

Better Regulation for All

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Introduction : I am pleased to take-up the invitation to make a submission to the Business Regulation Forum. The Forum has set an ambitious agenda to achieve a measurable reduction in regulatory compliance burden for businesses. We need good regulations to help protect citizens' rights, promote a safer society and ensure more confidence in goods and services. While good regulations are required for most areas of economic and social life, it needs to be applied in a systematic and co-ordinated way. However, all regulations involve costs, and that is where there is a requirement to see much more evidence of the case being made for the introduction of new regulations. Of course, it is not just new regulations that need to be closely examined. There is also the matter of examining the case for retaining certain existing regulations. In this regard, the Small Business Forum recently argued that RIA should be used to review regulations, over a seven-year period, with the objective of amending existing regulations and thereby reducing the burden of compliance (**Small Business Forum, 2006**).

My contribution to the Forum will be confined to seven topics :-

- Pressure for Better Regulation (Section 1)
- Need to take the long-term view (Section 2)
- Importance of RIA (Section 3)
- Importance of Consultation (Section 4)
- Increasing the Skill-base (Section 5)
- Appreciation of the EU Dimension (Section 6)
- Some Conclusions (Section 7)

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2. Pressure for Better Regulations : Regulations affect not just governments but also citizens, consumers and communities in general. In a world where economies face increasing competition and where citizens demand higher levels of public service and regulatory protection, the pressure is increasing to get the best results from regulation at the lowest cost, in a timely fashion and in an open and transparent manner. In general, regulations should only be introduced when necessary and be sufficient for the task at hand. Over-regulation is not the way forward. As the Mandlekern Report pointed out -- regulation “...*should be transparent and accessible to all and as simple as possible. It should be enforceable and at European level should obey the principle of subsidiarity*” (**Mandlekern Group Report, 2001**). Madlekern went on to argue that regulation should be used only when necessary and be appropriate and proportionate to the task. Moreover,

- Regulation must not be introduced in ways that are heavy-handed.
- Unnecessary ‘red tape’ is not just a frustrating irritation, it can be an actual barrier between business, citizens and government.
- Competitiveness of an economy is adversely affected if governments cannot be clear as to the rules, if there are too many rules, if they are contradictory, if they are expensive to comply with, and if they are not enforced consistently.
- Imaginative ways have to be explored to achieve policy goals, using other policy instruments; and
- Policy makers must resist the urge to simply produce more and more rules.

Above all else, regulations should not adversely affect the robustness of businesses as they go about their work, create employment and generate wealth. Where rules or regulations have to be introduced they need to be kept as simple as possible. In the final analysis, new regulations should only be given the ‘green light’ where the benefits of regulation clearly justify their costs. As Vita Tanzi put it - “*To function well, market economies need Governments that can establish and enforce the 'rules of the game' [and] they*

also need a pared-down set of regulations that are clear and leave little margin for interpretation and discretion” (Tanzi, 1999).

3. Need to take the long-term view : There is need to avoid taking a ‘short-term’ view of regulation. This involves a move away from the traditional “regulate first” approach and instead striving to ensure that there is much more evidence of the evaluation of different options in advance of decisions being taken. It is not just a question of what should be stated in the legal text. The impacts, in terms of the burden of enforcement on government expenditure, also need to be considered, in terms of inspectorates, audits, prosecutions etc., as these are enforcement costs that can be considerable. Equally costs of compliance can be significant. Therefore, a ‘long-term’ view needs to be taken as to what compliance and enforcement will be required.

Taking time to estimate what the implications might be for compliance and enforcement, in advance of legislative decisions being taken, can avoid surprises or disputes about resources afterwards. As well as identifying unintended impacts, taking a ‘long-term’ view of regulation helps to identify in advance those who need to be consulted and the extent to which their views need to be taken on board. Of course, a key question is to ask whether a particular regulation is actually necessary; that it is proportionate, and that it has been developed in a transparent manner.

4. Importance of RIA : Regulatory Impact Analysis (RIA) has a key role to play in seeing that new regulations can be justified. RIA, if properly applied, should ensure that a systematic structured system is used to examine alternatives to regulation. RIA calls for a structured approach to decision making. Under RIA, decisions will need to be based on proposals that have been fully evaluated, right through to the likely costs of compliance and enforcement. Properly planned and implemented RIA can improve the quality of regulation. It can also help to improve economic competitiveness and

maximise consumer welfare by ensuring regulations do not impose disproportionate costs and unintended impacts on businesses or citizens.

