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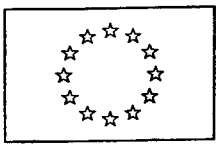

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION

Simplifying and improving the regulatory environment

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INTRODUCTION

A concern of some antiquity

1. The Edinburgh European Council of December 1992 made the task of simplifying and improving the regulatory environment one of the Community's main priorities.

Nine years on, it has to be said that the results still fall short of the objectives, due to the complexity of the task and the lack of real political support. **As a result, most of the work still remains to be done. This view is shared by the two arms of the legislative authority**, a point which has been stressed in any number of debates in the European Parliament over the past two years.

The need to act

So regulatory improvement and simplification remain **an absolute necessity for the future of the European Union**. The reasons were set out in the White Paper on European Governance, which the Commission adopted on 25 July 2001:

- The need to strengthen the **democratic legitimacy** of the European project means that the EU has to work towards legislation which is better, simpler, more responsive to the real problems, and more accessible. This is a *sine qua non* if EU action is to be better understood, better applied and more readily accepted by the people of Europe.

- The EU's **economic and social development** requires, in accordance with the strategy formulated at the Lisbon European Council, a clear and effective regulatory framework to protect the interests of the people and of business competitiveness by enhancing legal certainty and cutting the cost of poor regulatory work[1].

- **With enlargement looming large**, there is a need for regulatory arrangements to be made simpler and better if the *acquis* is to be fully applied in an enlarged Europe which still has the requisite freedom of action.

Recent moves

2. The need for the **European institutions and the Member States to get moving** has been expressed on various occasions over the past two years at the highest level:

- The **conclusions of the Lisbon European Council**, subsequently confirmed and extended by the European Councils of Stockholm and Göteborg, call for the

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1 According to research done by EOS/Gallup, European firms say that they are excessively shackled by the poor quality of regulation. They put the cost of regulation at 4% of Community GDP. 15% of this cost, or 0.6% of Community GDP, could be avoided by better regulation, bringing a saving of some EUR 50 billion.

formulation "***by the end of 2001***" of a "***strategy for further coordinated action to simplify the regulatory environment***"[2].

- European Parliament debates in 1999 and 2000 on the evaluation of the SLIM and BEST programmes brought out the need to allocate, at all levels, the requisite resources to generate good, simple and comprehensible legislation.

- The **High-level advisory group**, set up by the Ministers for the national civil services in November 2000, has delivered important and high-quality input on all aspects of this problem. The report of the Group, chaired by Mr Mandelkern, contains an in-depth analysis of good practices for ensuring quality regulation across the whole of the legislative cycle. It also contains a highly significant number of specific recommendations for improving the quality of legislative instruments (at both national and Community level), though the responsibility of the Member States is not sufficiently emphasised. The quality of national and Community legislation would be improved if the Member States and the Community institutions — each acting within its own sphere — were to implement the report's recommendations. The Commission feels, however, that implementation of these recommendations should take account of the specific features of the decision-making process within the Community, and of the specific competences of each institution[3].

The Commission is convinced that no progress can be made without changes to the way all the players go about their tasks, whether they be European institutions or national authorities. Effecting a reform of this nature would not require any further amendments to the treaties. However, **the Commission does feel that an interinstitutional discussion on simplifying and improving the regulatory environment is necessary** and should serve to formulate the political framework for a common strategy.

Commission initiatives

3. **The Commission has already presented an interim report to the Stockholm European Council**[4], taking stock of the situation and suggesting certain guiding principles and possible courses of action. In addition, the **White Paper on European Governance**[5], which the Commission adopted on 25 July 2001, proposes guidelines; with the opportunity for wide-ranging consultation up to **March 2002**. The Commission also notes with great interest the European Parliament's first

