



SMART REGULATION: WHAT IT REALLY MEANS

Submission to the EC stakeholder consultation on Smart Regulation

June 2010

ABOUT ACCA

ACCA is the global body for professional accountants. We aim to offer business-relevant, first-choice qualifications to people around the world who seek a rewarding career in accountancy, finance and management.

In Europe, we support over 80,000 members and 362,000 students throughout their careers, providing services through a network of 80 staffed offices and centers around the world, including our pivotal Brussels office. Most (59%) of our members work in or for small and medium-sized enterprises (SMEs) and we have over 100 years' experience in understanding and supporting SMEs.

Regular input from our members, as well as the expertise of our in-house technical experts, allows ACCA to provide informed opinion on a range of financial, regulatory, public sector and business areas, including: taxation (business and personal); regulation and business law; pensions; education; corporate governance and corporate social responsibility.

As well as being represented on all major European accountancy fora, ACCA is a member of the European Association of Craft, Small and Medium-Sized Enterprises (UEAPME).

Global research demonstrates that accountants are the professional advisers of choice for small businesses and SMEs in general, and that regulation, including employment law, is a major element of their business support offering.¹ Under our global theme, "Accountants for Business", ACCA is committed to supporting our members and students in their role as business advisers.

¹ R. Blackburn and R. Jarvis, "The role of small and medium practices in providing business support to Small and Medium-sized Enterprises" Information Paper presented to the IFAC SMP Committee, April 2010

INTRODUCTION

Consistent with the activities of our membership, ACCA has a particular interest in the design and effects of regulation as it applies to SMEs, and our entire submission is informed by this perspective. The Commission's commitment to the *Think Small First* principle suggests to us that Smart Regulation must be calibrated to address the circumstances of SMEs first and then modified, where necessary, to apply proportionately to larger firms.²

ACCA strongly supports better regulation initiatives in all of our markets and are pleased to see Europe lead the way in addressing the concerns of regulated SMEs. In developing a programme of Smart Regulation, we would urge the Commission to resist being drawn into a false dilemma of better social protection vs. a better business environment. The majority of owners and managers of SMEs perceive most kinds of existing regulation as being justified *in principle*,³ and regulated SMEs often benefit themselves from strong enabling effects of regulation.⁴ Moreover, the majority of the public in European as well as other countries trust SMEs more than they do governments or big business to act according to universal values.⁵

However, certain things are true of even the most enlightened entrepreneurs or the most beneficial regulations. Perceived regulatory burdens can prevent individuals from taking early-stage entrepreneurial activity, thus reducing the number of new start-ups.⁶ They can also divert would-be entrepreneurs to the informal economy, to the detriment of all concerned.⁷ In established SMEs, the costs and restrictions associated with compliance can discourage employment⁸, investment⁹ or innovation.¹⁰ Furthermore,

² European Commission, "Think Small First – Considering SME interests in policy-making" Report of the Expert Group, March 2009

³ R. Blackburn, W. Eadson, R. Lefebvre and P. Gans, "SMEs, regulation and the role of the accountant" ACCA Research Report no. 96, November 2006

⁴ M. Anyadike-Danes, R. Athayde, R. Blackburn, M. Hart, J. Kitching, D. Smallbone and N. Wilson, "The impact of regulation on small business performance – Report for the Enterprise Directorate of BERR" January 2008

⁵ K. Schwab, S. Zahidi, M. Rojas, T. Finnell, J.J. de Gioia and T. Banchoff, "Faith and the Global Agenda: Values for the post-crisis economy" World Economic Forum, January 2010.

⁶ P. van der Zwan, I. Verheul, R. Thurik and I. Grilo, "Entrepreneurial progress: Climbing the entrepreneurial ladder in Europe and the US" Tinbergen Institute Discussion Paper 2009-070/3 March 2010.

