Better legislation, subsidiarity and proportionality and smart regulation

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The Committee on Legal Affairs adopted the own-initiative report by Sajjad KARIM (ECR, UK) on better legislation, subsidiarity and proportionality and smart regulation.

It endorses the strategic approach adopted by the Commission in its Communication on Smart Regulation in the European Unionand points out that **all European institutional actors have a role** in promoting and delivering better lawmaking, in accordance with the principles and guidance contained in the Smart Regulation agenda and the Interinstitutional Agreement on better law-making. Members urge the incoming Presidencies and the Commission to set in motion the process of **renegotiating the Interinstitutional Agreement** so as to agree on key changes in preparation for future negotiations with the Council of Ministers on adapting the Interinstitutional Agreement to the new provisions of the Lisbon Treaty. Every effort should be made to ensure that Parliament and Council are treated as equals in the law-making process.

National parliaments: the committee welcomes the closer involvement of national parliaments in the European legislative process, following the adoption of the Lisbon Treaty, with over 300 submissions received so far. It considers however that the current timescales allowed for national parliament engagement are often insufficient, and that the form of national parliament responses is often such that they are not classified as reasoned opinions or objections on subsidiarity grounds. It calls accordingly on Parliament's Secretary General to investigate methods of **improving the way in which national parliament submissions are integrated** into the working practices of the Parliament. Members also point to the lack of material criteria for establishing that there has been a breach of the subsidiarity or proportionality principle, and underline the need for the material conditions for the application of those principles to be specifically defined at EU level.

Reducing administrative burdens and ensuring proper implementation: Members express concern that the programme to reduce administrative burdens may not reach its target of reducing administrative burdens by 25 % by 2012 and point out that Parliament and the Council should act promptly in order to approve proposed measures. They encourage the High-Level Group of Independent Stakeholders on Administrative Burdens to enter into a dialogue with SMEs from across Europe, to identify the barriers most frequently referenced for preventing them from trading with other Member States within the Single Market, and **propose measures to remove or reduce these obstacles** to increased growth. The committee stresses the need for the programme to continue post-2012 to cover the life of the current Commission, with a more ambitious and clearly defined target and an enhanced remit to enable the programme to extend beyond simply administrative burdens and to address regulatory burdens and costs arising from EU legislation as a whole, including regulatory 'nuisances'.

Policy formulation: Members call on the Commission to make better use of White Papers presenting draft legislative proposals for consideration, stating that this would reduce the frequency with which proposals have to undergo substantial, if not wholesale, revision during the legislative process. It would also aid evaluation of the proportionality of suggested legislation, which is often difficult when only outline proposals are presented initially in Green Paper form.

Welcoming the Commission's commitment to **review its consultation procedure**, the report states that the current asymmetric methods and forms of consultation do not encourage responses from all interested stakeholders. It makes several suggestions in this regard, including: (i) a common approach involving a

standard form for responses to consultations which would simplify matters for respondents and encourage receipt of a more detailed selection of responses (ii) mainstreaming multilingualism in the running and publication of the results of public consultations, as a prerequisite for extensive involvement of all the European stakeholders; (iii) simplifying consultation documents so as to aid responses from the relevant stakeholders, with the introduction of a 'clarity test'; (iv) improved communication by the Commission after the consultation period has closed, and feedback on the main issues raised by all respondents.

The committee moved on to underlines the importance of **guaranteeing the independence and credibility of the analyses carried out in the Commission's impact assessments** so as to secure the overall goals of the smart regulation agenda, and reiterated Parliament's position on the issue as set out in its resolution of 8 June 2011 . It suggests that impact assessments should identify the particular effects – both positive and negative – that measures will have on competitiveness and growth within the EU and that these effects should as far as possible be fully quantified. In addition, when formulating new legislation, the Commission is asked to place the utmost importance on its possible impact on small and medium-sized enterprises, and to exempt SMEs from regulation where provisions would disproportionately affect them and there is no robust reason for including them in the scope of the legislation. The committee takes the view in this regard that the SME test adopted in the Small Business Act has a key role to play, and expects the Commission to make full use of the test.

Ex-post evaluation: Members demand that the Council require Member States to draw up and publish tables illustrating the correlation between directives and national transposition measures, since such tables are essential in order to provide transparency on how national law transposes the obligations in EU directives, and can play a useful role in identifying discrepancies and cases of gold-plating. They also stress that the recasting technique should always be used when amending legislation.

Lastly, the committee welcomes the personal support the President of the Commission has given to the Smart Regulation agenda, considering the issue to be of sufficient importance that real political leadership is required from the Commission to keep this issue high on the political agenda, and in this regard suggests that the agenda be brought forward as a key part of the portfolio for one of the College of Commissioners. For its part, Parliament should investigate methods to increase the importance attached to better law-making within its committees, and the use of inter-committee meetings to address this issue requires further consideration.