



Improved impact assessment and consultation of stakeholders: towards quality regulation in the EU

Orgalime Position

1 October 2002

Orgalime comments on Commission Communications of 5 June 2002:

-
- 1. EU Governance Better Law Making – COM 2002(275) final**
 - 2. Impact Assessment – COM 2002(276) final**
 - 3. Towards a reinforced culture of consultation and dialogue - proposal for general principles and minimum standards for consultation of interested parties by the Commission (consultation document) – COM 2002(277) final**
 - 4. Action plan "Simplifying and improving the regulatory environment"– COM 2002(278) final**
-

Orgalime represents 31 trade federations representing some 100 000 companies in the mechanical, electrical, electronic and metalworking industries in 21 European countries. These industries, which include many small and medium-sized companies, employ some 7.6 million people and account for 1200 billion euros of output per year, that is about a quarter of the EU's output of manufactured products and a third of the exports of such products.

Executive summary

In Orgalime's view quality regulation can only be achieved by ensuring mutual confidence between policy makers and consulted parties, i.e. through a proper definition of the objectives sought by regulators, a well structured and transparent consultation procedure and dialogue with relevant stakeholders, as well as efficient impact assessment procedures.

Orgalime therefore welcomes the Commission's Communications, which it believes go a long way to tracing a path towards achieving better regulation at the level of the EU. Orgalime wishes to highlight what we believe are the crucial factors pinpointed in the Communications, if the goal of achieving better regulation is to be reached:

- The new impact assessment described in Commission's Communications on impact assessment and minimum standards for the consultation of stakeholders must be introduced and applied effectively: we welcome the proposal to apply this to all major new European policy initiatives and regulatory proposals.
- There must be a political commitment of all institution players in the regulatory process (Commission, Council and Parliament) to use such impact assessment procedures and to cooperate throughout the regulatory process in order to assess the impact of proposed legislation, including any amendments proposed.
- A systematic consultation of relevant and representative stakeholders must be carried out: in particular, due weight must be given to European associations such as Orgalime, which speak for large, well-organised, transparent and democratic networks representing clearly identified constituencies.
- Appropriate information must be delivered during all stages of the consultation process to interested parties, in order to build up confidence among stakeholders and stimulate response to inquiries. Orgalime also believes that if stakeholders are to participate fully in the consultation procedures, then the EU institutions should give due weight to the results obtained from such consultation and impact assessments derived from the data supplied by stakeholders.
- As part of an impact assessment, the Commission should always consider whether regulation is first of all necessary, cost effective and, if so, in what form it should be enacted, so as to choose the least onerous approach compatible with achieving a defined objective. Orgalime believes that, regulators should always discuss with relevant stakeholders what are the most efficient and cost-effective ways to meet the defined policy objectives in a reasonable time frame, prior to considering regulation including giving due weight to self regulation and co-regulation.

INTRODUCTION

Orgalime, which was set up in 1954 has always played an active role in providing input to policy makers and regulators since the first days of the European Union. We consider that, as representatives of the European engineering industry, and therefore of part of civil society, we have an essential role to play in communicating the views of the largest sector industry. The engineering industry, though overwhelmingly comprised of SMEs, is particularly well structured, through its large network of non-profit making associations at a national and sectoral level, to provide regulators with pertinent input. The Commission has already recognised this for a number of years by including Orgalime in its consultation structure, including through registering Orgalime in its CONECCS database of civil society organisations.

Orgalime welcomes the in depth analysis made by the Mandelkern Group on better regulation which has been instrumental in launching the move towards a better regulation programme, as well as the debate raised by Commission's White Paper on European Governance. We fully support UNICE's contribution to this debate through its position issued on 28 February 2002.

We also welcome the Enterprise Paper "Business Impact Assessment Pilot project – Final Report" which makes a candid analysis made in of the present situation in this area and believe that the proposals to improve policy-making made in the four recently published Communications are an essential step for the preparation of Commission's action plan towards simpler and better legislation.

We fully support the Commission's statement that political endorsement, institutional recognition and a corresponding change in the administrative cultures of the European Parliament and Council is vital to the success of the upgraded system and very much hope that the intentions expressed in the Communications will be followed by proper implementation.

While we consider that the four Communications issued by the Commission on 5 June 2002 all form part of the better regulation debate, in the present paper, Orgalime comments specifically on the areas of **impact assessments** and set of **minimum standards for the consultation of stakeholders**, which we believe are an essential first step to achieving quality regulation.