⁷ M. Ayyagari, T. Beck and A. Demircuc-Kunt, "Small and Medium Enterprises across the globe: a new database" World Bank Policy Research Working Paper 3127, August 2003 and N. Batini, Y. Kim, P. Levine and E. Lotti, "Informal labour and credit markets: a survey" IMF Working Paper WP/10/42, February 2010

⁸ K. Fialová and O. Schneider, "Labour market institutions and their effect on labour market performance in the new EU member states" CESifo Working Paper No. 2421, October 2008

⁹ A. Alesina, S. Ardagna, G. Nicoletti and F. Schiantarelli, "Regulation and Investment" *Journal of the European Economic Association*, 3:4, June 2005

¹⁰ S. Robson and M. Kenchatt, "First findings from the UK Innovation Survey 2009" in ONS, Economic and Labour Market Review 4:3, March 2010.

compliance with regulation is generally more costly for SMEs, per unit of regulated activity, than for larger businesses, creating an implicit subsidy for big business.¹¹ By increasing the cost of entering or operating in an industry as a smaller player, this can limit competition. This is particularly true of the different regulatory regimes across countries – a key obstacle to SMEs seeking to profit from a Single European Market.¹²

Finally, the effects of regulation on SMEs can often depend more on the knowledge and compliance resources of individual businesses than on the content of the regulations themselves, and are generally more detrimental (or less beneficial) for those without adequate resources and support.¹³

We therefore believe that Smart Regulation, in any jurisdiction, should aim to achieve the following three objectives. First, to **maximise the public benefits delivered to society for each Euro of cost** imposed on regulated parties; second, to **ensure that regulatory cross-subsidies** (whereby the parties bearing the final cost of regulation are not the same as those that benefit from it) are **fair, transparent and sustainable**; and finally, to **oversee the development of a healthy regulatory services industry**, including government bodies, enforcement agencies and private sector advisers, which delivers genuine value to regulated parties and the wider public. The unique circumstances and goals of the EU also suggest to us a fourth and final objective: to **ensure harmonisation of legislation and facilitate the development of a Common Market**.

¹¹ European Commission, “Models to Reduce the Disproportionate Regulatory Burden on SMEs.” Report of the Expert Group, May 2007

¹² K. van Elk, J. Hessels and R. van der Horst, “Internationalisation of European SMEs” December 2009

¹³ M. Anyadike-Danes, R. Athayde, R. Blackburn, M. Hart, J. Kitching, D. Smallbone and N. Wilson, op. cit.

DETAILED RESPONSES

1 Do you think that the Commission's approach to improving existing legislation is appropriate, or do you believe there are more effective ways of doing so? Could you give us practical examples?

- 1.1 ACCA does not believe it is appropriate to restrict the scope of Smart Regulation to improving existing legislation alone. In assessing their regulatory simplification programmes, member-states are finding one by one that businesses report little improvement in the overall ease of doing business even when they agree that important simplifications have been achieved.¹⁴ Though there are many plausible explanations for this phenomenon, one key observation is that **the flow, not the stock** of regulation that accounts for most of its effect on SMEs.¹⁵ If this distinction is overlooked, European policymakers could come to see the Smart Regulation agenda as a failure, which would be a disastrous outcome.¹⁶
- 1.2 With regard to containing the cost of incoming regulation, ACCA has given a qualified welcome to proposals for a system of **regulatory budgets** including the policy costs of compliance where this has been proposed, for instance in the US and UK, but we realise that without a great deal of preparation this would be an impractical and controversial means of controlling the flow of regulation.¹⁷ What we do believe to be more practical and less controversial is the use of **costed forward schedules of regulatory activity**, combined with adherence to **common commencement dates**. We believe that the format of the Commission's Work Programme could readily be adapted to allow for such a schedule and that this would invite appropriate scrutiny from European stakeholders.¹⁸

¹⁴ Report of the General Audit Chamber (*Algemene Rekenkamer*), *Reductie administratieve lasten voor het bedrijfsleven* (Reduction of administrative burdens for businesses), *Kamerstukken II* (Dutch Parliamentary Papers) 2005-2006, 30 605, nos. 1-2.; UK National Audit Office, "Complying with regulation: Business perceptions survey 2009" October 2009

¹⁵ NAO, op.cit

¹⁶ On the importance of champions to the cause of Better Regulation, see OECD, "Overcoming barriers to administrative simplification strategies: Guidance for policymakers" February 2009

¹⁷ See UK BIS, "Regulatory Budgets – Respondent organisations' views" December 2008 and ACCA response to the call for public comment on improving the process and principles governing Federal Regulatory Review, April 2009

¹⁸ The UK's Regulatory Forward Programme is a good example of how such initiatives can invite stakeholder scrutiny and spur serious debate. By producing a costed schedule of activity, the UK Government prompted the British Chambers of Commerce (BCC) to review the flow of new employment regulation and efficiency of existing rules in A. Morris, "Employment Regulation: Up to the Job?" March 2010. This publication will be followed up by a debate, entitled "Is deregulation dead?", in July 2010 involving the BCC and Trade Unions Congress (TUC), who have published their own review of the evidence in H. Reed, "Flexible with the truth?" January 2010.

