

Neil Davidson QC
Cabinet Office
22 Whitehall
London SW1A 2WH

3rd March 2006

Dear Colleague,

Davidson Review: Implementation of EU Legislation

I should like to invite you to submit evidence to an independent review that the Government has asked me to lead of the UK's implementation of EU legislation. The Review will focus on the issue of 'over-implementation' and examine areas where the UK has regulations that are stricter or more burdensome than required by current EU legislation.

The context for the Review is the Government's drive to reduce unnecessary regulatory burdens on business and other stakeholders, as set out in Chapter 3 of the 2005 Pre-Budget Report. Around half of new regulations that impact on business derive from the EU and there are now systems in place to ensure that such laws are not 'over-implemented', unless there is a strong and proven case for doing so. However the stock of existing UK laws may include areas that were not implemented in the least burdensome way possible, thereby placing the UK at a competitive disadvantage.

The Review will look for evidence of 'over-implementation' in its broadest sense from transposition – the process of writing EU legislation into national law - through to enforcement. The Review will include in its scope instances of goldplating, double-banking and regulatory creep, the terms for which are explained in the accompanying document. Wherever possible, the Review will seek to identify proposals for deregulation or simplification that government departments may be able to include in their simplification plans to help reduce the burdens of their legislation.

In the accompanying 'call for evidence' I have outlined the issues on which we would like to hear your views and the examples of over-implementation, supported by evidence, which we are particularly keen to receive. This letter is being sent to key contacts across government, regulators, the business community and contacts in other European Member States. The letter is also being posted on the Review website http://www.cabinetoffice.gov.uk/regulation/davidson_review/

I should be grateful if you would send your submission to the Review team by 25th May. Early submissions of evidence would be gratefully received. I look forward to hearing from you and thank you in advance for your contribution.

Yours sincerely,



Neil Davidson QC

Davidson Review of the Implementation of EU Legislation - Call for Evidence

Background

The Government has asked Neil Davidson QC, the former Solicitor General for Scotland, to conduct an independent review of the UK's implementation of EU legislation, focusing on the issue of 'over-implementation'. Around half of new legislation with an impact on business derives from the EU and there are now systems in place to ensure that such laws are not 'goldplated', unless there is a clear and proven case for doing so. However the Government recognises that the stock of existing UK legislation derived from the EU may include examples of legislation that has not been brought into effect in the least burdensome way possible.

The issue of 'goldplating' EU legislation has been raised with Government for a number of years, but it has often been couched in general terms with little hard evidence relating to specific pieces of legislation. This Review provides an opportunity for businesses, trade associations, voluntary bodies and other stakeholders to submit hard evidence of EU legislation that has been implemented in ways that go beyond the minimum requirements of the EU legislation.

Terms of Reference

The main purpose of the Davidson Review is to support the productivity of the UK economy by ensuring that EU legislation has not been implemented in way that results in unnecessary regulatory burdens. The Review will support the work of government departments to reduce the regulatory burdens for which they are responsible by:

- Reviewing selected areas of EU-derived legislation for evidence of over-implementation in the UK, or smarter implementation by other Member States;
- Scrutinising departments' efforts to identify instances of over-implementation in their simplification plans and where possible, propose further simplification or deregulation measures for them to include in their plans.

The Review will publish a final report with recommendations for Government by the end of 2006.

Scope

The Review will evaluate a sample of EU legislation that has already been implemented in the UK, rather than look at every piece of legislation that originated with the EU. The Review will consider the whole process by which EU legislation is

given effect in the UK, from legal transposition - writing EU legislation into national law - through to enforcement. It will take into account the impact of legislation on business, the voluntary and public sectors and draw on comparisons of how legislation has been implemented in other Member States.

In order to maximise the potential for reducing regulatory burdens, the Review will adopt a broad definition of 'over-implementation' and consider examples of:

- **Goldplating.** This is when implementation goes beyond the minimum necessary to comply with an EU Directive by extending the scope; substituting wider legal terms for those used in the directive; not taking full advantage of derogations within a directive to keep requirements to a minimum; providing sanctions or enforcement mechanisms in the legislation that go beyond the minimum needed; or implementing early.
- **Double Banking.** This can occur when European legislation covers the same ground as existing domestic legislation and where the two regimes have not been made fully consistent or merged into one. For example, there may be domestic rules which serve less of a purpose under the new EU-derived framework but which generate confusion or extra costs for stakeholders.
- **Regulatory Creep.** This can occur where rules are unclear and where there is confusion between standards, guidance and regulation. This uncertainty creates additional burden and cost. For example, where stakeholders are not clear whether the requirements in a piece of guidance produced are statutory or best practice.

