The United Kingdom’s Guiding Principles for EU Legislation

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In the Beginning…..Commitments

• **Coalition Agreement May 2010:**
  
  “We will end the so-called ‘gold-plating’ of EU rules, so that British businesses are not disadvantaged relative to their European competitors”

• **Guiding Principles for EU legislation** published in December 2010
  
  – Completed July 2011 – include operating principles for **Early Engagement and Influencing**

• **Transposition Guidance** revised and published April 2011
So what does this mean?

• Guiding Principles comprise:
  – General Principles
  – Operating Principles
• From Early Engagement, via EU influencing, to Transposition
• The Principles establish how we **tackle the flow** of EU legislation from conception to implementation
  – Concept
  – Proposal
  – Negotiation
  – Adoption
  – Publication
  – Transposition
  – Implementation
  – Review
General Principles: Government’s Approach

- The Government's approach is:
  - to look at the cumulative impact of new EU measures
  - wherever possible, argue for alternatives to regulation at European level
  - to engage with the European Commission before it has adopted proposals to increase UK influence
  - to build alliances with other MSs, MEPs and other EU-level stakeholders to increase the UK’s effectiveness in negotiation
General Principles: Ministerial Commitments

• **Ministers must ensure that:**
  
  – They are **sighted on all EU measures** in their Department from proposal to transposition/implementation
  
  – Their Departments assess **from the outset**
    
    • the impact on the UK, and
    
    • effectively project manage from **negotiation to transposition**
Guiding Principles: Early Influencing and Engagement

• **Twice a year**, Ministers report to the Foreign Secretary on their Department’s early influencing priorities and engagement strategies:
  
  – to *influence the Commission’s policy agenda* and ensure future EU measures are justified;
  
  – to ensure that proposals which cannot be achieved through non-regulatory means are *drafted to maximise benefits and minimise risks to the UK*.

• Cabinet Committee can then **agree cross-Government early influencing priorities**
Guiding Principles: Early Influencing and Engagement

• Departments will seek clearance for their proposed UK negotiating position promptly
  – analysing the order of magnitude of likely impacts of options to help Ministers make evidence-based decisions;
  – analysis should be proportionate to the proposal and time available, and presented succinctly.

• The Government will work with EU partners to hold the EU institutions to account on the commitments made on
  – consultation
  – impact assessment
  – the ‘think small first’ principle
  – reviews in order to improve the quality of EU regulation
Guiding Principles: Approach to Transposition

 Ministers must inform Cabinet Committee of their approach to transposition/implementation within two weeks of an EU measure appearing in the Official Journal of the European Union – satisfy the Committee:

– that they have identified the aims of the EU law and the relevant policies of the UK Government

– how the two will be brought into harmony so that transposition neither has unintended consequences in the UK nor risks infraction
Guiding Principles: Approach to Transposition

Transposition Principles addressed twice during policy development cycle:

- ‘Pre-consultation’ Cabinet Committee Clearance
- ‘Final Stage’ Cabinet Committee Clearance

Principle 5 – When transposing EU law, the Government will:

a) wherever possible, seek to implement through the use of alternatives to regulation

b) endeavour to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts

c) use copy out for transposition where it is available, except where doing so would adversely affect UK interests – if not used, need to explain to Cabinet Committee the reasons for their choice

d) necessary implementing measures come into force on (not before) the transposition deadline, unless there are compelling reasons

e) include a statutory duty for Ministerial review every five years
What is ‘gold-plating’?

Principle 5 b) “endeavour to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts”
So what is ‘Gold-plating’?

`Gold-plating` is when implementation goes beyond the minimum necessary to comply with a Directive:

- extending the scope
  - adding in some way to the substantive requirement, or
  - substituting wider UK legal terms for those used in the Directive
- not taking full advantage of any derogations which keep requirements to a minimum
- retaining pre-existing UK standards where they are higher than those required by the Directive
- implementing early, before the date given in the Directive

Source: UK Government Transposition Guidance
Sources of Guidance

• Guiding Principles for EU legislation
  www.bis.gov.uk/policies/bre/improving-eu-regulation/guiding-principles-eu-legislation

• Transposition Guidance
  www.bis.gov.uk/assets/biscore/better-regulation/docs/t/11-775-transposition-guidance.pdf

• Better Regulation Executive (BRE) website
  www.bis.gov.uk/bre

• Red Tape Challenge
  www.redtapechallenge.cabinetoffice.gov.uk
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