- 1.3 That said, the stock of regulation is not itself without significance. Evidence suggests that some episodes of business growth, most crucially the transition from self-employed to employer, can be particularly difficult, as a great deal of the stock of regulation is triggered by hiring decisions and turnover thresholds.¹⁹ ACCA believes that **thematic reviews** of existing regulation, focused on such regulatory bottlenecks, can substantially benefit the business environment in Europe. Under thematic reviews, the stock of regulation is divided into clusters of related laws and these are reviewed in order to deliver the same or higher levels of social protection under a more streamlined and integrated system of regulations and guidance. The Australian government's recent Review of Subordinate Regulation²⁰ could provide a robust template for this, but we believe that a review of good practice would turn up many similar exercises in Europe.²¹
- 1.4 We are aware that, in their joint paper on Smart Regulation, the governments of Denmark, the Netherlands and the UK have called on the Commission to not classify such initiatives as regulatory simplifications unless they involve an actual reduction in reporting or compliance obligations.²² This approach, however, overlooks **the role of the business support industry**, in determining the ultimate cost and effectiveness of compliance. The UK Government in particular ought to have known better; having only recently endorsed the findings of the Anderson Review, which demonstrated the savings and other gains, not least in terms of job creation, that can be achieved from streamlined and improved regulatory guidance.²³ The Commission has already considered how the contribution of Europe's business support industry can be optimised²⁴, and we would urge it to consider how these findings relate to regulatory services.

¹⁹ See for instance, European Commission, "Obstacles to growth – recruiting the first employee" Report of the Expert Group, April 2005

²⁰ For an overview, see M. Bishop "Australian Government Review of Subordinate Regulation 2008" Presentation to the International Regulatory Reform Conference, Stockholm, November 2009

²¹ The ACCA SME Committee identified the UK's Equality Bill as one such example. See ACCA "Accelerating recovery" April 2010.

²² "Smart regulation – a cleaner, fairer and more competitive EU" March 2010

²³ "The Good Guidance Guide: Taking the uncertainty out of regulation" BIS January 2009. Estimated cost savings amounted to £880m annually and the maximum number of jobs lost to uncertainty over regulations was estimated at 150,000.

²⁴ "Creating top-class business support services" Commission Staff Working Paper SEC(2001) 1937, November 2001

1.5 Finally, we would like to see more emphasis applied to **improving the quality and focus of regulators and enforcement agencies**, both in the European institutions and in the member states. Assuming no compromise in the benefits of regulation, progress in reducing burdens on business will gradually become more difficult and rely more on robust, innovative thinking and improved consultation as Smart Regulation becomes more embedded. Regulators and enforcement agencies should actively promote compliance through practical and timely guidance, and regard any need to impose penalties for non-compliance as a failure on their part as well as that of regulated parties.

2 What can be done to ensure that businesses feel the benefits from simplification and administrative reduction programmes? Do these programmes focus on the right issues? How can stakeholders, including SMEs, better indicate which pieces of legislation should be simplified? Could you give us practical examples?

2.1. Our experience of Better Regulation initiatives to date suggests that radical improvements to business perceptions of regulation are unlikely on the back of existing simplification and administrative reduction programmes alone.²⁵ While such findings should not discourage European policymakers, and do not invalidate the savings achieved to date, their root causes need to be addressed.

