often unclear who is actually deciding - experts or those with political authority. Also, it was noted that in the EU, the better-informed public increasingly is questioning the content and independence of the expert advice that is given. The issue of expert advice is thus becoming acute in the EU, especially in areas of risk assessment, risk management and areas where the precautionary principle is to be applied (i.e. areas where a risk seems to exist but cannot be calculated). In order to ensure that expertise contributes effectively to the structuring of economic life in the EU, many initiatives were taken. Notably, the system of scientific committees in the area of food safety and consumer protection was revamped in 1997 after a number of crises, notably on BSE. In 2002, a further step was taken to consolidate lessons learnt from the past in the EU. In line with the White Paper, a set of core principles and guidelines on the use of expertise was set up, aimed at spreading good practice, notably where accountability, plurality and integrity is concerned.

Scope

The Communication "Improving the knowledge base for better policies it is set out when and how experts can be employed" applies whenever Commission departments collect and use advice of experts coming from outside the responsible department. The principles and guidelines thus cover the collection of advice through *ad hoc* and permanent expert groups; external consultants (individuals, groups or companies, possibly using study contracts); and instances when these mechanisms are used in conjunction with inhouse expertise.

The principles and guidelines are relevant to the involvement of expertise at all stages in the policy-making cycle, embracing the initial identification of the need for a policy action or response (including foresight exercises); shaping policy options (including impact assessment); policy proposal; policy implementation; and policy monitoring and review. The principles and guidelines are not legally binding. Nor do they apply to the formal stages of decision-making as prescribed in the Treaty and in other Community legislation. Therefore, both formal legislative procedures and the formal exercise of the Commission's implementing powers with the assistance of 'comitology' committees are excluded. The Commission's minimum standards on public consultation (see below ad 4) apply in consultations of the public at large, and also when the Commission seeks the views of civil society groups and other interested parties because of the constituencies they represent, rather than because of the expertise they possess. Whenever there may be doubts as to whether the minimum standards on consultation or the guidelines on expertise apply, the departments responsible will provide detailed guidance to the relevant external parties.

Core principles

Three core principles always underpin the activities of the Commission departments whenever they collect and use expert advice within the scope outline above. The core principles tell the Commission to always: i) seek advice of an appropriately high quality, determined by the experts' excellence, independency and their pluralism (assembling a diversity of viewpoints, for instance minority views); ii) be open in seeking and acting on advice from experts; iii) ensure that its methods for collecting and using expert advice are effective and proportionate.

Guidelines

A set of 17 guidelines implement the abovementioned principles, grouped in 5 categories. The main points of these guidelines could be of use when setting out a strategy for improved use of expertise by for instance ministries and departments in Russia. They can be summarised as follows:

Guidelines on the use of expertise

Category 1 Planning ahead

- 1. An adequate level of in-house expertise is to be ensured.*
- 2. Policy issues that require expert advice should be identified as early as*

possible.

Category 2 Preparing for the collection of expertise

3. The manner in which experts are involved (in-house, consultancy, expert group, conference, etc.) should be determined by the urgency, complexity and sensitivity of the policy issue.

4. Other departments liable to be interested in the policy issue should be invited to contribute.

5. Departments should first assess the extent to which their needs can be met by any existing mechanisms conforming to the core principles. Suitable mechanisms may also be found in other countries or international organisations.

6. The scope and objective of the experts' involvement, and the questions they will address, should be set out clearly.

7. A scoping exercise should determine the profile of expertise required. The nature of the issue in question should determine the optimum mix.

Category 3 Identifying and selecting experts

8. Departments should cast their nets as widely as possible in seeking appropriate expertise. As far as possible, fresh ideas and insight should be sought by including individuals outside the department's habitual circle of contacts.

9. Both mainstream and divergent views should be considered. However, it is important to distinguish proponents of theories that have been comprehensively discredited from those whose ideas appear to be supported by plausible evidence.

Category 4 Managing the involvement of experts

10. When using expertise, departments should maintain a record of the process including the terms of reference and the main contributions of different experts or groups of experts.

11. In consultation with the experts themselves, it is to be determined whether the assembled expertise covers the topics to be addressed and whether sufficient pertinent background information and data are available and ensure that there is a clear understanding of the tasks assigned.

12. Experts should declare immediately any direct or indirect interest in the issue at stake, as well as any relevant change in their circumstances after the work commences, in order to avoid conflicts of interest.

Category 5 Ensuring openness

13. The main documents associated with the use of expertise on a policy issue, and in particular the advice itself, should be made available to the public as quickly as possible, providing no exception to the right of access applies.

14. Departments should consider allowing the public to observe certain expert meetings,

particularly on sensitive policy issues.

15. Departments should insist that experts clearly highlight the evidence (e.g. sources, references) upon which they base their advice, as well as any persisting uncertainty and divergent views.

16. Departments should consider how to promote an informed and structured debate between policy-makers, experts and interested parties (e.g. workshops, consensus conferences), particularly on sensitive issues.

17. Proposal should be accompanied by a description of the expert advice considered, and how the proposal takes this into account.

Ad 4) Involvement of stakeholders and public consultations on proposed legislation

Introduction

In the EU and in its Member States, parliaments play an important role when it comes to representing citizens and society. At the same time, it is realized that the legislator (government and parliament) itself does not have the all expertise and insight views necessary to create legislation that is effective and efficient and does not hinder economic development more than necessary. It is therefore common practice to widely consult different interested parties when preparing new legislation with regard to the economic situation. In this way, it can be ensured that the parties concerned by this legislation will get a possibility to express their concerns, suggest changes etc. and in that way improve the quality of the economic regulation. Often, non-binding guidelines describe how the legislature is to conduct consultations, who is to be consulted, how much time there is for submitting comments etc. In this way, it can be prevented that policy-makers just listen to one side of the argument or of particular groups getting privileged access.

The EU aims at involving civil society organizations, as these play an important role as facilitators of a broad policy dialogue. For this reason, the White Paper on European Governance stressed the importance of involving these organisations in its consultation processes, and the Commission particularly encourages a coherent approach to representation of such organisations at European level. This specific role of civil society organisations in modern democracies is closely linked to the fundamental right of citizens to form associations in order to pursue a common purpose, as highlighted in Article 12 of the European Charter of Fundamental Rights. Belonging to an association is another way for citizens to participate actively, in addition to involvement in political parties or through elections.

There is no commonly accepted - let alone legal - definition of the term 'civil society organisation'. It can nevertheless be used as shorthand to refer to a range of organisations which include: the labour-market players (i.e. trade unions and employers federations - the "social partners"); organisations representing social and economic players, which are not social partners in the strict sense of the term (for instance, consumer organisations); NGOs (non-governmental organisations), which bring people together in a common cause, such as environmental organisations, human rights organisations, charitable organisations, educational and training organisations, etc.; CBOs (community-based organisations), i.e. organisations set up within society at grassroots level which pursue member-oriented objectives, e.g. youth organisations, family associations and all organisations through which citizens participate in local and municipal life; and religious communities. Thus, in the view of the Commission, 'civil society organisations' are the principal structures of society outside of government and public administration, including economic operators not generally considered to be "third sector" or NGOs. The term is thus inclusive and links to the concept of these organizations, rooted as they are in the democratic traditions of the Member States of the European Union.

Sometimes, consultations with the institutionalised advisory bodies of the EU (the Economic and Social Committee - ESC and the Committee of the Regions - CoR) are even binding, notably where economic regulatory initiatives are concerned.

In the Russian Federation, the quality of economic and other legislation could also benefit from discussion with stakeholders and public consultations. Maybe the bill now under discussion with regard to the proposed Public Chamber might become a step in the direction of more public consultations.