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2 Conclusions of the Lisbon European Council of 23 and 24 March 2000: *"set out, by 2001, a strategy for further coordinated action to simplify the regulatory environment, including the performance of public administration, at both national and Community level"*. Conclusions of the Stockholm European Council of 23 and 24 March 2001: *"The Commission, in cooperation with all relevant bodies, will present a strategy for regulatory simplification and quality before the end of 2001."* Conclusions of the Göteborg European Council of 15 and 16 June 2001: *"... the Commission will include in its action plan for better regulation to be presented to the Laeken European Council mechanisms to ensure that all major policy proposals include a sustainability impact assessment covering their potential economic, social and environmental consequences."*

3 To take an example: some of the recommendations made by the Mandelkern Group might sit uneasily with certain practices used by the Community legislator. In many cases, a regulatory instrument has to be adopted on the express condition that a new instrument be proposed to cover other aspects.

4 COM (2001) 130.

5 COM (2001) 428.

Elements of a coordinated strategy

opinion on the White Paper[6]. The important thing is that these elements should form part of a coordinated and operational strategy, **a strategy which would mean**:

- Having a **common definition** of objectives: as far as the Commission is concerned, this would mean improving the practices and current provisions of regulatory activity, throughout the legislative cycle, and simplifying existing legislation, in both qualitative and quantitative terms. The aim is not to deregulate or to interfere with the executive's or the legislator's prerogatives, and certainly not to restrict the Community's freedom of action.

- Getting **strong and real political support** from the Member States and the institutions, reflected in human and budgetary resources, new working methods and a new working culture.

- **Pinpointing specific, realistic and inspirational measures** which can give a clear political signal to the people of Europe.

It follows that the way in which the principles and content of this strategy are applied should be a matter for interinstitutional dialogue between the Commission, the European Parliament and the Council.

Four priority measures

4. The point of the Commission's communication, then, is **to consult the other institutions and the Member States** on this strategy and on what the Commission sees as the most pressing concerns:

(1) simplifying and improving the *acquis communautaire;*

(2) well prepared and more appropriate legislation;

(3) a new culture within the institutions;

(4) better transposition and application of Community law[7].

On the strength of reactions from the Council and the European Parliament to this communication, and bearing in mind the consultation process initiated by the White Paper on Governance, which runs until March 2002, **the Commission will propose a detailed plan of action for simplifying and improving the regulatory environment in June 2002.**

1. SIMPLIFYING AND IMPROVING THE *ACQUIS COMMUNAUTAIRE*

The first thing is to divest ourselves of the current political contradiction: the *acquis communautaire* is highly regarded for its basic raft of rights and integrating provisions and, at the same time, denigrated for its complexity of access, comprehension and application.

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6 Resolution of the European Parliament, contained in Mrs Kaufmann's report, adopted on 28 November 2001.

7 The Commission would point out that it also proposed other measures in its interim report to the Stockholm European Council.

Simplifying the acquis communautaire

As it currently stands, the *acquis communautaire* extends to more than 80 000 pages, making it clearly cumbersome for economic operators and the man in the street alike. Any difficulties are bound to increase with the arrival of new Member States which will have to digest this corpus of rules and regulations. **Simplifying and reducing the volume of texts is clearly essential, as is the need for a quantified objective and a clear political deadline.**

There are various ways[8] of doing this, and a number of one-off measures have been taken over recent years (e.g. the SLIM initiative). It has to be said, though, that results remain extremely limited. The institutions and the Member States must **draw the necessary conclusions** and set up a campaign to simplify legislation and make it coherent, effective and coordinated.

A reduction of at least 25% by January 2005

The Commission proposes **that the institutions together formulate an integrated programme for simplifying the *acquis communautaire***. This aim could be achieved by reducing the number of acts, either using the codification method or recasting a set of succeeding regulations, and by reducing the total number of pages, using the same methods and by simplifying the substance of the regulatory instrument[9]. This programme, which would supplement the codification programme already adopted by the Commission, could have the effect of considerably reducing the volume of existing texts, if possible by at least 25%, by the end of the present Commission's term of office in January 2005. On conclusion of this first stage in the process, the institutions would decide on the arrangements for the second phase in the light of their experience in the first.

All concerned need to be aware that a plan of this scale must have the requisite resources and lead to the **formulation of new working methods**[10].