2.2 First, **a wider and more ambitious target of regulatory savings needs to be set**, one focused on reducing the **policy costs** of regulation. The stock of administrative requirements lies at the heart of the better regulation agenda primarily because it lends itself to a convenient standardised costing methodology.²⁶ But in fact this makes up only a small part of the stock of regulatory burdens,²⁷ which in turn accounts for only part of the impact of regulation. The potential administrative savings identified under the Commission's current programme amount to 0.45% of the average SME's total costs; spread out across a number of years, this type of saving may simply not register.²⁸ Nor should the commission be tempted to assume that any improvements reported are necessarily the result of the administrative burdens

²⁵ In fact, it is true of almost all aspects of Small Business Act (SBA) implementation that the impact on businesses on the ground is less significant than the impact seen by advocacy groups at the policy development level. See UEAPME, "Think Small Test and SBA Implementation Scoreboard" May 2010.

²⁶ K. Wegrich, "The Administrative Burden Reduction Policy Boom in Europe: Comparing mechanisms of policy diffusion" LSE Centre for Analysis of Risk and Regulation Discussion Paper 52, March 2009

²⁷ The administrative burden of regulation is estimated at 3.7% of GDP, while the overall burden of regulation is estimated at 12.3% of GDP. See T. Ambler, F. Chittenden and A. Bashir, "Counting the cost of EU regulation to business" June 2009

²⁸ ACCA calculations based on a EUR40,372.2m savings target and 2005 estimates from EIM Business & Policy Research for the Commission's SME Performance Review 2009. The average SME's costs have risen by 3.5% *per annum* between 2002-08

reduction of simplification programmes, as the diffusion of administrative technologies in the SME sector could be producing more substantial savings.

- 2.3 Second, **a net target of administrative savings needs to be set in order to control the flow of new administrative burdens.** Regulatory savings against an arbitrary baseline are naturally not salient to businesses, while net savings from one year to another might be. Because the Commission has not committed to a net savings target or even a measurement of the flow of administrative burdens, it is impossible to know whether net savings have been delivered.²⁹ The administrative burdens reduction programme is too costly and complicated to repeat regularly, which suggests that the Commission should consider either shifting to a net savings target, or imposing some form of regulatory budgeting.
- 2.4 Third, the Commission needs to shift **from an output-based to an outcome-based system** of indicators of regulatory reform.³⁰ We believe that a concise, output-based scoreboard of regulatory quality, encompassing both the positive and negative impacts of regulation, can be constructed from EU-wide surveys, and replicated for individual member-states as well as more specific business populations such as SMEs. We would suggest that the effects of regulation on **new enterprise activity, employment, investment and innovation** can be easily monitored through available survey data. To expand on one example, the Community Innovation Survey (CIS)³¹ provides evidence of whether regulation acts as a barrier to innovation, while the Innobarometer surveys³² provide evidence of whether regulation incentivises innovation. The two can be monitored on an ongoing basis as one pair of indicators in an outcome-based scorecard of European regulation.
- 2.5 Finally, we believe that the benefits of regulatory reform are contingent on the function of the business support industry (see Introduction). Improved regulations will mean nothing to businesses that are unaware of them, or which are driven to over-compliance by uncertainty, overzealous inspectors or self-serving advisers. By working through trusted private sector advisers, high-quality government guidance and appropriately skilled and empowered enforcement agents, both the Commission and member-states can maximise awareness of simplifications, while also making compliance easier, cheaper and more predictable. Adequate support could also improve the compliance

²⁹ The experience of the UK, where target flows of new burdens were also outlined, suggests that delivering net savings might be more difficult than delivering savings against a baseline. See NAO, "The Administrative Burdens Reduction Programme 2008" October 2008.

³⁰ For a definition of an outcome-based system of regulatory reform, see ACCA, "Better Regulation: What it really means" January 2009.

³¹ Full details on the CIS are available from Eurostat:

<http://epp.eurostat.ec.europa.eu/portal/page/portal/microdata/cis>

³² The Gallup Organisation, "Innobarometer 2009" Flash EB Series #267 May 2009

capacity of businesses, especially SMEs, thus ensuring even more efficient compliance and a more level playing field.

3 Which good practices of ex-post evaluation in the Member States or elsewhere do you consider that the Commission should use in developing the evaluation approach? For example, is there a way to improve the involvement of Member States and stakeholders in the evaluation exercise?