The latest developments in the EU described here show how involvement of stakeholders and public consultations are regulated nowadays in the EU with the aim of, *inter alia*, improving the regulation of economic life. The description of European legislation, guidelines and practice could contribute to the debate in Russia on when and how to involve stakeholders and convene public consultations in order to contribute to making Russian legislation concerning state regulation of economy and its development more future oriented, predictable, certain, coherent, and non-controversial.

Formal consultations: ESC and CoR

When preparing new European legislation, in the majority of cases dealing with economic regulation the Treaties prescribe that consultations are to take place with two advisory bodies: the Economic and Social Committee (ESC) and the Committee of the Regions (CoR). The ESC consists of representatives of the various economic and social components of organised civil society, and in particular representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations, consumers and the general interest. Its 350 independent members are appointed by the Council for a period of four years on proposal from the Member States.

The CoR also consists of a maximum of 350 members appointed by the Council, consisting of representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly. In this way, it is ensured that the views from the regions as well as those from the main economic and social groups are expressed and taken into account when designing new legislation.

In 2001, the Commission concluded Protocols on co-operation with the ESC and the CoR. The rationale behind these Protocols was to reinforce the function of these bodies as intermediaries between, on the one hand, the EU institutions, and, on the other, organised civil society (ESC) or the regional and local authorities (CoR). As far as the ESC is concerned, this new approach closely reflects the spirit of the Nice Treaty. The Treaty reinforced the ESC participation in the Community framework by stipulating that it "shall consist of representatives of the various economic and social components of organised civil society". As regards the CoR, the Protocol on co-operation is essential because of the Committee's dual role: It is the representative body of regional and local authorities in the EU and acts as an indispensable intermediary between these authorities and the EU institutions. Within the Commission, the Protocols are implemented on the basis of an internal vademecum for the Commission departments. According to the Protocols, the ESC and CoR will be asked, in the near future, to organize consultations on behalf of the Commission.

In Russia, on 22 December 2004 a Kremlin-sponsored bill was tentatively approved by the State Duma creating a public oversight board intended to boost citizens' participation in government. At the same time, their opportunities to elect individual representatives are being restricted. The bill would create a Public Chamber with a

consultative status, which is to function as a forum for public discussion of key tasks before society. It would have 126 members, one third of which would be appointed by the President, one third by the president's appointees and those two sets in turn would choose the rest. The chamber is intended to give civil society another kind of opportunity to influence the government.

Informal consultations: introduction

Besides these official forms of consultation, the Commission and the other bodies involved in the European legislative process have always been discussing new legislative proposals in an informal way with interested parties, ranging from discussions with professional lobbyists to NGOs and trade representatives of the EU's main trading partners. Such wide consultation is one of the Commission's duties according to the Treaties and helps to ensure that proposals put to the legislature are sound. This is in line with the European Union's legal framework, which states that "the Commission should [...] consult widely before proposing legislation and, wherever appropriate, publish consultation documents".

After several earlier initiatives in this respect, as of 1 January 2003, a set of general principles and minimum standards for consultation of interested parties by the Commission applies as a means to support better law making in the EU. The consultation standards at the EU level as developed by the Commission are cast in the form of a so-called Communication, i.e. a policy document that is not legally binding. This was done on purpose, as it was felt necessary to avoid an over-legalistic approach (avoiding challenges of Commission proposals in the ECJ on grounds of alleged lack of consultation of interested parties), and in order to differentiate from the formalised and compulsory decision-making process according to the EC- and EU-Treaties. The Communication itself was published in the form of a draft in June 2002 for comments by interested parties. The outcome of this consultation process is described in Part IV of the Communication, which thus put into practice itself its very aim.

Scope

In order to clarify when to apply the general principles and minimum standards, the Communication specifies that they apply in the first place to those legislative initiatives that are subject to an extended impact assessment, i.e. those initiatives preliminary identified as resulting in substantial economic, environmental and/or social impact on a specific sector (see ad 3 above), and with a significant impact on major interested parties, or resulting in a major policy reform in one or more sectors. The Directorates-General of the Commission are encouraged to apply the general principles and minimum standards also to any other consultation exercises they intend to undertake. A number of issues excluded from the scope of the Communication are listed, like Green Papers and decisions taken in a formal process of consulting Member States following the so-called comitology procedure.

General principles

There are four general principles that need to be observed. They involve participation, openness and accountability, effectiveness and coherence. As for the first principle, the Communication quotes the White Paper on European Governance where it was already explained that "[The] quality of [...] EU policy depends on ensuring wide participation throughout the policy chain - from conception to implementation." The Commission expresses that it is committed to an inclusive approach when developing and implementing EU policies, i.e. consulting as widely as possible on major policy initiatives, in particular, in the context of legislative proposals.

As for openness and accountability, again following the White Paper, it is underlined that the European institutions should work in a more open manner [...] in order to improve the confidence in complex institutions, and that each of these institutions must explain and take responsibility for what it does in Europe. The Commission sets out its belief that the processes of administration and policy-making must be visible to the outside world if they are to be understood and have credibility, and that this is particularly true of the consultation process, which acts as the primary interface with interests in society. Thus consultation processes run by the Commission must also be transparent, both to those who are directly involved and to the general public. Hence, the Communication underlines that it must be clear what issues are being developed, what mechanisms are being used to consult, who is being consulted and why and finally what has influenced decisions in the formulation of policy. Interested parties must themselves operate in an environment that is transparent, so that the public is aware of the parties involved in the consultation processes and how they conduct themselves. Openness and accountability are thus important principles for the conduct of organisations when they are seeking to contribute to EU policy development. It must be apparent which interests they represent and how inclusive that representation is.

Interested parties that wish to submit comments on a policy proposal by the Commission must therefore be ready to provide the Commission and the public at large with the information described above. This information should be made available either through the CONECCS database (where organisations are eligible for this database and wish to be included on a voluntary basis) or through other measures, e.g. special information sheets. If this information is not provided, submissions are considered as individual contributions.

On effectiveness, the White Paper is quoted saying: "Policies must be effective and timely, delivering what is needed." This means that consultation must start as early as possible, and that interested parties are involved in the development of a policy at a stage where they can still have an impact on the formulation of the main aims, methods of delivery, performance indicators and, where appropriate, the initial outlines of that policy. Consultation at more than one stage may be required. Both the Commission and outside interested parties will benefit from understanding the perspective of the other. The Commission operates within a policy and political framework that is influenced by many factors. For example, it must take account of its international obligations to third countries and international organisations. Finally, the Commission stresses that a prerequisite for effectiveness is respect of the principle of proportionality (see also ad 2 above on this topic). Here, this principle means that the method and extent of the consultation performed must be proportionate to the impact of the proposal subject to consultation and must take into account the specific constraints linked to the proposal.

As for the last general principle of coherence, again following the White Paper, the Commission pledges that it will ensure that there is consistency and transparency in the way its departments operate their consultation processes, and that it will include in its consultation processes mechanisms for feedback, evaluation and review. This will be ensured through appropriate co-ordination and reporting in the context of the Commission's "better law-making" activities. Interest groups are encouraged to establish their own mechanisms for monitoring the process, so that they can see what they can learn from it and check that they are making an effective contribution to a transparent, open and accountable system.

Minimum standards

The minimum standards consist first of all of a section A on clear content of the consultation process, B consultation target groups (determining who is to be consulted; organisations in major trading partners of the EU are specifically mentioned), C publication (internet at a single access point, <http://europa.eu.int/yourvoice>) and traditional alternatives like press releases and mailings, D time limits for participation (normally 8 weeks) and E acknowledgement and feedback. Each of these minimum standards will be briefly discussed here.

A) Clear content of consultation

All communications relating to consultation should be clear and concise, and should include all necessary information to facilitate responses. The information in publicity and consultation documents should therefore include:

- * A summary of the context, scope and objectives of consultation, including a description of the specific issues open for discussion or questions with particular importance for the Commission.