COMMISSION COMMUNICATION ON GENERAL PRINCIPLES AND MINIMUM STANDARDS FOR CONSULTATION

Orgalime comments on General Principles for consultation

PARTICIPATION

In its Communication “Towards a reinforced culture of consultation and dialogue - proposal for general principles and minimum standards for consultation of interested parties by the Commission”, the Commission commits itself to follow an inclusive approach when developing and implementing EU policies. Orgalime welcomes this commitment and stresses the importance that relevant stakeholders, such as European associations representing clearly defined interest groups, can play in this area.

OPENNESS AND ACCOUNTABILITY

The White Paper on European Governance calls upon European institutions to work in a more open manner in order to improve the confidence in complex institutions. While Orgalime fully supports the principle of transparency in the decision making process and looks forward to its application in all EU institutions, we stress that even the best consultation framework is not enough: there must also be a clear commitment of the institutions towards achieving quality regulation, if one is to minimise the risk of adopting legislation that is neither workable nor cost effective.

Orgalime also fully supports the call that stakeholders who seek to contribute to EU policy development should be open and accountable: we believe that organised and transparent networks, such as that of Orgalime, which represent a wide constituency of European manufacturing industry, are among the most important partners of policy makers. They are in a position to clearly express the interests of a defined constituency and can also often propose to regulators means other than regulation, such as self regulation and co-regulation for achieving defined policy objectives. It is therefore vital for such stakeholders to be given due weight in the consultation and decision making process and for them to be in a position to maintain an open and meaningful dialogue with the Commission and other EU institutions; in this context we believe that working meetings between a limited number of experts often prove to be most productive, while larger showcase consultation meetings more often than not provide little added value.

EFFECTIVENESS

Orgalime welcomes the Commission’s commitment to achieve effective and timely policymaking and agrees that this entails the setting up of a timely consultation procedure. Orgalime does however caution the Commission against launching blanket consultations before defining in consultation with targeted stakeholders the policy objectives to be achieved and the outlines of regulatory initiatives proposed.

COHERENCE

Orgalime welcomes the Commission's proposals to set minimum standards for consultation, which would introduce common rules for consultation processes governing consistency, transparency, feedback and review throughout the Commission services. These should allow for direct discussions with relevant stakeholders who should be asked to comment on policy objectives and provide input into regulatory proposals.

At present, a number of different partial impact assessment systems exist in parallel in the Commission, for example business impact assessments, business test panels or environmental impact assessments. There are often inconsistencies in the results obtained, even for the same draft legislation. As an example we can cite the conflicting results, obtained for the consultation on the revision of the EMC Directive, which ended with positive conclusions for the “Business Test Panel” and negative results with the “Business Impact Analysis”. A consistent approach, based on a harmonised, co-ordinated system applicable throughout the Commission, and preferably other EU institutions, would be a major step forward.

Orgalime agrees that a review process is necessary in order to ensure that the above objectives are obtained: we believe that a central, independent monitoring unit, perhaps under the authority of the Secretariat General, should be set up.

Orgalime comments on Minimum standards for the consultation of stakeholders

CLEAR CONTENT OF THE CONSULTATION

Orgalime believes that before launching any consultation, it is essential that the Commission should clearly state its policy objectives and should provide sufficient background information in clear and concise language to facilitate responses. If high quality responses to consultation are to be obtained, it is essential that the consultation should be carried out at a stage when sufficient background information and the most important features of a planned regulation have been defined. If this is not the case, then the results of the consultation can only be poor and the quality of the impact assessment will suffer in consequence.

In drafting and sending out questionnaires, we believe that it is important to involve stakeholders, including where relevant their representative associations: impact assessments stand or fall on the quality of data. Such studies are usually not undertaken by the Commission but by consultants, who often perform their task without having the necessary technical expertise to draft appropriate questionnaires, nor have the network of contacts to perform adequate research. Companies, and especially SMEs, usually consider such ill prepared enquiries as an administrative burden without immediate benefit for their business; they lack the necessary time, expertise and confidence in the overall usefulness of such a process. As a consequence response rates are usually poor. These can however be substantially improved if representative associations are involved in the process since they generally have reference groups who are prepared to spend some time in participating in enquiries whose outcome may impact their businesses.

PUBLICATION

Orgalime welcomes the considerable effort being made to increase transparency by publishing relevant information and documents on the Internet. However, Orgalime considers that “open and transparent consultation” does not necessarily mean “direct” consultation: we believe that the Web-based consultation tools are essentially useful for collecting perceptions of easily understandable societal issues.

We consider the Interactive Policy Making (IAPM) initiative as a positive step towards improving transparency on draft legislation. However, Orgalime considers simplified Web based questionnaires are sometimes inappropriate when used to reach specific categories of stakeholders (e.g. SMEs), or for consultations on complex issues, such as the future of the New Approach or the environmental impact of electrical and electronic equipment where simple yes-or-no answers are limiting.

