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PROJECT ON
INDICATORS OF REGULATORY QUALITY

FINAL REPORT

(Executive summary)

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INDICATORS OF REGULATORY QUALITY

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EXECUTIVE SUMMARY

[1] *Content* - This report classifies and discusses the advantages and limitations of indicators and indexes of regulatory quality. It sets out the analytical framework of the project, proposes an approach to handle the complexity of regulatory quality, critically reviews measures proposed by the literature, discusses the initiatives under way in the EU and elsewhere, and reports on the results of a questionnaire sent to the project's support network in May 2004. Finally, it contains three systems of indicators and shows how they can be used by the Commission and the member states.

[2] *Why regulatory quality?* - Regulatory quality is a complex notion. But it has an advantage: principles of better regulation provide a focus on quality that goes beyond efficiency. In fact, the experience of governments and international organisations indicates that quality is anchored to the notion of good governance. As such, regulatory quality has a normative dimension, sets the goals in terms of governance, and is neutral to the scope and size of public intervention. Quality is intimately different from quantity. High quality regulation does not mean 'low levels of regulation', but regulation that is proportionate, targeted, efficient, accessible, and transparent. This locates regulatory reform in a context that is compatible with different political agendas.

[3] *Complexity of regulatory quality* - However, regulatory quality is not a 'one-size-fits-all' concept. Quite the opposite, it is contingent on the institutional context, the models of the policy process upon which a specific 'better regulation' policy is built, and the different logics and preferences of the stakeholders. The implication is that governments and the European Commission should choose indicators only after having defined their principles of better regulation, the relative importance of tools in the regulatory reform strategy, and the purposes behind the adoption of indicators. Principles and regulatory reform strategies come first, and indicators should reflect the broad policy goals set by the policy makers.

[4] *Definition of regulatory quality* - Our definition of regulatory quality is in terms of embeddedness. The measure of quality of regulatory tools is the extent to which impact assessment (IA), consultation, simplification, and access are embedded in the wider regulatory policy process. In a sense, even if an impact assessment is impeccable in terms of economic analysis, this is not a sufficient condition for quality. The latter is achieved when better regulation tools change the way regulators think about public policy, inform ministerial decisions, and conversely, when they change the way organized interests, firms and citizens engage in the policy-making process, understand and accept the regulatory framework. We operationalise this definition with indicators. Our indicators are a gauge of quality.

[[5] *Indexes or indicators?* - It would be wrong to look for 'the' measure of regulatory quality. Not only does quality mean different things in the light of different principles and the preferences of different stakeholders, it is also extremely difficult to capture it by dint of a single measure. No matter what the quality of aggregation is, it is usually very difficult to deduce or infer from ambitious indexes of quality what needs to be done to further improve regulatory quality. The consequence is that we recommend systems of indicators rather than individual indexes. Complex measures – we argue – should be considered as one component of a system of indicators that also includes simple measures.

[6] *How the EU member states approach regulatory quality* – There are signs of convergence and there is political momentum for indicators in the EU. However, progress has been uneven

so far. Our questionnaire shows that the message of the Mandelkern report, the White Paper on Governance, and the Better Regulation action plan of the European Commission has been diffused throughout the ‘old’ and ‘new’ EU member states. EU member states share relatively broad objectives, but there is still limited convergence around the objectives of ‘maximisation of the net benefits of regulatory measures’ and ‘maximisation of citizens’ wealth’ for better regulation programmes. This chimes with the limited diffusion of full cost-benefit analysis as the cornerstone of regulatory quality. When we probed the support network on indicators of quality arising out of a cost-benefit approach to better regulation, we found no evidence of countries pursuing cost-benefit assessment of regulation as the major pathway to quality. The pattern of convergence in impact assessment is limited. True, there is unanimous support for IA. However, IA means quite different things in different countries. In some member states IA does not go much further than compliance cost assessment or checklists; in others it does not stretch beyond a handful of pilot IAs; finally, in a few cases there appears to be a consistent effort to assess a wide range of costs and benefits in an integrated process.

[7] *Clustered convergence* – Turning to the measurement of quality, we can specify the profile of three clusters. Firstly, member states with basic systems of quality assurance tend to focus on quantifiable targets covering administrative burdens. Secondly, in other member states the tools of better regulation are still at the stage of pilot project. Measurement of quality has been considered, but there is a very limited number of activities under way. Finally, where quality assurance is sophisticated and multi-actor, and impact assessment well-embedded, initiatives for the measurement of quality target the whole regulatory process and the different better regulation tools.

[8] *The role of stakeholders* - Another result of our cross-country comparison is the systematic incorporation of stakeholders’ needs into quality assurance systems and tools of better regulation like impact assessment and simplification. Surveys of stakeholders have been refined over the years, and have improved the overall level of accuracy of the main regulatory costs. Some EU governments are developing their methodologies with the input of stakeholders. In other cases, stakeholders are not formally part of the process, but contribute with ideas and suggestions as to the building up of methods and techniques. This happens eminently in the areas of ‘cutting red tape’ programmes. As quality has different meanings to different stakeholders, the involvement of business actors (and possibly other stakeholders) is a good practice. At the EU-level, there is plenty of evidence of stakeholders-driven evaluation of the Commission’s impact assessments. This is evidence of ‘pluralistic evaluation’, with private sector think tanks and academics engaged with various methodologies in checking the quality of consultation, Commission’s numbers, and overall approach to better regulation programmes.