Furthermore, RIA can contribute to the development of good governance by increasing the accountability and transparency of the regulatory process. And by setting performance indicators as part of the RIA process, it will be possible to gauge how well particular regulations are doing in meeting their objectives and achieving their desired outcomes. RIA complements good governance in that it is designed to contribute towards increasing the accountability and transparency of the regulatory process. Of course, “*good regulatory governance does not happen on its own; it requires careful planning, well-conceived rules, structured implementation, sensitive management and a lot of consultation*” (Ferris, 2001).

In the final analysis, it is important to recognise that RIA, even when well constructed, is not a tool that substitutes for decision-making. Rather it should be seen as an integral part of the policy making process within government, which aims to raise the quality of debate and therefore the quality of the decision-making process. And it also has the potential to strengthen regulation by systematically examining the possible impacts arising from government actions and communicating this information to decision makers in a way that allows them to consider the full range of positive and negative effects that are associated with a proposed regulatory change.

5. The Importance of Consultation: Consultation is a key component of good regulation. The adoption of a consistent and transparent approach to consultation can enrich public governance; it can assist the public service in its key role in contributing to policy formulation; and it can enhance the regulatory environment in which business has to operate. Of course, ensuring that consumer and citizen are consulted is not an end in itself. Much more important are the objectives of improving the quality and availability of goods and services, reducing prices, increasing public health and safety (through better

enforced and designed regulations) and ensuring more open, accountable and transparent government. As I have pointed-out elsewhere, there is a growing need for a “...*regulatory framework that facilitates the continuing development of a competitive economy, within which there can be efficient delivery of quality goods and services, while protecting the interests of the citizen as customer*” (Ferris, 2002).

6. Increasing the Skill-base : RIA should not be developed in an “ivory tower”, away from the mainstream of public administration. It should be an integral part of the administrative process. It should also be the responsibility of the officials, charged with overseeing the introduction of particular regulatory proposals, to actually prepare RIAs. However, if RIA is to be fully implemented across the spectrum, then there is need to ensure the development of skills within the government machinery, including skills in enumeration and valuation of costs and benefits.

There is a need for Government to increase the resources allocated to basic data collection. Producing facts and figures is the most convincing way to demonstrate what regulatory proposals are most likely to work in practice. There are a number of recent national and international publications that provide good advice on the type of skills and data required for RIAs. In Ireland, one need only refer to the recent publication, entitled *RIA Guidelines : How to conduct a Regulatory Impact Analysis*, produced by the Department of the Taoiseach (Department of the Taoiseach, 2005). At the international level, there are very helpful frameworks available from the OECD (OECD, 1997), the Mandelkern Group on Better Regulation (Mandelkern, 2001), SIGMA (SIGMA, 2001) and more recently the EU (European Commission, 2005).

An IPA publication can be of assistance as to how to address the issue of costs and benefits (Mulreany, 2002). Providing increased certainty in relation to costs and benefits invariably involves collecting more detailed data. This may involve assigning dedicated economists or statisticians to Government

Departments undertaking RIAs. Consideration might also be given to commissioning additional statistics from research institutes or statistical organisations. In the case of Ireland, the relevant bodies include the Central Statistics Office, the Economic and Social Research Institute and the Institute of Public Administration. Another approach is to engage consultants to help with the data gathering.

6. Appreciation of the EU Dimension : There is a growing awareness within the European Institutions and EU Member States of the need for regulatory reform. The European Union is currently engaged in a programme of action to implement the recommendations of the Mandlekern Report. (**Mandlekern Report, 2001**). In Ireland too, there are clear commitments to ensure that new regulations make a positive contribution to competitiveness.

As regards RIA, there is an EU dimension that Ireland should not lose sight of. Clearly there is need to ensure that national RIA policy is in harmony with the EU regulatory process. Ireland's concern is how to negotiate and implement EU Directives so as to ensure Ireland's interests are taken into account. There is no doubt that RIA can bring tangible benefits by identifying the likely impact of EU proposals on Ireland, on a timely basis. In particular, it can highlight national impacts that are not picked-up by the EU Commission's impact assessments, which focus on the impact on the overall Union. On a wider front, RIA provides a mechanism for Ireland and other EU Member States to contribute to the regulatory agenda, which is of growing importance at the level of the European Union.

7. Some Conclusions : In general, regulations should only be introduced when necessary and be sufficient for the task at hand. Over-regulation is not the way forward. The quality of regulation depends on having RIA embedded in a clear policy making structure with transparent definitions of responsibility, and well-resourced. RIA has the best chance of being truly effective if it is well planned as regards process and implementation. It is important to ensure that RIA is introduced in a form appropriate to existing procedures and practices. The more

common sense that can be brought to the process then the better the likely outcome. This is a concept that the Business Regulation Forum should keep to the fore in tackling its agenda of achieving a measurable reduction in regulatory compliance burden for businesses.

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