- * Details of any hearings, meetings or conferences, where relevant.

- * Contact details and deadlines.

- * Explanation of the Commission's processes for dealing with contributions, what feed-back to expect, and details of the next stages involved in the development of the policy.

- * If not enclosed, reference to related documentation (including, where applicable, Commission supporting documents).

B) Consultation target groups

As was already indicated in the introduction, it is important to determine in advance who is to be consulted on the basis of clear criteria. The second minimum standard tells us in this respect: When defining the target group(s) in a consultation process, the Commission

should ensure that relevant parties have an opportunity to express their opinions, i.e. those affected by the policy; those who will be involved in implementation of the policy, or bodies that have stated objectives giving them a direct interest in the policy. In determining the relevant parties for consultation, the Commission should take into

account the following elements as well: the wider impact of the policy on other policy areas, e.g. environmental interests (ex art. 6 EC Treaty where this is laid down as an

obligation) or consumer policy; the need for specific experience, expertise or technical knowledge, where applicable; the need to involve non-organised interests, where appropriate; the track record of participants in previous consultations; the need for a proper balance, where relevant, between the representatives of social and economic bodies, large and small organisations or companies, wider constituencies (e.g. churches and religious communities) and specific target groups (e.g. women, the elderly, the unemployed, or ethnic minorities), organisations in the EU and those in non-member

countries (e.g. in the candidate or developing countries or in countries that are major trading partners of the European Union, so for instance Russian organizations). Where appropriate, the Commission encourages contributions from interested parties organised at European level. Where a formal or structured consultation body exists, the Commission should take steps to ensure that its composition properly reflects the sector it represents. If this is not the case, the Commission should consider how to ensure that all interests are being taken into account (e.g. through other forms of consultation).

C) Publication

Adequate awareness-raising publicity and adapted communication channels to meet the needs of all target audiences are to be used. Without excluding other communication tools, open public consultations are published on the Internet and announced at the "single access point". For addressing the broader public, a single access point for consultation will be established where interested parties should find information and relevant documentation. For this purpose, the Commission uses the 'Your-Voice-in-Europe' webportal. At the same time more traditional alternatives to the internet (e.g. press releases, mailings) are used. The use of internet and/or other means of publication will depend on the percentage of persons with internet access in a country or region. In Russia, internet thus might not yet be the primary means of publication.

D) Time limits for participation

There should be sufficient time for planning and responses to invitations and written contributions, i.e. at least 8 weeks for reception of responses to written public consultations and 20 working days notice for meetings. The main rule is to give those participating in consultations sufficient time for preparation and planning. Consultation periods should strike a reasonable balance between the need for adequate input and the need for swift decision-making. In urgent cases, or where interested parties have already had sufficient opportunities to express themselves, the period may be shortened. On the other hand, a consultation period longer than eight weeks might be required in order to take account of inter alia the need for organisations to consult their members in order

to produce a consolidated viewpoint, certain existing binding instruments (this applies, in particular, to notification requirements under the WTO agreement - a point of importance for Russia as well in its preparations for WTO membership), the specificity of a given proposal (e.g. because of the diversity of the interested parties or the complexity of the issue at stake) and the main holiday periods.

E) Acknowledgement and feedback

Receipt of contributions should be acknowledged. Results of open public consultation should be displayed on websites linked to the single access point on

the Internet. Depending on the number of comments received and the resources available,

acknowledgement can take the form of an individual response (by e-mail or acknowledgement slip), or a collective response (by e-mail or on the single access point for consultation on the Internet; if comments are posted on the single access point within 15 working days, this will be considered as acknowledgement of receipt).

Contributions will be analysed carefully to see whether, and to what extent, the views

expressed can be accommodated in the policy proposals. Contributions to open public consultations will be made public on the single access point. Results of other forms of

consultation should, as far as possible, also be subject to public scrutiny on the single access point on the Internet. Adequate feedback to responding parties and to the

public at large is to be provided. To this end, explanatory memoranda accompanying legislative proposals or communications following a consultation process need to include the results of these consultations and an explanation as to how these were conducted and how the results were taken into account in the proposal. In addition, the results of consultations carried out in the Impact Assessment process are summarised in the related reports.

How to measure quality?

An issue that should not be overlooked in the discussions on improving the quality of legislation is the question how regulatory quality is to be assessed. The Commission has initiated a project on the development and critical evaluation of indicators to assess regulatory quality. The aim of that project is to develop a common set of indicators and thus to foster co-operation between the Member States and the Commission to monitor the quality of their regulatory activity in the interest of the competitiveness of European enterprises. The project started with providing a detailed map of initiatives for better regulation in EU member states and Australia, Canada, New Zealand, and the US, with major emphasis on innovations in the measurement of regulatory quality. This stage 1 was based on desk research, communication with the project's support network created by the DG Enterprise, and a questionnaire. The indicators were classified in three different types, that is, design of the process, activities and outputs, and real-world outcome. At the end of stage 1, IRQ will produce a report with the following Sections: definitions of regulatory quality; set of existing indicators currently used by EU member states and other selected countries; how they are gathered; and advantages and limitations of indicators, taking into account different dimensions, such as efficiency, administrative assimilation, flexibility, and precision.

Stage 2 build a set of indicators suitable for the EU context, in order to strengthen the monitoring process of the implementation of the better regulation policies of the EU. The final report discusses the indicators, show how they can be gathered, and illustrate the conditions under which they can facilitate institutional learning. The final report was presented in a conference in Brussels in January 2005. The results are not yet publicly available, unfortunately.

Ad 5) Simplification of legislation

In order for legislation to be effective, it should be attuned to the problems posed and to technical and local conditions. By (re)writing legislation in a less complicated style, it becomes easier to implement and easier to read and to understand. Combined with efforts to improve legislative procedures as described above, action in the field of simplification of legislation can achieve saving time and reducing costs for companies and public authorities. The ultimate goal, as the Commission put it in its Action Plan "Simplifying and improving the regulatory environment", is to "ensure a high level of legal certainty" and to "enable economic and social operators to be more dynamic".

The Action Plan notes that within the EU, there are over 80 000 pages of legislation and that there is a need to reduce this volume on the one hand and to simplify this body of law on the other hand. It identifies four ways to improve European regulatory instruments: consolidation, codification, recasting/redrafting and simplification.

The first way to reduce and simplify regulation is through consolidation. Consolidation means grouping together in a single non-binding text the current provisions of a given regulatory instrument, which are spread between the first legal act and subsequent amending acts. Notably, 'dead wood' needs to be removed (legal texts that are obsolete and outdated), as this leads to a considerable reduction in the volume of legislation, without changing the legal status.

Codification means the adoption of a new legal instrument, which brings together, in a single text, but without changing the substance, previous instruments and their successive amendments, with the new instrument replacing the old ones and repealing it. By the end of 2003, of some 2,400 "families" of legal acts, 36 codified texts were proposed to the Legislator, replacing 354 pre-existing acts, i.e. a tenfold reduction.

The third way to simplify and reduce legislation is by recasting/redrafting. This means adopting a single legal act, which makes the required substantive changes, codifies them with provisions remaining unchanged from the previous act, and repeals the previous act.

The final instrument is simplification, i.e. to make the substance of a piece of regulation simpler and more appropriate to the users' requirements.

Legislative acts which undergo codification, recasting or simplification must be submitted to the legislator for adoption as their structure and substance changes.