Withdraw a hundred or so regulatory proposals pre-dating 1999

At the same time, it is essential to rid the legislative system of proposals which are no longer of any topical interest. To give a strong political signal, the **Commission intends to withdraw a hundred or so pending proposals dating from before 1999 and which are no longer of topical interest**.

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8 Consolidation means grouping together in a single non-binding text, for reasons purely of information, the current provisions of a given regulatory instrument which are spread among the first legal act and subsequent amending acts. Codification means the adoption of a new legal instrument which brings together, in a single text, but without changing the substance, a previous instrument and its successive amendments, with the new instrument replacing the old one and repealing it. An interinstitutional agreement setting up a fast-track method of work with a view to the official codification of legislative texts was concluded on 20 December 1994. Recasting means adopting a single legal act which makes the required substantive changes, codifies them with provisions remaining unchanged from the previous act, and repeals the previous act. The inter-institutional agreement for a more structured use of the recasting technique for legal acts was recently finalised and will make it easier to apply this method. Simplification means seeking, with the benefit of hindsight, to make the substance of a piece of regulation simpler and more appropriate to the users' requirements (the SLIM method is the best example of this).

9 In accordance with the principles laid down in the inter-institutional agreement on recasting adopted by the institutions in 2001.

10 Cf. Part 3 of this document.

2. LEGISLATION WHICH IS BETTER PREPARED AND MORE APPROPRIATE

Community law is often criticised for the alleged inappropriateness of solutions proposed by the Commission and subsequently adopted by the European Parliament and the Council.

Improve the quality of Community law

The **Commission feels that it has a responsibility to make sure that the quality of Community law is steadily improving**[11]. This is a basic element in terms of strengthening the Community's democratic structures.

Against this background, and without wishing to prejudice the outcome of this consultation, the Commission is proposing two priority measures.

A – Strengthening consultation and prior impact analysis

Strengthen the preparation of legislative proposals...

Each proposal for a legal act constitutes a commitment on the part of the Commission. Having regard to the wider Community interest, the Commission first of all conducts a prior evaluation of the problem to **assess the expediency of action at Community level**. It then conducts consultations with the parties concerned and does impact analyses with a view to **assessing which is the most effective way of meeting the desired objectives, which is the most appropriate instrument and, where appropriate, what would be the cost and benefits**. It might be that, at this stage, Community action is not necessary.

To give the people of Europe more effective and more transparent legislation, in accordance with the Protocol on the application of the principles of subsidiarity and proportionality[12], the Commission intends to improve these practices.

1) Consultations

... by more in-depth consultations.

The Commission already has access to appropriate instruments (Green Papers, White Papers, consultations of the social partners, forums and, increasingly, interactive Internet-based consultation processes, etc.) and a wide range of bodies (e.g. groups of experts and advisory committees) for consultation purposes. It is also committed to publishing a full list as soon as possible in the interests of transparency. The Commission also takes into account, wherever possible, the opinions of the Economic and Social Committee and the Committee of the Regions. **This is a unique and invaluable resource for the Commission, and any improvement in the way it works will provide additional guarantees for the public at large.**

We have to go further along this path. The Commission now intends to intensify these **consultations**, targeting representatives of civil society **and using the Economic and Social Committee and the Committee of the Regions**, and developing access for the general public to databases so as to encourage **online consultation** (via Eur-Lex et Pre-Lex)[13].

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11 In accordance with the 1999 inter-institutional agreement on common guidelines for the drafting of Community legislation, published in OJ C73 of 17.03.1999.

12 Cf. point 9 of the Protocol, appended to the Amsterdam Treaty.

13 Eur-Lex is the interinstitutional database which contains current legislation. Pre-Lex is a special website containing part of legislation currently in preparation. It might be worth considering making Eur-Lex

2) **Impact analysis**

The Commission already undertakes **pre-assessments** of its draft proposals, so as to decide whether or not to take action at EU level.