- 3.1 Post-hoc reviews of regulations are still generally rare both in the EU institutions³³ and in the member states. We would support any initiative to increase the frequency and improve the quality of such reviews.
- 3.2 Compliance behaviour determines a great deal of the final cost and benefits of regulation, and there is some evidence that many SMEs do not respond to new regulation in standard or predictable ways.³⁴ Impact Assessments should set out their assumptions on how business will adapt to new regulation and ex-post evaluation should explicitly address these. This could set up a feedback loop which would allow the Commission to learn more about compliance behaviour.³⁵
- 3.3 To ensure that Smart Regulation structures do not incentivise the creation of unenforceable regulation, an estimate of the costs of enforcement, including fines and other disciplinary measures, should be included in Impact Assessments and departures from the status quo considered against the total burden of regulation. Ex-post evaluations could then compare these estimates with realised costs in order to better evaluate the efficiency of enforcement.³⁶
- 3.4 Finally, we believe that sunset clauses can provide a useful trigger for post-implementation reviews that might otherwise not take place. We believe that stakeholders will be more incentivised to provide ongoing evidence and feedback if there is a guarantee that this will determine the survival of a piece of legislation.

³³ ECA, "Impact Assessments in the EU Institutions: Do they support decision making?" February 2010.

³⁴ Ipsos MORI, 'Business perspectives of government guidance' BERR, July 2008. This study found that compliance was not to be assumed for 42% of UK SMEs (all except those classified as 'capable but unconcerned' and 'prepared and established'), as it was constrained by internal resources and attitudes.

³⁵ For ACCA's full argument, see our submission to the UK BIS consultation on Regulatory Budgets. UK BIS, "Regulatory Budgets – Respondent organisations' views" December 2008

³⁶ Ibid.

4 Which sectors do you think should be subject to a pilot policy evaluation?

4.1 We believe that the SME sector needs to be subject to pilot policy evaluations, including in cases when SMEs are only affected as consumers. This is consistent with the advice of the Commission’s own expert group regarding application of the *Think Small First* principle:

The definition of the “Think Small First” principle implies that policy makers give full consideration to SMEs at the early policy development stage.³⁷

4.2 However, ACCA as well as UEAPME and other stakeholders believe that such pilot evaluations should not be aimed primarily at evaluating the need for exemptions or differential regulations for SMEs. While we recognise that these may be the only way to reduce burdens for SMEs and maintain proportionality, we believe that only a “bottom-up approach” to policymaking is truly consistent with the *Think Small First* principle.

4.3 Under a “bottom-up approach” SME pilots would be used very early on to determine what measures will work best if applied to the smallest regulated parties (usually micro-enterprises), and how these can be scaled up proportionately for progressively larger businesses. They would also seek to disaggregate the general category of “SMEs” into more specific populations in need of attention, so that assessments of regulatory burdens can pinpoint any disproportionately affected businesses.

5 Within the integrated approach, where all relevant impacts are assessed side by side, are there any specific issues on which the Commission should reinforce its analysis? If so, why and how?

5.1 It is our view that Impact Assessment needs to be transformed from the act of producing appendices to fully-formed proposals to the process of refining the thinking of regulators and informing evidence-based policies. The fact that the term “Impact Assessment” is almost always used to denote a document rather than a process is *prima facie* evidence that success still eludes us. Admittedly, ACCA is not aware of any jurisdiction in which this transformation has been achieved – but this ought to be Europe’s aspiration as a world leader in the Better Regulation agenda.

³⁷ EC, “Think Small First – Considering SME interests in policy-making” Report of the Expert Group, March 2009

5.2 In its recent review of Impact Assessment reports³⁸, the European Court of Auditors (ECA) has delivered a tactful but stern warning regarding the quality of IAs. Apart from our endorsement, we have little to add to the ECA assessment, which recommended the following areas for improvement:

- “[T]he intervention logic is not made explicit” In fact, this was never done in any of the cases examined by the ECA, despite being compulsory.
- “IA reports generally did not present the alternative options analysed in a way which allows for a straightforward comparison. This was due to three reasons: a lack of quantified impact analysis, insufficient use of methods to compare and present qualitative evidence and an asymmetry in the depth of analysis between different options.”
- “Implementation aspects are not sufficiently covered by impact assessments”. Only 37% of IAs addressed possible implementation problems.
- “Only 11 % of the IA reports contained estimates of enforcement costs [...] [T]he Commission does not consistently use the SCM to quantify and monetise administrative burdens.” [...] “[T]he SCM was only used in three cases (5 % of all relevant 2007/2008 IA reports)”