A major codification programme was launched already in 2001. Later on, the Commission defined in its Communication "Updating and simplifying the Community acquis" (COM(2003)71 final), an new ambitious programme to ensure that Community legislation would become more clear, understandable, up-to-date and user-friendly. Conceived as the beginning of a long-term process, the programme foresees an intensive start-up period of 2 years divided in 3 phases: Phase I from February to September 2003; Phase II from October 2003 to March 2004; and Phase III from April to December 2004. Priority indicators were developed in order to set about on the complex and diffuse process of simplification, which requires considerable resources. The process of simplification was divided into three parts. First, the development of prioritisation indicators on which the legislation will be screened on a case by case basis in order to identify and prioritize policy areas where the relevant legislation could be a candidate for simplification. Secondly,

based on these indicators, presenting an initial list of priority policy areas that have been selected in order to screen their potential for subsequent simplification initiatives. Thirdly, the methodology and procedures that will be adopted to prepare the Commission's simplification proposals and processes. As for the issues selected, it can be noted here that they include inter alia industrial products, marketing authorisations, agriculture, competition and contract law.

Indicators for prioritizing

There are many different prioritisation indicators that could be applied in order to assess the priority that should be given to different policy areas for future simplification (and also codification). The indicators - examples of which are proposed in the table below - will, therefore, need to be applied on a case by case basis to determine the relative priority of each policy area for achieving legislative simplification. The opportunity to simplify any existing legal instrument could, of course, also present itself during legislative work that is, for wider policy reasons, already taking place or where policy reviews have been programmed.

Examples of indicators for prioritisation on a case by case basis

1. Importance of a particular policy area, assessed through two specific indicators:

* *The policy areas' relative importance within the economy in terms of growth, competitiveness and jobs;*

* *The weight a particular policy area represents in terms of its share of the law and how significantly its functioning is influenced by legislation (for example indicated by the number of legal acts) and the level of technical details included in the existing acts in force.*

2. Where there are indications of potential problems with existing legislation, for instance from citizens and other stakeholders (expressed as complaints; the response to consultations; or where the legislation is difficult to understand and apply).

* *Where there are difficulties with legislation because of successive amendments, overlapping or conflicting requirements and potential legal uncertainty resulting from inconsistent definitions or terminology.*

* *Where experience has shown that administrative implementation and compliance costs appear disproportionate in relation to the benefits sought by the legislator and achieved; and/or the potential for legislative (and policy) simplification is considerable.*

* *Where there are potential major risks (fundamental rights, the environment, consumers, health or safety; industries or services, etc.) that are not satisfactorily targeted by existing legislation but which could be addressed in a simplification initiative rather than in a new legislative proposal.*

3. Where new political initiatives or evolving regulatory practices may justify legislative update and consequently an opportunity to simplify the legislation:

* Where the application of horizontal initiatives (sustainable development, environmental concerns; safety; fundamental rights, etc.) require updating and amendment in respect of a particular sector;

* Where the legislative approach may no longer be appropriate and could be replaced by more efficient, flexible and proportionate instruments (for example, framework directives, new approach directives or "softer" regulatory alternatives). In addition, evaluation of policies should be more systematically used to establish the possible need for simplification;

* Where new obligations (for example, resulting from international agreements) require updated legislation or changes to the legislative format chosen in order to exploit more effectively the potential synergies between overlapping regulatory regimes, or where legislation refers to international agreements and annexes such agreements to legal acts (such as international standards developed in accordance with the WTO 's TBT or SPS Agreements, by intergovernmental or other organisations like the Codex Alimentarius).

Progress in EU practice

The Commission presented a first progress report (COM(2003)623 final) in October 2003, which outlines achievements during Phase I and the work programme for Phase II. The overall results of the first phase of implementation of the programme have been mixed due to delays but not unsatisfactory, in so far as a change of regulatory culture has started to take place. Most of the Commission's services were making significant efforts to simplify legislation. A second progress report (COM(2004) 432 final) covering Phase II was presented in June 2004. It shows that the implementation of the simplification programme is, now, overall well underway despite some delays in the realisation of certain actions. In particular, the codification work has been greatly delayed due to the EU enlargement process.

Options for Russia

For the Russian Federation, in several fields of economic regulation the experiences in the EU can be used when it comes to simplifying and improving legislation. For a start, it needs to be realised that in order for simplification and improvement plans to work, a change in Russia's regulatory culture will need to take place. Rather than producing more legislation each year as if more is better, the EU example of "less is more" should become the credo - aiming at quality legislation rather than quantity. Where the specific techniques described above are concerned, consolidation seems to be of use specifically in the EU context and thus less well suited for adoption in Russia. Codification in the sense used in the EU might contribute more to Russia's efforts. It seems possible to seek out areas in which several legal instruments are applicable, decide on which of those are redundant and

integrate the necessary ones in a single text. Recasting/redrafting and simplification do seem to offer important chances for making current Russian legislation concerning state regulation of economy and its development more predictable, certain, coherent, and non-controversial. Especially in the present legal situation in the Russian Federation, in which legal uncertainty is often caused by various laws, decrees etc. being applicable to one and the same situation a systematic effort to recast/redraft existing regulatory regimes in specific field could contribute a great deal to improving the situation. Also simplification plans could ensure that consistency is improved of Russian legislation. Both simplification and recasting/redrafting, because they contribute to legal certainty and transparency, would in their turn help in combating corruption.

The fact that legislative acts which undergo recasting/redrafting or simplification must be submitted to the legislator for adoption as their structure and substance changes does mean that a well thought out action programme needs to be set out, with realistic timeframes adapted to the speed at which procedures can take place. It might be worthwhile to strive for inter-institutional agreements (for instance between the Presidential Administration and the Duma) on such a programme, or where necessary to set up special faster procedures for adopting simplified or recasted/redrafted legislation. Case studies of European experiences in specific areas, both at the EU level and at the level of individual Member States, could be of help when it comes to setting up a Russian action programme. As a minimum, political priority is to be accorded to the simplification efforts, and the efforts will need to be based on an explicitly defined and coherent strategy.

National level

As was already indicated in the introduction above, the issue of making the regulation of the economy more efficient is receiving wide attention not only at the EU level, but also in many if not most of the EU Member States. Creating a better business climate by cutting red tape, reducing administrative burdens and administrative compliance costs are at the forefront of all initiatives. An extensive survey by the European Commission¹ shows that companies in the EU believe they could save on average 15% of their total compliance costs if current legislation were better designed. It is estimated that regulatory compliance costs for EU companies amount to 4% to 6% of EU GDP. This suggests that savings from improving the quality of regulation in the EU could be at least 50 billion Euro.

Within the enlarged EU, differences between countries are large. For example, as was discussed in the EU part already, it is of use to focus on special needs of SMEs. This is also true at the national level, of course. Some Member States are leading by example with an array of different channels to speak out to small businesses. For example, the Small Business Council in the UK organises hearings with small businesses across the country and represents the voice of small business to the Government. Its Chairman participates in ministerial meetings and presents annual policy recommendations to the Government. The Danish administration consults over 1 000 representative companies each year on administrative burdens. New methods to measure administrative burdens were developed in Sweden and the Netherlands, and Finnish business representatives participate in working groups drafting legislation. Business organisations in countries such as Germany and Austria are regularly consulted on draft legislation. On the other side of the equation, several EU countries, notably in the new Member States, still provide no opportunities for small businesses to express their interests and concerns in the policy and law-making process.

As is the case at the EU level, instruments like regulatory impact assessments are widely promoted to ensure that new proposals will lead to proportionate, efficient and effective regulations which reach their policy goals while hindering economic development not more than necessary. In this paper, attention will be paid to the experiences in this respect of the Netherlands, Sweden and the United Kingdom. The experiences show a wealth of valuable information on how to establish goals on simplification and reducing administrative burdens, and on regulating economic life in general, which can contribute to adapting Russia's economic regulatory course where it is also struggling with similar issues.

¹ The result of the survey is available at http://www.europa.eu.int/comm/internal_market (look under Single Market Scoreboard). For a summary, see press release MEMO/01/376 of 19 November 2001.