[9] *Administrative burdens* - International cooperation is making progress in the area of measuring administrative burdens. Denmark, the Netherlands, Sweden, and, outside the EU, Norway intend to apply the same methodology – the standard cost model (SCM). It would be a mistake, however, to build programmes and measures of regulatory quality exclusively around administrative burdens. They are only one – often limited – part of regulatory costs. Focusing exclusively on that dimension would possibly bias measure of direct costs of regulation (which also include compliance costs), they do not assess the net burden of new regulations, they do not compare costs and benefits, and finally they address a limited constituency. Additionally, consensus on this measure is limited to a cluster of member states. Consensus is important, but it has to be around the correct measure.

[10] *EU initiatives to measure regulatory quality* - At the Commission, there are several initiatives under way which can directly or indirectly lead to measures of quality. Projects like IMAC have gone as far as to propose specific lists of indicators. The Commission's reports on better regulation tools include useful measures, although some indicators, such as the reduction in the number of Official Journal's pages, should be treated with caution. One important result of our review is that some data-collection instruments are already there, or almost there. We refer to the EBTP, the Eurobarometer, and other instruments to collect the views of stakeholders. In terms of objective measures of regulatory quality, the Commission has already discussed some useful indicators, although the discussion of how to gather them is less developed. There are two problems with the current state of play. Firstly, reporting and measures of quality are not organised in a specific system of indicators covering the whole spectrum of better regulation tools. The individual proto-systems working in IA, consultation, simplification, and access do not speak to each other. Secondly, there is the danger of uncontrolled proliferation of indicators. There is no need to produce yet another set of ad-hoc indicators. Rather, the challenge is to coordinate efforts and weed redundant measures.

[11] *Indicators: The political dimension* – We develop indicators in the context of the major objectives set by the Lisbon strategy and the principles established by the White Paper on Governance, the Better Regulation Action Plan of the European Commission, and the Mandelkern report. The report presents three systems of indicators - both for the EU-level and the member states – suitable for the monitoring and evaluation of the Commission's new integrated system of impact assessment and the overall better regulation policy. Better regulation is not the exclusive responsibility of the EU institutions. It involves different levels of governance – national governments as well as local authorities have their own responsibility. The overall impact of measures of regulatory quality would be greater if there would be a convergence in the use of indicators also at the national level. The report fleshes out the coordinates of a possible open method of coordination applied to indicators of regulatory quality. The letter of four finance ministers (Ireland, Luxembourg, the Netherlands, and UK) on the priorities for better regulation of four consecutive EU Presidencies (January 2004) refers to an open method of coordination (see Annex 4).

[12] *Indicators: The technical dimension* – The report presents two systems and shows how indicators can also contribute to a third system of policy evaluation. System no.1 could be used by the cluster of member states with basic approaches to regulatory quality and impact assessment in experimental-pilot stage. It is a simple macro ex-ante system of indicators of quality. System no.2 requires the examination and ex-post measurement of the quality of impact assessment and other tools. It also includes indicators of real-world outcome and limited use of surveys of regulators and stakeholders. This second system can be used by the cluster of member states in which consultation, simplification, and the measurement of administrative burdens are already well embedded. The third system is applicable to the Commission and to member states with sophisticated quality assurance mechanisms. It provides a bridge between measurement of regulatory quality and the systematic evaluation of better regulation.

[13] *Linking the technical to the political* - A process of open coordination should have the goal of getting all EU member states to create the pre-conditions for progressive convergence towards best practices for better regulation. This can be done gradually, for example by taking the commitment to adopt system 1 in all EU member states at the next Spring Council (2005) and devise steps towards the adoption of the other two systems. We estimate that – at the level

of individual member state – it would take up to one year to implement the second system and two years to implement a fully-fledged evaluation of better regulation policies.

[14] *Making progress across the EU* - The three systems of indicators are portrayed in the table. All member states should be able to adopt system 1 and several indicators of systems 2 in 15-18 months. A pre-condition for this is that member states currently at the pilot stage with IA and consultation move on to the systematic implementation of this tool. Put differently, the major obstacle to the adoption of most of system 2 across the whole EU is not data-gathering but the fact that IA and consultation are not used on a routine basis in policy formulation and consequently are not embedded in the law-making process. Some member states have designed laws on impact assessment and simplification but apart from individual pilot projects there is no consistent effort to assess a wide range of costs and benefits in an integrated process and to consult systematically following specific written guidance.

INDICATORS OF REGULATORY QUALITY

	QUALITY OF THE PROCESS	INTERNAL EVALUATION	EXTERNAL EVALUATION
Scope of indicators	<p>Pre-conditions for regulatory quality.</p> <p>Ex-ante micro analysis.</p>	<p>Ex-post measurement of the quality of regulatory programmes.</p> <p>It includes a checklist and indicators of real-world outcome.</p>	<ul style="list-style-type: none"> • Ex-post and external evaluation of the quality of regulatory programmes. • External evaluation is a broad activity. It includes indicators and other methods such as case studies and in-depth interviews. • Ex-post technical analysis of the performance of the indicators used in the other two systems.
Design indicators	YES	NO	NO
Activity indicators	YES (Impact assessment and consultation)	YES	YES
Output	NO	YES	YES
Real-outcome indicators	NO	<ul style="list-style-type: none"> • Impact of better regulation policies • Survey-based indicators • Indicators of economic outcomes 	YES
Surveys of regulatory and stakeholders	NO	YES	YES
Who collects the indicators	<p>SG of the Commission</p> <p>Central regulatory quality units in member states</p>	<p>SG of the Commission</p> <p>Central regulatory quality units in member states</p>	External evaluators (think tanks, academics, consultancy units)
How often	Every year	Every year	Every two years
Time needed to put the system in place	6 months	15-18 months	2 years