Where action proves necessary, the pre-assessment will also help to **decide which proposals have to be subjected to detailed impact analysis**. This decision is one for the Commission when it adopts its programme of work.

Harmonised sustainability impact analyses

Against this background, and in accordance with the mandate handed down by the Göteborg European Council, **the Commission intends to establish, by the end of 2002, a coherent method for impact analysis to ensure that all major proposals contain, in a form which is proportional and adapted to their content, a sustainability impact assessment covering their economic, social and environmental consequences**. It intends to present a Communication on this subject as soon as possible. The system will be based on an evaluation of the costs and benefits, stressing the economic, social and environmental impacts. The impact assessment will define the problem which needs to be addressed, and will analyse the available options, their respective impact, and how the policy will be implemented.

Pursuant to the recommendations made by the Mandelkern group, the Commission expects the Member States to ensure that, whenever a national regulatory impact assessment is carried out, the results of that assessment are notified to the Commission and to the other Member States along with the details of the regulatory measures themselves.

Setting up these practices is a difficult but necessary business, but must **not make the legislative cycle excessively protracted; nor must it constitute an obstacle to the European Union's freedom of action**[14]. The Commission's view is that a regulatory instrument which is better prepared and which is based on sound consultations and impact analyses will lead to the measure being adopted more readily and rapidly by the European Parliament and the Council.

B – Making better use of the available regulatory instruments

Make better use of existing legislative instruments

In the **White Paper on European Governance**, which was adopted in July 2001, the Commission said it wanted to focus **joint discussion** on ways of adapting the Community's legislative instruments and other means of action.

It is clear that the **range of instruments has to be clarified if we want to achieve greater effectiveness**. The Commission will conform to the Treaty provisions on the choice of instrument where this is clearly laid down.

The available range of instruments is already wide: regulations, directives, decisions, framework decisions, agreements and recommendations. The open method of

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into an access portal for all legislative sites. In addition, Eur-Lex already contains Celex and details of national transposition measures.

14 Clearly, these detailed impact analyses will not relate to urgent proposals, or to minor or ongoing management proposals, or where the intention is simply to amend the text or bring it up to date, or to acts required by the Treaty itself.

coordination and agreements between the social partners are complementary possibilities.

The **distinction between regulations and directives** has to be more clearly understood: a regulation must be used only for action which requires uniformity of application in the Member States, while directives must revert, in all other cases, to being an instrument which lays down a legal framework and sets out the objectives, in accordance with the Treaty and the Protocol on the application of the principles of subsidiarity and proportionality[15].

With a view to making more use of less detailed directives, the Commission should, in appropriate cases, be given **more executive powers**. At the same time, there should be a review of the existing **comitology** procedures and of the arrangements whereby the legislator vets executive instruments.

In addition, all the possibilities offered by existing types of action should be used to meet the Treaty's objectives: regulatory action, coordination, financial support, binding or non-binding measures. To meet certain new requirements in specific sectors, some leeway should sometimes be given to the interested parties themselves (e.g. economic operators, social partners, other players) so as to give them the responsibility and avoid having excessively cumbersome legislation, in accordance with the above-mentioned principles and with the dictates of transparency and defence of the general interest.

Co-regulation: a Community framework fleshed out by the interested parties

Co-regulation is a way of achieving flexibility and greater effectiveness. It creates a link between binding legislative or regulatory measures (forming the principal legal and policy framework), on the one hand, and action taken by the parties most interested in applying the particular measure, on the other. It should also be vested with Community sanctions as a guarantee of continuity of the law and consistency of the legislation.

Co-regulation is not an attempt to by-pass the legislator's prerogatives, nor to duck out of regulation. It will always be up to the legislator to decide to what extent recourse should be had to co-regulation. The practical arrangements for this will emerge from the interinstitutional dialogue. There is provision under the Treaty for **agreements between social partners** at European level, which can be implemented either by a binding Council act or by dint of procedures and practices proper to the social partners and the Member States (see Article 138 and 139 of the Treaty). Creating Community norms by way of such agreements pays more heed to the principles of proportionality and subsidiarity.