1. The Netherlands

1.1 Introduction

Like many countries and like the EU, the Netherlands were faced with overregulation: too detailed, too complex and incoherent regulations, causing unnecessary expenses, unstable regulations, difficult to comply with, to execute and to enforce. It became clear in the Netherlands as it did in other countries in Western Europe, that this is a common problem for complex societies, where the people want a high standard of living and far-reaching protection by the law. Too easily social groups ask the government for protection of their interests. Too easily is supposed that legislation will be effective to this end. Moreover the individual Minister usually receives more respect for the number of Laws he has been able to get through Parliament than for the number of Laws he refrained from drafting. ‘Less is more’ – the new EU slogan discussed in the first part of this report - certainly was not a commonly heard phrase in the Netherlands of the 1960s and 1970s.

From the beginning of the 80s, the Dutch government understood that a joint and systematic policy of the entire Cabinet was necessary to cut down and to prevent deficient legislation. The efforts of individual Ministers would not be sufficient to combat the legislative shortcomings, because individual Ministers are (i) not very willing to deregulate regulations in their own field, because pressure groups presumably will resist that and moreover specific regulations are conceived as emphasizing the specific interests that the Minister concerned stands for, (ii) not very interested in the transparency of the legal system as a whole and (iii) not very interested in the cumulative effects of the whole legal system to society, economics and executive public authorities.

Hence, the Minister of Justice was charged with several general (coordinating, supervisory and initiating) duties as to the quality of all Dutch legislation. Those duties concern (i) legislative harmonisation and deregulation, (ii) development of general legislative policy and (iii) reviewing of draft Bills and draft Cabinet Regulations (as of 1984). Carrying out those duties the Dutch Minister of Justice developed a General Administrative Law Act,² that has improved the harmonisation and transparency of Dutch law. Besides the Minister of Justice initiated several Cabinet programmes for deregulation, since 1994 in close cooperation with the Minister of Economic Affairs. In 1989 the Dutch Minister of Justice was explicitly charged with the responsibility for the development of the general legislative policy. Soon after he introduced the Policy Paper “Legislation in perspective.”³ That Policy Paper holds a comprehensive Cabinet policy on legislative quality. It has been followed by several other Policy Papers, each of them concerning a specific legislative topic of a general nature. Recently, the paper “A practical legal system” was published in Dutch and in English. It brings together the knowledge and ideas about the nature and causes of increasing legislation, its unwanted effects and how to tackle them.⁴

Most of the Policy Papers and White Papers have been elaborated into the Dutch Directives on Regulations. The Directives (i.e. guidelines, not directives in the sense of

² In Dutch: Algemene wet bestuursrecht. The full text in English of this act is available at the website of the Dutch Ministry of Justice, <http://www.minjust.nl>.

³ English translation from the official Dutch version; available at the Dutch Ministry of Justice.

⁴ A practical legal system, White Paper from the Minister of Justice of the Netherlands, sent to Parliament 21 April 2004, Dutch edition TK 29 279, nr. 9, English translation Ministry of Justice, June 2004.

binding pieces of European law!) now contain 350 provisions about a wide range of subjects, e.g.: general substantive quality requirements, assessment and consultation procedures, drafting techniques and uniform terminology. They will be discussed in more detail below in section 1.2.

In the mid-1990s, the so-called MDW-operation started which aimed at improving existing legislation (discussed in section 1.3 below), and at improving proposed new initiatives in order to avoid pumping water from a sinking ship while not plugging the hole. Later on, the policy goal of reducing administrative burdens with 25% by 2010 was set at. The Dutch legislator makes use of a national impact assessment system aimed at identifying significant side-effects of proposals at an early moment in time. Finally, the war on red tape is taking place in the Netherlands in the sense that systematic efforts are made to reduce administrative burdens for enterprises (discussed in section 1.4 below).

1.2 Directives on Regulation

In the Netherlands, a number of fundamental requirements that regulations have to comply with are laid down in a guidebook for the legislator. Many of these requirements resemble the ones used at the European level and in other EU Member States. The requirements are laid down in this guidebook, entitled *Directives on Regulation*, by now encompass some 350 provisions. The book is not legally binding as such. The main requirements are grouped around the following themes:

I. Only if necessary and proportional

The burden of proof for a new regulation is on the initiator of the regulation. A regulation shall only be introduced if the initiator is able to prove that (i) a real problem exists and (ii) particularly the proposed regulation is necessary (which implies also that it has to be effective). The requirement of proportionality implies, that (i) no regulation shall be introduced until it has been established that there is neither a non-regulatory alternative, nor a possibility for self-regulation or a less far-reaching regulatory alternative, and (ii) every effort shall be made to minimise the costs and other effects of regulations to individuals, companies, institutions and public authorities (including local authorities and enforcement authorities).

II. Respecting superior law

Regulations have to be consistent with both superior legislation, including the Constitution, Community law and international law.

III. Respecting the primacy of Parliament

Because of the superior, democratic position of Parliament, Laws shall delegate no more power to subordinate regulations than is necessary. Laws have to contain at least the principal provisions. From this principle may be deviated if and as far as is necessary for the sake of urgency, e.g. when the legislation has to be changed quickly, because of either the nature of the subject or the duty to implement Community or international law.

IV. Stable and predictable

First, frequent and quick changes in the law have to be avoided. Secondly, regulations should generally not enter into force at very short notice. They have to contain transitional provisions for already existing cases. Thirdly, retroactivity is only allowed in exceptional circumstances, if and as far as this is justified by very compelling reasons.

V. Compliant, applicable and enforceable

It would neither be fair nor have any use, if the new regulation cannot be complied with by the individual citizen or a company. Also it has no use to issue a regulation, if the relevant authorities are not able to apply, to implement or to enforce it.

VI. Effective

Even if the regulation is compliant, applicable and enforceable, it may still not be effective. For example, when a regulation would prohibit selling beer in pubs to minors, this would not be very effective if minors are not stopped from buying beer in supermarkets or petrol stations in the neighbourhood.

VII. Consistent and coherent with the whole body of legislation

First, the initiator of the regulations has to take care, that new legislation does not imply obligations for individual persons, firms or public authorities that are *contrary* to obligations originating from other regulations. Secondly, even if the obligations are not inconsistent, regulators should try to avoid that one person needs for the same activity several permissions under various regulations. That may sometimes be avoided by means of either *integration* of regulations or *coordination* of permission procedures. Thirdly, unnecessarily diversity between legislative provisions with roughly the same content should be avoided: regulators have to aim at *harmonisation* of the law.

VIII. Simple, clear and transparent

The structure of the regulation and the language have to be as simple, clear and transparent as possible. The same applies to the relation with other regulations (see requirement VII).

IX. Founded upon careful consideration of all relevant facts, interests and alternatives

Regulators have to investigate, to assess and to consider all relevant facts, interests and alternatives in order to establish whether and how the foregoing quality requirements can be met.

X. Easily accessible to the public, together with an explanatory memorandum

Regulations shall always be published, together with an authoritative explanatory memorandum, that renders an account of considerations as meant under quality requirement IX. Popular brochures should be easily available. Since a couple of years, the full text of all Dutch legislation is freely available on the Internet.⁵

1.3 Competition, deregulation and quality of legislation (MDW)

⁵ At <http://www.overheid.nl>. Note that the same holds true for European Union legislation nowadays. That legislation can be accessed at EurLex via the general EU website <http://europa.eu.int>.

In 1994 the Dutch government introduced the Competition, Deregulation and Legislative Quality (MDW⁶) project, which initiated a simplification process across departments. The operation is carried out in a step-by-step approach, focusing on a small number of selected and well-defined projects. These projects are governed by strict official and political supervision. The selection process is such that attention focuses on laws or markets that are considered to be bottlenecks, for instance because the regulatory policy is unnecessary restrictive⁷, limits competition or causes a disproportionate burden in its enforcement.