5.3 We do not believe that the new IA Guidelines will by themselves make much difference to these shortcomings, as explicit guidelines in place between 2005-08 appear to have been routinely ignored in practice, including, in the case of the Council and Parliament, the obligation to perform IAs in the first place.³⁹ Worse, we are concerned that the Commission’s new IA Guidelines do not emphasise sufficiently the distinction between regulatory costs and burdens. By dismissing the establishment of a “good practice” baseline as “open to interpretation” the Guidelines actually obscure the question of the efficiency of regulations.⁴⁰ Indeed it is our view that, under a high-quality consultation regime, good practice cannot remain “open to interpretation” for long.

5.4 Finally, we believe it is very important to appreciate the diversity of the business population, which is often obscured through aggregation in Impact Assessments. The SME sector, which includes 99.9% of all business in the EU, is far from homogeneous, including as it does anything from freelancers and home-based family businesses to high-growth technology start-ups or publicly listed medium-sized businesses, complete with HR and compliance

³⁸ ECA, op. cit

³⁹ Ibid.

⁴⁰ European Commission “Part III: Annexes to Impact Assessment Guidelines” January 2009.

departments.⁴¹ As useful as it is for IAs to document the impact on SMEs, this requirement should be complemented with an emphasis on reporting *any* disproportionate effects on parts of the business population.

- 5.5 We are pleased with the level of scrutiny afforded by the Impact Assessment Board (IAB). However, we believe it is very important that the IAB's recommendations be published when they are made, not once they have been adopted, as is the current (legitimate) practice. The IAB typically demands further or more detailed analysis, including additional evidence. In such cases, it is clear that the assumptions behind the IA are flawed in the first place. Stakeholders therefore need to be alerted in order to help inform the evidence base. Furthermore, the drafters' response to such recommendations is often perfunctory, ticking the IAB boxes without improving the quality of analysis.⁴² We believe that the IAB should have the right to veto Impact Assessments that do not adequately address its concerns, similarly to the Office for Information and Regulatory Affairs (OIRA) in the US.

6. Do you have concrete ideas on how the Commission can improve its assessment of social impacts? Do you have examples of best practice in dealing with this issue in Member States or elsewhere?

- 6.1 First, given the problems involved in quantifying social impacts, it is particularly important that the Commission be better prepared to either monetise social impacts or incorporate qualitative assessments into IAs. Currently both are problematic areas as highlighted by the ECA.⁴³
- 6.2 Second, where the findings of social research are used to inform policy, these need to be subject to peer review. This requirement is hinted at in the Commission's own Guidelines⁴⁴, but requires that regulators at both the European and national levels maintain broad networks of experts. ACCA can attest to the feasibility of such quality control mechanisms, based on the experience of our independent Research Committee.⁴⁵

⁴¹ See ACCA, "Accelerating recovery" April 2010

⁴² A case in point is the Impact Assessment report on proposals to exempt micro-enterprises from certain financial reporting requirements. The IAB recommendations suggested that more evidence be provided that proposals would not impact the integration of the Common Market. The authors of the IA duly added a comment to the effect that micro-enterprises rarely trade across national borders based on dated evidence, even as DG-Enterprise had commissioned, or was about to commission, a major study on the internationalisation of SMEs. The study (K. van Elk, J. Hessels and R. van der Horst, op. cit) subsequently found that over 40% of micro-enterprises are active across borders, but the Impact Assessment was not updated to reflect this.

⁴³ ECA, op. cit.

⁴⁴ European Commission "Guidance for assessing Social Impacts within the Commission Impact Assessment system" November 2009

⁴⁵ For more details see <http://www.accaglobal.com/general/activities/research/committee>

6.3 Finally, we believe that it should be possible to align the assessment of social impacts at the macro level (through IAs) with reporting standards on social impact at the micro level. This will not only make the conduct of post-implementation reviews of regulation easier, but will also accelerate the diffusion of good practice in reporting. ACCA is committed to the convergence of reporting standards (including standards for SMEs) through the Global Reporting Initiative (GRI), and we would be happy to discuss its merits with the Commission. Regardless of our preference, the Commission should consider the integration of social impact assessment and social reporting standards as a natural part of its ongoing work on standards for social, environmental and governance reporting.⁴⁶

7. What concrete improvements could the Commission make to ensure that all relevant stakeholders are aware of and able to participate in consultations? Are there particular forms of consultation which you found useful when taking part in the Commission consultations (open internet questionnaires, stakeholder meetings, public hearings)?