TIME LIMITS FOR PARTICIPATION

While Orgalime appreciates the fact that consultation procedures must not slow down decision-making, we believe that to receive a high qualitative input, it is important that stakeholders, especially SMEs, have enough time to comment. Orgalime considers that in such cases 3 months is usually a proper time frame for consultation of its membership.

ACKNOWLEDGEMENT AND FEEDBACK

Orgalime welcomes the Commission’s commitment to providing feedback and acknowledgement for those who have participated in the consultation process. This will no doubt encourage wider participation in such consultations. We also endorse the proposal to make such information available publicly in so far as the data transmitted to the Commission has not been provided on a confidential basis: at times, industry is prepared to provide sensitive proprietary data, but will request that access to such data should be limited. This should be possible.

SPECIFIC ELEMENTS FOR FOCUSED CONSULTATIONS

Orgalime believes that in many areas affecting its members and particularly in technical or internal market legislation, focused consultations may provide an advantage, as long the relevant stakeholders specified in the Communication are consulted.

Orgalime however considers that consultations in non-member countries should focus on those aspects, which are relevant to such countries, such as the impact on trade.

COMMUNICATION ON IMPACT ASSESSMENT

Orgalime looks forward to the Commission implementing the process of ex ante impact assessment for all major policy initiatives and regulatory proposals as soon as possible throughout the Commission.

Our comments take into account the experience which we are gaining at the present time with the Commission from the two of the Business Impact Assessments (BIA) pilot projects –the proposal for an electrical and electronic equipment (EEE) directive and the revision of the electromagnetic compatibility (EMC) directive–, which directly concern the industry we represent. We consider that these exercises, if they have given rise to a number of comments from the side of our industry should be considered as part of the learning curve in the search to achieve a high level of quality in the future.

While Orgalime believes that impact assessments carried out by the Commission are a first useful and necessary step in the right direction, we consider that there must also be a political commitment of all institution players in the regulatory process (Commission, Council and Parliament) to use impact assessment procedures and to co-operate throughout the regulatory process in order to assess the impact of proposed legislation and amendments to the Commission's proposal introduced during the legislative process. It is only in this way that better regulation will in the end be implemented.

We consider that, in the context of the Lisbon process, due weight should be given to the impact on business which is the motor of the European economy and provides the necessary foundation for implementing all EU policies within the context of sustainable development.

We also believe that regular ex post impact assessments should be carried out: this will allow regulators to effectively assess the quality of regulation and also provide insight on how to further improve the quality of law making.

TWO STAGE IMPACT ASSESSMENT

Orgalime welcomes the proposal to carry out a two-stage impact assessment. We believe that such an approach will be most effective for ensuring a proportional approach and a proper selection of those policy initiatives and regulatory initiatives that have major impact on stakeholders and should therefore be subject to an extended impact assessment.

We also welcome the proposal that the Secretariat General of the Commission should coordinate the basic support structure for the new impact assessment procedures.

It should however, not only provide the necessary training and assistance to the individual units carrying out impact assessments, but should also have the powers to require that the standards of consultation and impact assessment proposed in the Communications should be respected before the adoption of any Commission policy or regulatory proposal.

AN AID TO THE FINAL POLICY CHOICE?

While Orgalime understands that impact assessments will be considered as an aid to decision making and not a substitute for political judgment, we stress that, if the new impact assessment system is not to be met with the same scepticism as the existing "fiches d'impact", it is essential that clear and convincing reasons for rejecting the outcome of any impact assessment should be fully explained and be open to comment from the stakeholders affected by the chosen policy options. It is only in this way by ensuring mutual confidence between policy makers and consulted parties, that the Commission's drive to achieve a better quality of regulation in an open and transparent manner and of the quality expected from OECD countries will be achieved.

CONCLUSIONS

Orgalime is therefore looking forward to the planned introduction of a new, coherent method for impact assessment by spring 2003.

We very much hope that the Commission's action plan will take up the recommendations of the report with a view to introducing a comprehensive, coherent and transparent impact assessment procedure to be applied by the Commission, the Council and the European Parliament within the time frame set out in the Communications.

We trust that the Commission will consider our comments and suggestions as a positive contribution on the path to achieving an improved system of regulation.

We will also be happy to contribute further in the work of introducing streamlined, coherent and efficient consultation guidelines on the use of external expertise with a view to ensuring that the objectives proposed by the Commission in its Communications can be achieved progressively.