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Secretariat-General

Directorate C - Smart Regulation and Work Programme
SG.C.1-Evaluation, Regulatory Fitness and Performance
Head of Unit

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Dear Professor Macrory,

Thank you for your letter of 5 July concerning the work of the Avosetta Group on installation and infrastructure procedures in the field of EU and national environmental law.

The work of the Avosetta Group is the kind of work that we have been encouraging in different areas, including the 'Make it work' initiative, which we have continuously supported. We will check the reports in the Avosetta website.

In the document attached to your letter, some issues are raised concerning the Better regulation agenda and some of the concepts applied under that heading. I therefore take this opportunity to provide some explanations for the Group.

'Better regulation' has gone through several iterations since it was created as an EU policy under the Prodi Commission in 2000. Since then the overall policy has been renewed a number of times, including with a name change to 'Smart Regulation' in 2010 (COM(2010)543) under the Barroso II Commission. With the May 2015 Communication on 'Better regulation for better results – An EU agenda', the title: 'Better regulation' returned (http://ec.europa.eu/info/files/better-regulation-better-results-eu-agenda-0_en).

There are different elements in this agenda and here are some examples:

- Strengthening Commission commitment to the retrospective evaluation of the performance of existing EU interventions;
- Further developing Commission policy on impact assessment of options for future interventions;
- A set of Better regulation guidelines and a toolbox to be used by the Commission services in implementing the Better regulation agenda;
- The creation of a Regulatory Scrutiny Board - with all members now full-time and three members appointed from outside the Commission, with an extended mandate to cover major evaluations - taking over from the former Impact Assessment Board;

- A proposal for a new interinstitutional agreement on better law-making, with an agreement since adopted by the European Parliament, Council and Commission on 13 April 2016 (OJ L123, page 1, of 12.05.2016);
- Further development of the Programme on Regulatory Fitness and Performance (REFIT) and publication of the REFIT Scoreboard on progress made so far on the individual steps being taken to ensure better regulation in the different sectors of EU intervention;
- Creation of the REFIT Platform, comprising a group of high level experts from each Member State and a group of stakeholders from civil society with experience of the application of EU law, to suggest actions that could be taken in the REFIT programme to improve the efficiency and effectiveness of EU regulation and to reduce regulatory burden; and
- Creation of the 'Lighten the load – Have your say' website to encourage suggestions for regulatory burden reduction:

http://ec.europa.eu/priorities/democratic-change/better-regulation/feedback/index_en.htm

On recasting, this is the legal technique whereby the Commission proposes, and the European Parliament and Council adopt, measures which include amendments to a limited number of provisions and consolidation of the rest of the legislation, comprising the original regulation or directive and successive amendments adopted over time, to produce a partly amended and fully consolidated up-to-date legally binding text. This is distinct from codification which does not amend the earlier provisions, but only brings them together into one more accessible and comprehensible text. An official explanation is provided in the 'Interinstitutional Agreement on a more structured use of the recasting technique for legal acts' of 28 November 2001 (OJ C77, at page 1, of 28.03.2003).

Responding to the comments on evaluation, I think there is broad agreement on the need to use sound socio-legal methodologies. We are searching for wide-ranging input, sound data and resulting objectivity in evaluations. There is, unless otherwise indicated and explained, always a focus on how the relevant policy / public interest objectives have been achieved through the five criteria of: efficiency, effectiveness, relevance, coherence (covering any identified lacunae) and EU added value of the policy as well as regulatory burden reduction. Getting the most sound and strong, objective results depends on the quality of the organisation and management of each individual evaluation exercise. The Secretariat-General, along with the other Directorates-General interested in each evaluation participate in steering groups for each main evaluation to help to ensure a high quality process and outcome. Parts of evaluations are often out-sourced to consultants and each evaluation should include a 12 week public consultation. In addition to consultants' reports, each evaluation must include a document produced by the Commission services drawing their conclusions which can also contribute to a report adopted by the Commission.

We do have a strong commitment to assessing the impact of options for new or amending regulation. The European Parliament and increasingly the Council are interested in the content and quality of this work when examining the legislative proposals that the Commission tables. It is true that this kind of thorough preparation takes time, but generally the Commission is committed to "being big on the big things, and small on the small things" and to do that we need to collect as much information and experience as we can on what we should be doing and what is the best way to do it. The EU has been accused of regulating too much and too heavily in the past and we need to provide strong justifications for any EU regulation.

Finally, you mention the steps taken by Member States on the integration and simplification of licensing systems and the need for the decision which regulatory tools are appropriate to be left to the national level. I happen to have come out of a meeting yesterday here in Brussels also discussing the need for stronger input at regional, city and local levels of government. Our Better regulation agenda suggests closer working relations between Commission and Member States in the evaluation of the performance of existing EU regulation. This can tell us where to strike the balance and what adjustments might improve efficiency and effectiveness. That is one of the main purposes behind our push for a closer working relationship with Member States in evaluations. This brings me back to where I started, confirming our support for the 'Make it work' initiative. I participated in the Edinburgh meeting and have maintained regular contacts with the Dutch and UK colleagues involved throughout the process.

I hope that these explanations clarify how the Better and Smart regulation concepts have developed and relate to each other. We look forward to continuing to follow the work of the Avosetta Group and to increasing exchanges of experience and ideas between all levels of government and administration, as well as with stakeholders and all other interested parties, to ensure the most effective and efficient regulatory outcomes.

As your letter only reached us on 13 July, I am sending an advance copy of my reply by email, with the original to follow by post.

Yours sincerely,



Jonathon Stoodley