The Council of Ministers was responsible for the project and a ministerial commission prepared the decisions, with the prime minister as chairman. The Ministers of Economic Affairs and of Justice formed a fixed representation together with the chairman. The other ministers had the opportunity to participate in the meetings and the decision-making when appropriate. MDW has a successor in the so-called 4B's-program: Better Policies for Citizens and Businesses.⁸

The main aim of the MDW project was to review and revise existing legislation in order to minimize negative effects from these regulations and laws on competition and economic dynamism. Since the launch of MDW, 69 modernization projects have been launched, 29 of which were completed by 2003. Some examples of completed rule simplification projects are:

- *Simplification of the Building decree and the Housing Act*
- *Simplification of the law on working conditions*
- *Modernization of the rules for food, reducing the number of decrees and regulations by around 65*
- *Harmonization of the Definition of Entrepreneurs and Self-employment.*

The MDW projects not only focus on rule-simplification, but also on areas such as deregulation of markets, promoting competition, increased transparency, more efficient and effective policy instruments, standardization of rules, e-governance, etc. Each project is divided into three phases: 1. Orientation phase; 2. Advisory phase and 3. Implementation phase. In the Orientation phase, in order to identify MDW projects, a consultation takes place with officials and NGOs (e.g. trade unions, employers, environmental organizations and the Consumer Association). The government has put forward a number of spearheads: Improving the quality of public services; Improving the quality of legislation; Improving economic dynamism and innovation. These suggestions are translated into concrete project proposals, which are decided by the cabinet. Each September, a new number of MDW projects are launched. In the second advice phase, the MDW commission appoints a working party for each project under an independent chairman. The working party consists of representatives from ministries, and when necessary, external experts. Relevant NGOs are notified of the schedule and may attend hearings. The advisory phase ends with the publication of a report. In the implementation phase, the cabinet standpoint specifies to what extent the recommendations of the working party are adopted. The standpoint and implementation plan are debated in the Lower House of Parliament. The relevant ministry

⁶ In Dutch: marktwerking, deregulering, wetgevingskwaliteit.

⁷ Comparable to the "least trade restrictiveness" test used by the European Court of Justice.

⁸ In Dutch: "Beter Bestuur voor Burger en Bedrijf".

is responsible for the implementation. The cabinet reports to the Lower House of Parliament on progress.

1.4 Reducing administrative burdens

In the Netherlands the alleviation of administrative burdens on enterprises is enforced on the political agenda as part of the broader regulatory reform strategy outlined above. Emphasis was put on the institutionalisation of administrative simplification. This has been done by setting up an independent body, ACTAL, whose main task is to propose initiatives for administrative simplification. In addition to this, a methodology to measure regulatory burden in the Netherlands has been developed. It helps to maintain a cost-focused pragmatic approach to administrative simplification, stressing that in order to get to grips with regulatory burdens one has to ascertain the size of these burdens – so first define them – and calculate them.⁹ With the help of these tools the Dutch government monitors and sets up targets for administrative simplifications.

Twice a year, all relevant ministerial departments, have to present their plans, programmes and results with regard to administrative simplification or reduction to the parliament. The advisory board, ACTAL, oversees the departmental implementation of this task. Proposed laws and regulations as well as reports on existing laws and regulations have to be submitted to the advisory board. ACTAL has the power to advise the cabinet and the council of state not to discuss a proposed law or regulation if there is no accompanying report on administrative burden.

ACTAL was designed to give strong backing to the government's objective of reducing the administrative burden by 25%. The ACTAL group is set up temporarily to achieve this goal, most likely within three years time. The aim is to achieve a cultural shift among legislators and regulators to encourage them to find ways to significantly cut back the regulatory burden for businesses. The group also tries to increase the understanding about the impacts of laws and regulations on enterprises.

ACTAL's review procedure regarding proposed laws and regulations are as follows:

- Proposed laws and regulations which have impact on the overall administrative burden on businesses are conveyed to ACTAL for review.
- ACTAL decides on the basis of a set of selection criteria which laws and regulations should be selected for a deeper analysis.
- ACTAL analyses the proposed law or regulation according to a set criteria.
- The results of the analysis are communicated to the minister or deputy minister or initiator, as a final judgement.

The most important creation related to the work of administrative burden was the set up of the so-called Slechte committee.¹⁰ This committee put emphasis on economic significance of administrative burdens and also participated in creating a permanent focus on administrative burdens in a structural and cultural sense. The Slechte Committee built its approach to administrative reduction on two pillars, first the re-use of information

⁹ Focus on Administrative Burdens! Guide for defining and quantifying burdens for business, Legislative Burden Department, Ministry of Finance, The Hague, December 2003 (English edition).

¹⁰ Named after its chairman, a former CEO of Royal Shell.

already provided by enterprises to public authorities, and second, the use of IT mechanisms.

There are a number of technologically facilitated mechanisms put in place in order to reduce administrative burdens. One such mechanism that is under progress is the creation of one single web site where one can find questionnaires and forms of central, regional and local authorities that any enterprise has to fill out. A visit to the website will suffice to ascertain which information has to be supplied for which authority or for which kind of activity. The assembly can take place over internet.

In 2000 the government launched a pilot project aiming at standardising and facilitating electronic transfer of data from enterprises to government authorities. Once it is installed in the accounting models of the enterprise, data required by tax, administration, organisations in the social security sector or the statistical office can be imported directly without the involvement of any people. Cost reductions in five legislative fiscal areas are estimated to have totalled an amount of €80 million, which is approximately 50% of the legislative burden. There are other projects like IDEA, which is an interchange of data project, RINIS which is an inter-sectoral reference system and One-stop shops, which are virtual service counters for enterprises. The latter idea was also picked up in Sweden, where it will be discussed in more detail.

2. Sweden

2.1 Introduction

The issue of administrative burdens and the impact of regulation for SMEs were debated extensively in Sweden. One question was whether the government was giving enough priority for the matter, as there seemed to be only limited impact of its efforts to assess new regulation and to diminish the administrative burdens placed upon companies. Since 1998 the government has explicitly addressed the problems. The focus has been intensified in year 2000, when the objective was stated as to ‘significantly reduce the administrative burdens by the end of year 2003’. In practice however the priority has been upon the reduction of new burdens by focusing on the assessment of new or altered regulation. In the summer 2002, the government initiated work aiming at measuring the total administrative burden on companies, and thus enabling the formulation of a more quantitative target for its struggle for better regulation.

Sweden is closely following the work carried out both within the EU and within the OECD. At focus here is for example exchange of best practice, and benchmarking activities. The current focus on measuring the administrative burdens is also undertaken by looking at the experiences of other EU member states.

2.2 Organization

Various public bodies adopt regulation for business. The parliament is the legislative body, whereas the government issues instructions for the government agencies. The agencies also

have a considerable autonomy regarding the initiation of regulations and guidelines. Also local and regional governments are authorized to introduce regulation. As mentioned the main focus for the government has been to diminish the administrative burdens by assessing the impact for business as regards to new and altered regulation. In each ministry the jurisdictional secretariats are responsible for this assessment of new and altered legislation.

Each government or parliamentary inquiry (looking into issues that may lead to changed or new legislation) is also obliged to carry out the assessment. The work is coordinated by the Simplex Team in the Ministry for Industry, Employment and Communications. Linked to the assessment processes are also the Board of Swedish Industry and Commerce for Better Regulation (NNR). Representatives of Swedish industry, primarily SMEs, appoint this Board.

Furthermore the government has ordered six agencies to present proposals for the simplification of existing regulations the various proposals are being handled within the Government.

Simplex has significantly contributed to the revision of approximately 20 different proposals to new legislation. Furthermore there is of course the possibility that the

existence of Simplex and of the impact assessment process have improved many more proposals by bringing the issue to attention.

