

CCBE remarks on the Commission consultation on the ‘Stocktaking of the Commission’s ‘Better Regulation’ approach’

19/10/2018

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers. The CCBE regularly responds on behalf of its members on policy issues which affect European citizens and lawyers.

The CCBE is grateful for the opportunity to comment on the Commission’s better regulation framework by raising issues that could be improved.

- 1. The CCBE would like to highlight the importance of the early publication of roadmaps in order to have a sufficient amount of information about the Commission’s plans.** These roadmaps contribute to greater transparency of consultations and provide useful guidance on the Commission’s policy and legislative planning. Without this sort of ‘advance notice’, the 8- or 12-week consultation period may be even more difficult to adhere to for an organisation like the CCBE due to the length of internal consultation and approval processes.
- 2. The CCBE is convinced that the Commission’s impact assessments, at least in some cases, should take into account such aspects as the Rule of Law or the possible impact on the justice system.** In this context, reference could be made to the Rule of Law Checklist of the Venice Commission that different actors – such as the Council of Europe and the European Union – should use as a tool when addressing the need and content of legislative reform. The CCBE also believes that in conducting an impact assessment, it is both sensible and efficient that those sectors which are well-positioned to provide information should be consulted.
- 3. The consultation period should leave sufficient time for stakeholders to provide their input.** To provide a meaningful contribution, many organisations need to consult their respective constituencies which takes time. Moreover, many of the proposals require careful examination as to their potential implications. Holiday periods should also be taken into account. Legal professionals have substantial expertise in the areas in which the EU legislates and would welcome longer consultation periods and/or more opportunities to provide feedback.
- 4. The CCBE suggests that the Commission should make better efforts in communicating the results of consultations to stakeholders.** It is not always clear how the comments and concerns have been taken into account. Moreover, as mentioned under point 2, sectors which are or will be directly impacted by any legislation should have the opportunity to contribute to the impact assessment.
- 5. The CCBE strongly recommends that the Commission revises its methodology of designing questionnaires.** At the moment, many of the surveys appear to use a ‘one-size-fits-all’ approach. While the CCBE understands that consultations are designed to get as many responses from as many respondents as possible, in practice it becomes difficult for professional associations to fill in the questionnaire on a matter which is relevant to their area. Many organisations have legitimate interests in submitting their position papers, but often their remit is narrower than the scope of the consultation or the measure in question.

6. However, filling in the questionnaire is often necessary as a prerequisite to being able to submit a detailed position paper on the subject of the consultation. In practice, some organisations fill in the questionnaire with short or barely relevant answers (usually by ticking 'I don't know') just to be able to attach the position paper at the end. Not only is this burdensome but it also poses a risk to the analysis of the results of the surveys.
7. **The CCBE also recommends that the Commission revises the way in which it formulates the questions.** At the moment, many of the questions are leading questions, offering too few answers (in case of closed questions). Open questions do not always offer sufficient space to elaborate further, or demand too much information compared to what the respondents can realistically provide
8. The example below, taken from the 2016 consultation on the regulation of professions, may illustrate our point in more detail.

Overall, thinking about any proposals made in the NAP (National Action Plan), to what extent do you agree with the following statements?

"The proposals in this NAP will....

[...]

- *improve prices for consumers;*
- *improve employment opportunities / business growth*

[...]

9. The above question includes raises two methodological problems:
 - First, it does not ask about a specific measure but 'any' measure and is thus imprecise. The analysis based on the responses could potentially look like '*65% of the respondents think that the proposals in the National Action Plans will improve consumer choice.*' This statement is not specific enough and does not bring any substantial information to the process.
 - Second, one of the options above is in fact a question about two things: business growth and employment opportunities. These may not be compatible options and putting them into one possible answer risks incomplete or biased results.
10. Some questions are either leading questions or include a positive judgment. With regard to the latter point, Question 48 of this consultation reads '*Are you satisfied with the following aspects of the Commission's impact assessments?*', and one of the responses reads '*Transparent information about all the relevant impacts [...].*' The word 'transparent' is, in itself, positive and the statement may therefore be interpreted as suggesting that the information in Commission's impact assessments may already be transparent, whereas the real aim of the consultation is to actually find out if they are at all. Similar concerns can be raised with regard to Question 43 ('*Are you satisfied with the following aspects of the Commission's evaluations?*').