The Review team is interested in hearing about areas where EU-derived rules are enforced more strictly in the UK compared with other Member States. However, it recognises that work to take forward the Hampton Review should address the issues surrounding over-enforcement in the UK.

Whilst the Review will concentrate on areas where over-implementation has put the UK at a competitive disadvantage, it recognises that there will be instances where the benefits of over-implementation and higher regulatory standards justify the extra costs and also welcomes such examples.

Response details

Representations from all interested parties are invited and a list of questions is attached at Annex A. Most of the questions focus on the types of examples of over-implementation that the Review team is particularly interested in receiving. Wherever possible, when submitting examples, please supply evidence of its impact on stakeholders and, where appropriate, suggestions for simplification.

The deadline for responses to the call for evidence is **25th May 2006**. Please note that unless confidentiality is specifically requested, each representation could be made public. Submission of evidence should be sent in a word document, and clearly specify which question is being addressed.

Responses should be sent to:

Email: BRE-Davidson.Review@cabinet-office.x.gsi.gov.uk

Davidson Review
Better Regulation Executive
Cabinet Office
22 Whitehall
London SW1A 2WH

Tel: 020 7276 1751
www.cabinetoffice.gov.uk/regulation/davidson_review/

Call for Evidence – Questions

This annex sets out the issues on which the Review team would welcome responses. Not all questions will be relevant to all respondents – please skip questions that are not relevant to you. When answering the questions, please note that the UK is under a legal obligation to implement EU law in an effective, timely and proportionate manner. The focus of this Review is on areas where the UK has discretion in how it applies EU legislation, not the pros and cons of the EU legislation.

1. General

1a) Do you think that the over-implementation of EU legislation is a significant issue for the UK? Please give details of why / why not.

1b) At what stage in the process of bringing EU legislation into effect in the UK do you consider that over-implementation is most likely to occur and why? For example is it during transposition, the provision of guidance, or enforcement?

1c) What principles do you think should be applied when implementing EU legislation to help ensure that no unnecessary burdens are introduced? For example, cost-benefit analysis, consultation, use of copy-out¹ etc.

1d) The Review has adopted a broad definition of what constitutes ‘over-implementation’, covering goldplating, double-banking, regulatory creep and over-enforcement, as defined on the previous page. Are there any other types of over-implementation that should be included within the scope of the Review?

2. Examples of Over-Implementation

The following question invites you to submit specific examples of over-implementation to the Review team. As your examples will provide the basis for our choice of legislative areas to look into, please be as specific as you can about:

2a) The type of over-implementation that has occurred (goldplating, double-banking, regulatory creep, over-enforcement).

For example, if you consider that the EU legislation has been goldplated, please specify whether this was due to the UK legislation having a broader scope than the original EU Directive, or being implemented early.

2b) The EU legislation that has been over-implemented and the corresponding UK legislation (Please provide reference numbers where known).

2c) The industry / sectors affected by the legislation.

¹ Copy-out is when implementing legislation adopts the same wording as the directive.

2d) What extra burdens result from the over-implementation and the impact on your organisation or members? Do they have a disproportionate impact on a certain part of the sector, e.g. SMEs?

2e) Why you think that the over-implementation occurred, e.g. unclear definitions in the original EU Directive, or higher pre-existing national standards.

2f) Your views on whether the over-implementation was justified and why / why not.

3. Simplification

One of the main aims of this Review is to help government departments to reduce the regulatory burdens for which they are responsible, through identifying further proposals to be included in departmental simplification plans. Simplification plans cover a wide range of proposals, including proposals to deregulate, consolidate legislation, repeal legislation or streamline regulatory regimes.

3a) For each example of over-implementation provided, where possible, please outline how the regulatory burdens could be reduced. Please give an indication of the impact of your proposal.

4. International Comparison

The Review will consider whether other Member States have implemented certain areas of EU legislation in a smarter and less burdensome way than the UK.

4a) Do you have any specific examples of other Member States implementing European legislation in a way that resulted in less burdensome regulation than in the UK? Please be as specific as possible about whether this was due to differences in the actual legislation or how it is enforced in practice.

4b) Do you feel that this has resulted in a competitive disadvantage or benefits for UK businesses or other stakeholders? If yes, please say how and to what extent.

4c) Do you consider that other Member States have advantages when implementing EU legislation due to the different nature of the UK legal system by comparison to other Member States? Do you consider that newer Member States have administrative advantages by adopting legislation wholesale rather than in a piecemeal manner?

4d) Do you have any examples of best practice of the implementation of EU legislation here in the UK when compared with other Member States, i.e. legislation that minimises the burdens on UK stakeholders?

5. Other Information

5a) Please give details of any reports, contacts, or other information that you consider of relevance to the Review.

5b) Please outline any other issues to do with the implementation of EU legislation, which have not been mentioned so far, that you think the Review should consider.