Better Regulation and Challenges of Drafting EU Company Law

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Better Regulation in EU Company Law, Process and Substance
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Better regulation

• What does it mean?
  ➞ Making legislation:
    ✓ simpler,
    ✓ more understandable,
    ✓ more accessible.
  • What is the expected result?
    ✓ greater effectiveness
    ✓ greater acceptability of Community actions.

Better regulation ↔ Better legislation
Better regulation ≠ de-regulation

How to “better regulate”?
Focus on two areas:
✓ new policy initiatives in Commission work programme subject to regulatory impact assessments;
✓ simplification of key existing legislation.

What is a Regulatory Impact Assessment (RIA)?
✓ One global instrument identifying the likely positive and negative impacts of proposed policy actions
✓ An RIA will justify the chosen policy option, after having examined alternatives.
✓ Aid to decision-making – NOT a substitute for political judgement
✓ Full transparency of results of RIAs.

What to do with a RIA?
• RIA published with legislative proposals
• Should the amendments to Commission proposals be submitted to RIA?
• Dilemma: in which measure does the end-result correspond to the RIA of the Commission proposal?
Simplification – what for?

- Objective:
  - make things easier for all stakeholders,
  - lead to more effective legislative framework.
- Review of the *acquis* taking into account private sector and public interests.
- Dilemma: simplification vs. better regulation

Simplification applied to Company Law

- Should the 2nd CLD be revised?
  -> feasibility study on alternative to capital maintenance regime
- Should the 12th CLD be repealed?
  -> potential danger of repealing allegedly ‘redundant’ Directives for further enlargements.

Better regulation and Corporate Governance

1. Establishment of consultative groups:
   - European Corporate Governance Forum
   - Advisory Group on Company Law and Corporate Governance.
2. Consultation on future priorities for the Action Plan
3. Systematic consultations for all initiatives
   => input from stakeholders is crucial.
4. Regulatory impact assessments
5. Informal consultation of Member States within CLEG
6. Reduction of administrative burdens.

Consultation on future priorities for the Action Plan – written phase

Consultation document:

- 3 Parts:
  - the methods for policy making,
  - the continued relevance of medium and long term measures proposed in Action Plan,
  - the modernisation and simplification of European Company Law.
- Set of 14 detailed questions.

Global overview on responses to public consultation (266 responses received)

Global overview on responses to public consultation

Respondents per Nationality

Respondents per Category

- academics: 3%
- financial intermediaries: 8%
- foundations: 28%
- industry: 25%
- investors: 12%
- others: 12%
- public authorities: 8%
- trade-unions: 4%
Outcome of public consultation

• General support for Action Plan
• Overwhelming support for proposed application of better regulation principles
• Call for enabling legislation
• Support for some kind of simplification ("the devil is in the detail").

Follow-up

• Commissioner will issue a statement in a speech delivered to the European Parliament (timing: November 2006 ?)

Thank you for your attention!