It follows that the Commission will, in appropriate cases, use these various instruments and methods in proposing a solution which is geared precisely — and better — to a given situation. The Commission notes that self-regulation, subject to clearly defined conditions, may also be a way of achieving the Treaty's objectives and avoiding excessive regulation. The White Paper on European Governance proposed collective discussion of a general framework for such arrangements. On this point, the Commission awaits the reaction of the other institutions and of the Member States.

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15 Cf. point 6 of the Protocol on the application of the principles of subsidiarity and proportionality.

3. A NEW CULTURE WITHIN THE INSTITUTIONS

It has become clear since 1992 that regulatory simplification is not something that can be simply decreed. It requires not just **the requisite human and budgetary resources, but also changes to the existing structures, with a view to establishing a new administrative and political culture**[16].

Any such change will require a collective effort from the Commission, the other institutions and the Member States.

An internal legislative network within the Commission

The **Commission intends to set an example** by creating **an internal legislative network** to promote good practice and apply the principles of legislative quality which will emerge from the interinstitutional dialogue.

The network should make it possible to detect at an earlier stage in the process any initiative which does not accord with the principles of subsidiarity and proportionality. It will be up to the Secretariat General to run and coordinate this network and to alert the Commission to any proposals which might run counter to the principles of subsidiarity and proportionality. The Commission reserves the right to withdraw its proposals should the compromises envisaged by the Council or the European Parliament introduce a level of legislative complexity which the Commission feels is not compatible with these principles.

Interinstitutional networking essential

Since Community law is a matter for the European Parliament and the Council as well as the Commission, it would be necessary to set up a parallel **interinstitutional network**, under the aegis of the Commission, responsible for monitoring the legislative quality of texts.

A new culture means new working methods. For instance, it would not be right to make the work of codification, recasting or simplification a task simply for the experts who helped adopt the acts in the first place. For that reason, it would certainly be a good idea to set up a special *ad hoc* group within the Council. Similarly, the Council and the European Parliament should use fast-track procedures to adopt simplified texts.

4. IMPROVED TRANSPOSITION AND APPLICATION OF COMMUNITY LAW

In the main, a responsibility of the Member States

The **Member States, which are responsible for applying 90% of European law, also have a political responsibility in terms of the quality of the regulatory environment**, in that they have to apply and/or transpose the Community's legal instruments. This is an essential task, and it needs strengthening.

The Commission, for its part, checks on whether the law is being properly transposed and also has to check, alongside the Member States, what concrete effects the legislation is having.

More faithful transposition

The Commission would therefore like to see the **Member States commit themselves to ensuring that Community acts are transposed into their national**

The Commission reserves the right to state in the 2003 APS what resources it needs to do the work described in the plan.

legislation correctly and within the set deadlines, with a view to achieving the objectives set down by the Lisbon European Council. Procedures for notifying these transposing measures to the Commission will also have to be modernised and speeded up.

Correspondents in the Member States

By the same token, each Member State should **appoint transposition/application correspondents** to ensure that information passes correctly between the Commission and the national administrations. This structure should also generate better cooperation and produce **more feedback** for assessing the usefulness and effectiveness of a particular item of legislation.

Finally, without prejudice to its role as guardian of the Treaties, the Commission should, along with the Member States, look into the possibility of a **common approach to the monitoring and practical application of Community legislation**. This would require a set of objectives, principles and common criteria, arrangements for administrative cooperation, exchanges of information, mutual assistance and coordinated surveillance of the sector concerned.

Conclusion

For an interinstitutional strategy in 2002

Simplifying and improving the regulatory environment will require concerted action on the part of the institutions and the Member States. So far, very little has been achieved. **The Commission would urge all interested parties to do their utmost to formulate a common strategy which will serve Community lawmaking, and ultimately the people of Europe.**

Depending on reactions to this document, the Commission proposes launching joint discussions as quickly as possible with the European Parliament and the Council with a view to defining the principles and content of this strategy, the aim being to have an action plan by June 2002, and possibly an inter-institutional agreement.