7.1 ACCA believes that consultation with the consumers and users of regulated products and services needs to be formalised and strengthened, and that it should consider owner-managed SMEs as retail customers. Although our argument is informed by our experience of the retail financial services industry, it can be applied easily in any other sectors or family of products in which a more than negligible asymmetry of information or bargaining power exists between suppliers and the consumer.⁴⁷

7.2 ACCA has positive experiences of stakeholder fora, provided a balance of perspectives is ensured. We have, in the past, praised the approach taken by the UK's Risk and Regulation Advisory Group (RRAC) in this regard.⁴⁸ As a registered organisation ourselves, we are also keen to see better use made of the information held in the Commission's register of interest representatives. The Commission's summaries of stakeholder input could go further in correlating stakeholders' opinions with their characteristics and stated interests (including, crucially, an explicit focus on SMEs), in order to approximate an unbiased view.

⁴⁶ European Commission, "European Workshops on Disclosure of Environmental, Social and Governance Information: Final workshop – Summary of discussions" February 2010

⁴⁷ For our argument regarding financial services in the EU, see ACCA, "Financial regulation in the interest of consumers" July 2009

⁴⁸ ACCA submission to the UK House of Commons Regulatory Reform Committee inquiry on "Themes and Trends in Regulatory Reform" March 2009

7.3 Of course, stakeholders, ourselves included, can only offer an aggregated view of business opinions in formal consultation. One way of overcoming this limitation and improving the quality of insights is grassroots consultation. In this regard, the establishment of SME Panels and the European Business Test Panel are both positive steps forward. ACCA would like to see the influence of these Panels strengthened; their findings publicised more widely; the population of businesses on them reinforced; and reasonable coverage achieved across the whole of the EU.⁴⁹ Because not all businesses, especially smaller ones, are aware of which regulations ultimately originate from the European institutions and which from national governments⁵⁰, integration with business consultation databases in the member-states will be particularly useful.

8. Given that smart regulation can only be delivered if all institutions and Member States act together, what steps should be taken to ensure that this happens?

8.1 As a necessary first step, the Council and the European Parliament need to follow the Commission's lead in carrying out Impact Assessments. This is not only a matter of good practice but also the institutions' explicit obligation under the 2005 Inter-institutional Agreement. Unfortunately, the ECA's recent audit of IAs found that Parliament only carried out seven Impact Assessments between 2005 and 2008, while Council only carried out one.⁵¹

8.2 Second, the Impact Assessment process in the member states and the EU institutions need to be further integrated. Current practice and guidance treats the two processes as largely separate⁵², despite the fact that member states may be better placed to make assumptions about enforcement capabilities and compliance behaviour in their own countries than the EU institutions.

8.3 Finally, where member states are given some level of discretion in the application of policies, there must be assurances that administrative savings and burdens will be correctly recognised where they occur. In the case of recent proposals to give member states the option to exempt micro-enterprises from some financial reporting obligations, a paradox emerged whereby the Commission could report a regulatory saving (because *it* was no longer requiring micro-enterprise to submit financial statements) even if *all* member states then refused to extend the exemption to businesses in their jurisdiction.

⁴⁹ These issues were underlined by the ECA's assessment of IAs in ECA, op. cit.

⁵⁰ UK House of Commons Regulatory Reform Committee 'Getting Results: The Better Regulation Executive and the impact of the regulatory reform agenda.' July 2008

⁵¹ ECA, op. cit.

⁵² Evaluation Partnership, 'Evaluation of the Commission's Impact Assessment System'. EC, April 2007 and European Commission, "Impact Assessment Guidelines" January 2009

Although micro-enterprises would not experience any actual savings, a false saving equal to 20% of the remaining administrative burdens reductions under the Commission's current programme would be created.⁵³

⁵³ ACCA, "Exempting Europe's micro-enterprises from financial reporting requirements: Frequently asked questions on the views of ACCA", March 2010