2.3 Impact assessment

Each ministry and each inquiry considering new or altered legislation mandatory reviews it with regards to its impact upon businesses. In doing so, an impact assessment checklist is being used. The role of the Simplex Team is to ensure that the assessment, as far as government work is concerned, is carried out and that identified possible negative impact is taken into consideration. The checklist used consists of 12 questions:

1. What is the problem to be solved by the regulation and what happens if a regulation doesn't take place?
2. Are there any alternative solutions?
3. Which administrative, practical or other measures must the small businesses take by consequence of the regulation?
4. How much time would be needed for small businesses to comply with the regulation?
5. Would the regulation lead to additional costs for wages, other expenses or stress resources for small businesses?
6. Can the regulation distort competition to the disadvantage of small businesses or otherwise decrease their competitiveness?
7. Will the regulation in any other aspects affect small businesses?
8. Is it possible to control the compliance of the regulation, and how will the effects of the regulation on small businesses be observed and reviewed/scrutinized?
9. Should the regulation be in force only for a limited amount of time to prevent possible negative effects on small businesses?
10. Are particular concern needed for small businesses when the coming into force of the regulation is considered?
11. Are there any special measures of information needed?
12. How has necessary consulting with business and authorities concerned been done and what significant points of views have been put forward?

Officials in each ministry and in government agencies are continuously being trained in efficient regulation and in the application of the checklist in legislative preparations. Many of the government agencies are also acting upon their own to strengthen efficiency and simplicity.

2.4 Improving the abilities of companies to comply with regulation

The use of Internet and electronic media is well developed in some of the most important agencies. Furthermore portals on the Internet have been opened in order to coordinate contacts between authorities and business (<http://www.foretagarguiden.se>). More than 30 public authorities have linked information to foretagarguiden.

Current initiatives to develop public administration so as to meet the needs of businesspeople are summarised in the notion of the '24/7 agency'. Based on the fundamental values of democracy, the rule of law and efficiency, the aim is to deliver public administration that is accessible, irrespective of office hours and location, delivers

quality services and responses, is open to users' opinions and ideas on how to improve public administration; uses simple, fair rules and has optimal benefit to users through collaboration and continuous assessment and development of activities. IT is both a precondition for and a key part of this process, but the great challenge is to develop leadership, work and collaboration. Modernising public administration is a long-term task that calls for tenacity and creativity. The Government indicates the direction and adopt targets for 24/7 agencies, but these must be realised by each individual unit in its own way and in collaboration with others. The challenge is to enable public agencies, municipalities and county councils to give every individual and corporate public-service user all the advantages of 24/7 e-government.

3. United Kingdom

3.1 Introduction

The UK is committed to better regulation, and the Prime Minister is personally involved in the issue. He held consultation meetings with a number of large companies and branch organizations in 2001 in order to discuss the issue and regularly organises seminars. Better regulation is defined in the UK as “regulate only when necessary, doing so in a light touch way, and reducing regulatory burdens where ever possible”. With the manifesto the government reiterated its wish to create better business regulation, and Labour acknowledged that the framework for the business sector had not yet been fully modernized, which results in unnecessary costs and burdens for the business sector. It should be noted that a commitment to better regulation exists across the political spectrum: the other two main parties had equally strong manifesto commitments to regulatory reform. In the Labour Party manifesto the following specific government initiatives are mentioned:

- * Use the new fast-track deregulatory parliamentary procedure to bring forward a programme of deregulatory initiatives involving all the key government departments.
- * Time-limit regulations where appropriate.
- * Introduce high-quality secondees from business to work in the Regulatory Impact Unit.
- * Require every government department and regulatory agency to review the working and impact of major pieces of regulation within three years of implementation.
- * Improve the quality of regulatory impact assessments, including periodic evaluation of their content and use in public consultation.

In this way the stated objectives concerning better business regulation have a qualitative character. No quantitative objectives have been drawn up.

3.2 Organisation

The effort to create better business regulation in the UK takes place in a number of different institutions on a national and regional level. The most important institutions on a national level are:

Panel For Regulatory Accountability: The panel is the highest authority in the work on regulation. The panel consists of high-ranking politicians from the Government whose task it is to stimulate the development and have a comprehensive overview of the work with better regulation in UK.

Regulatory Impact Unit (RIU): RIU is centrally placed in the Prime Minister’s “Cabinet Office”. RIU has 60 employees, and it is its function to promote fair and effective regulation through support to other ministries, agencies and regulators. On a more concrete note this work implies: promote the principles of good regulation, identify risks, give support to the “Better Regulation Task Force” (BRTF), remove unnecessary and burdensome legislation and improve the impact assessments of new legislation (RIAs). As a part of the RIU, a Business Regulation Team (BRT) was established that set out, through a dialogue with the business sector, to identify areas in which improvement of the law is especially required

Departmental Regulatory Impact Units (DRiU): Each DRiU is a little unit of 1-4 employees that has been set up in each department. Their work consists of coordinating the better regulation work of their own ministry and assisting in the elaboration of RIAs. RIU is the core in the network of DRiUs.

Regulatory Reform Minister: In every ministry a Regulatory Reform Minister has been appointed, as the person responsible for better regulation in the specific ministry. The minister is responsible for seeing that the Ministry has a programme to remove all unnecessary and burdensome legislation, and to ensure that all new legislation is necessary and only imposes minimum costs on companies.

Independent Regulators: Within the infrastructure and finance sector it has been thought necessary to set up a number of independent regulation units. They have the primary responsibility for regulation in these areas, whereas the work on regulation in other areas takes place in the specific ministry.

Better Regulation Task Force (BTRF): BTRF is an independent advisory board consisting of 16 members with different backgrounds. This taskforce reports directly to the Prime Minister. Each year, the taskforce selects 4-5 areas in which studies are carried out and reports are prepared. When the taskforce prepares a report the Government has committed itself to presenting a detailed feedback to this report within 60 days. In this regard the taskforce has no immediate authority, but generally the Government takes its reports very seriously.

3.3 Impact assessment of new regulation

In the UK, like at the EU nowadays, there exists a set of guidelines for assessing the consequences of new legislation: Regulatory Impact Assessment (RIA). Since 1998 the elaboration of a RIA has been mandatory when introducing most new laws. A RIA is a political tool to determine the impact from every law proposal that affects companies or charitable organizations. The objective with RIAs is to obtain a quality improvement in new laws and to encourage a public debate on the new legislation. A RIA contains the following sections:¹¹

- Step 1 Establishing purpose and intended effect
- Step 2 Working up options
- Step 3 Seeking collective agreements
- Step 4 Announcing proposals and carrying out public consultation
- Step 5 Making recommendations to Ministers
- Step 6 Presenting the regulation or legislation to Parliament
- Step 7 Reporting and accountability

Under the first section the effect of the legislation on benefits, costs and SMEs is estimated. Cost-benefit and compliance-cost analysis is in this way an obligatory part of the RIA. The RIA distinguishes between two kinds of costs of a proposal: implementation costs and policy costs. The former covers administrative costs whereas the latter covers costs that can be attributed to the *purpose of the legislation* (e.g. *increased expenses following the introduction of minimum salaries*). *Both types of expenses are assessed by the same method: First, the types of companies that will be affected by the bill are identified. This is done through an informal consultation with the companies and branch*

¹¹ Good Policy Making: A Guide to Regulatory Impact Assessment.

organizations. Thereafter the concrete costs from a bill are identified. Choosing one or more companies that the bill is relevant for as a starting point does this. Hereafter the actual costs for the “model” companies are estimated. Depending on the bill different approaches can be used (sensitivity analysis, scenario planning etc.) Finally, the total costs of the bill are estimated by multiplying by the number of expected affected companies. Similarly, efforts are made to estimate, and where possible to quantify, the benefits (to companies, consumers, the environment) of the bill. The impact assessments are made as early as possible in the legislative process, as its main objective is to serve as a tool for the respective Minister in charge of a specific department in the final law preparation process.

In order to avoid that writing the RIA (a comprehensive process in itself) becomes a very bureaucratic system, in the guidelines it is emphasized that the process has to be adapted and scaled in regard to the legislation in question (it needs to be proportionate in other words) The experience of RIU has been that RIA is not a big burden, rather it is a way to put commonsense into the system. RIU emphasizes that it is good to invest the resources in the legislative process and it is preferable to reduce the problems “upstream” in the regulation process instead of “downstream”.

3.4 Legislative process

The process in connection with the work on the better regulation is very much dependant on the area in question. As mentioned, a RIA is now almost always mandatory when introducing new legislation. The RIA has to be prepared as early in the process as possible. The RIA is an important part of the legislative process, as clear recommendations concerning the coming law preparation process is stated there. The independent regulators have a duty to involve the public in their work through formal hearings. For government departments there are guidelines for consulting the public (just as there are at the EU level) and consultation is a mandatory part of RIAs. It is emphasized that consultation has to be appropriate and a written consultation alone is not always best. Other methods could be: meetings, web forums, user surveys etc. In practice, great importance is attached to the opinion of the business sector in the legislative process, but other elements of civil society are important in the consultation process, too, and consumer groups and non-governmental organizations have well organized and effective inputs into consultation.

3.5 Improving the abilities of companies to comply with regulation

As a part of the RIA there is a set of guidelines for helping companies to comply with legislation. The guidelines call for the use of simple, plain language in the guidance folders, ensuring that they are understandable by smaller companies and also require that there be a 3-month period from the publication of the guidance to the coming into force of the legislation. Furthermore the guidelines refer to 3 institutions that can help the drafting authority develop guidance folders: The Plain English Campaign, Better Regulation Task Force and Small Business Service.

In the UK there is a new project called the Government Gateway has been launched. It is a portal where all services that for the present are offered in Britain are gathered. It is primarily customs and tax requirements, but there is also a range of more specific forms, e.g. forms for farmers. It is the intention of the government to expand this portal so that it

contains a greater number of forms that can be filled out and sent in electronically. Furthermore, to help companies in England there is <http://www.businesslink.org> (with affiliated organizations in Scotland, Wales and Northern Ireland). This is a public web page, which objective is to help smaller companies in the interpretation and the compliance of different regulations (once again primarily tax and customs regulations). Simplification of regulation is in general an area of high priority. In 2001 the "Regulatory Reform Act" was passed. The Regulatory Reform Act is a new streamlined procedure to be used in parliament for reducing burdensome legislation. In connection with this, a "Regulatory Reform Action Plan" was elaborated in 2002. In the Action Plan 260 areas that in the next three years were going to be the object of revision were identified. 167 out of these 260 areas concerned the business sector (including charitable organizations).

3.6 Impact and visibility

In the UK there is no quantitative monitoring system that assesses the administrative burdens and there are no plans to elaborate such a system. As mentioned, there are no quantitative objectives in the area either. The primary monitoring is being carried out on the simplification projects mentioned in the Government's action plan, making sure the Ministries meet their deadlines. In regard to RIA there exist some internal reporting systems in the ministries concerning the number of RIAs carried out etc. However, RIU do not have any knowledge of reports that document their effect. Instead they refer to the National Audit Office report "Better Regulation: Making Good Use of Regulatory Impact Assessments" published in November 2001, and to the OECD report "Review of Regulatory Reform in the UK", published in October 2002, which is positive towards the reforms carried into effect in Britain. In regard to visibility there is in general an intense debate in the UK concerning administrative and other regulatory burdens. The RIU therefore tries to inform the public as much as possible about the initiatives that have been carried out. Among other things a press secretary have been employed in RIU, press conferences are held, press statements are sent out and there is an active search to publicize initiatives taken by ministries or projects that they have started. Each year the BRTF publishes an annual report, which is a resume of the reports they have published through out the year. BRTF's work is not just related to the business sector, but as the business sector is an area given high priority by the government where regulation is concerned, BRTF will naturally produce many reports relating to business concerns.

Last but not least, "The Green Book, Appraisal and Evaluation in Central Government" has been published as a Treasury Guidance. It sets out how it is ensured that public funds are spent on activities that provide greater benefits to society and that they are spent in the most efficient way.

Lessons for Russia from experiences in the EU and its Member States

The strategies with regard to improving the regulatory economic environment designed in a Member State of the EU could not be simply copied and applied to Russia. However, some key elements and conditions can be identified from the various experiences described above and adapted to the Russian needs and situation. This could contribute considerably to a successful Russian regulatory policy.

Political commitment

In order to achieve any improvements in regulation of economic life there needs to be a clear political commitment from the top level in government. As regards the level of commitment, defining targets and deadlines for reaching the policy goal of reducing the administrative burdens on business should be set. Furthermore, the personal involvement of top-level politicians will be of aid. Such initiatives represent the “political muscles” necessary for turning policy goals into implementation successes. In Russia, the Presidential Administration and President Putin would seem to be the key players in this respect.

Organisation

Those who are to play a role in improving existing and/or ensuring a better quality of new regulatory initiatives are to be identified first of all (public as well as private), second, their respective roles and responsibilities in the law process are to be defined, and, third, the interaction between them is to be set out. These factors constitute the institutional model which has been chosen to apply in the implementation of the policy goal.

Incentives

The organizational set-up is closely linked to the third driving force – incentives. The organizational set-up influences the configuration of the incentives and vice versa. Incentives are to be understood as the set of motivational factors, which make the various players, and stakeholders act as they do within the defined organizational structure and processes. It seems that the most important issue in this regard is to focus on those instruments, which influence the incentives of government institutions and function as effective means to engage the ministries/departments and governmental agencies as active partners.

RIA

Political commitment, the organizational set-up and the incentives are the underlying drivers that determine the extent to which the policy goal of reducing the administrative burdens for business in practice is implemented in the law process. The regulatory impact analysis (RIA) is an instrument that can help the lawmakers to assess the e.g. the administrative burdens that are the side effects of regulation and, in some models like the one used in the EU, also the benefits of new regulation to business and to society in

general. The result of a RIA may influence the law process and thereby the quality of business regulation.

Impact of regulation on the administrative burdens of businesses

Various instruments are used in the EU and its Member States that reduce administrative burdens (red tape). One of these instruments is ensuring that the information exchange between public authorities and businesses function as smoothly as possible. Some of the digital solutions developed in the EU and its Member States could be adapted and used in the Russian Federation, which has already taken steps in this direction by requiring publication of new legislation on the websites of the various ministries. An added value would be one single entry point where all RF legislation can be accessed. This would be also of use in monitoring the amount of legislation that exists at present and developments over time. Furthermore, digital solutions are generally considered to be a way of reducing the administrative burdens in companies, e.g. to get the right information about relevant regulation from public sources and to submit mandatory information from companies to public authorities. This rationale is that improvements in the efficiency of communication flows and interaction, either through digital solutions or other modes of communication, between sender (public authorities) and target groups (the business community) will imply efficiency gains in terms of reduced workload for businesses, simply because they will need to spend less time and energy on getting the right information and finding out how to comply with the requirements of regulation. In addition to this, improvements in communication flows will also create efficiency gains in the public organizations, which in other words mean a winwin situation.

Simplification of existing rules and regulations

Rule simplification is an instrument available to lawmakers as a mean to address the administrative burdens caused by existing rules and regulation. The application of this instrument involves defining administrative burdens for business in Russia and a method of calculating these burdens, scrutinising which rules apply to specific sectors (for instance SMEs) of the economy or to all sectors (taxation) and what the administrative burden this entails, setting out a plan to reduce these burdens using instruments like redrafting adapted to Russia's needs and possibilities, implementing the plan, monitoring of the administrative burdens of regulation and how they evolve over time.