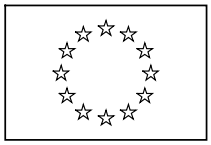

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION

Action plan "Simplifying and improving the regulatory environment"

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Action plan "Simplifying and improving the regulatory environment"

INTRODUCTION

The purpose of this communication from the Commission is to present to the European Council an Action plan introducing "a **strategy for further coordinated action** to simplify the regulatory environment", in accordance with the **mandate issued by the European Council at Lisbon and confirmed at the Stockholm, Laeken and Barcelona summits**[1]**.**

The aim of simplifying and improving the regulatory environment is to ensure, in the interests of members of the public, that Community legislation is more attuned to the problems posed, to the challenge of enlargement and to technical and local conditions. By being written in a less complicated style, it should be easier to implement for the Member States and operators concerned and easier for everyone to read and understand. Combined with efforts to improve legislative procedures and institutional practices, action of this kind should save time and reduce costs for companies and public authorities. The ultimate goal is to ensure a high level of legal certainty across the EU, even after enlargement, enable economic and social operators to be more dynamic and thus help to strengthen the Community's credibility in the eyes of its citizens. The aim is not to deregulate the Community or limit its scope for action.

For over a year, the Commission has been engaged in a consultation process with the other institutions and Member States with which it shares responsibility for the quality of Community legislation. It has presented a series of papers in order to solicit their opinions:

- An initial interim report, submitted to the Stockholm European Council in March 2001, taking stock of the situation and setting out the ideas being considered[2];

- The White Paper on European Governance, adopted in July 2001, which includes a section on improving the quality of legislation. The White Paper was subject to wide public consultation until 31 March 2002[3];

- A political communication, submitted to the Laeken European Council, which was drawn up for the purpose of consulting the Council, the European Parliament and the Member States on the main points of the Action Plan[4].

In response to these documents, the Commission received several important submissions, which it has used in drawing up this action plan:

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1 Conclusions of the European Council summits at Lisbon (23 and 24 March 2000), Stockholm (23 and 24 March 2001), Laeken (8 and 9 December 2001 and Barcelona (15 and 16 March 2002).

2 COM (2001) 130 final.

3 COM (2001) 428 final.

4 COM (2001) 726 final.

- the comments received during the period of open consultation launched by the White Paper on European Governance; these show widespread support for the White Paper's proposals on the quality of legislation;

- the resolutions on this subject adopted by the European Parliament[5] and the Council of Ministers[6] as well as the opinions of the Economic and Social Committee[7] and of the Committee of the Regions[8];

- the comments of various Member States[9] ;

- and the final report of the high-level consultative group ("Mandelkern Group") set up by the Ministers responsible for the Civil Service in November 2000[10], of which the Commission has taken the utmost account and most of whose recommendations correspond to the measures proposed in this Action Plan.

Now that this consultation process has been completed, the Commission feels that the strategy for better quality legislation should focus on the three main parts of the legislative cycle: preparation and presentation of the legislative proposal by the Commission; discussion of the proposal by the European Parliament and the Council; application of the legislative act by the Member States.

The Commission has drawn up an **Action Plan** for simplifying and improving the quality of the regulatory environment without changing the Treaty. It wishes to discuss this now with the other institutions, particularly with a view to reaching an interinstitutional agreement.

In order to organise and assist the future dialogue between the institutions, the Action Plan, while stressing the relevance of the three stages of the legislative cycle, focuses on the individual and joint responsibilities of the entities involved: Commission, European Parliament, Council and Member States. This communication therefore makes a distinction between the following kinds of action:

- action which falls within the **Commission's** remit;

- action proposed to the **European Parliament and Council** in their capacity as the Community legislator;

- action designed to ensure the effective transposition and application of legislation by the **Member States**;

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5 Cf. European Parliament resolution on the Commission White Paper on European governance, adopted on 28 November 2001, and the European Parliament's draft resolution on the Communication "Simplifying and improving the regulatory environment" (COM (2001) 726), based on the Medina Ortega report.

6 Council Resolution on "Internal Market/Consumer Affairs/Tourism" adopted on 21 May 2002.

7 Opinion of the Economic and Social Committee, adopted on 21 March 2002.

8 Opinion on "New forms of governance: Europe as a framework for citizens' initiatives", adopted on 4 January 2001, and an opinion on the White Paper on European Governance, adopted on 4 April 2002.

9 Comments from the Federal Republic of Germany, Denmark, Sweden, the Netherlands, France and the United Kingdom on the White Paper on European Governance. Comments from the United Kingdom on the Commission Communication of 5 December 2001 (COM(2001)726).

10 Final report of the high-level consultation group, chaired by Mr Mandelkern, submitted on 13 November 2001.

- action to promote a **common legislative culture** within the Union.

In light of the comments and opinions received, the proposed Action Plan identifies specific measures involving the Commission, the European Parliament, the Council and the Member States either individually or collectively.

The Commission, for its part, intends to honour the commitments it has undertaken and announced in the three documents mentioned above. Therefore, with a view to improving the quality of its work, **the Commission is adopting, alongside this Action Plan, two specific Communications** which explain two key measures that the Commission is launching: firstly, the establishment of *minimum standards of consultation* and, secondly, the definition of a *consolidated impact assessment method* for its key initiatives concerning policy and legislation. In this way, the Commission wishes to send a clear political signal of its intention to improve the quality of legislation, make its working methods more transparent and set the example of good practice. These measures will be introduced by redeploying existing resources, which will remain the same.

The Commission would stress that the success of this strategy, to which the Action Plan gives concrete form, depends on **the other institutions and Member States showing a strong political commitment to its formulation and implementation**. In this respect, the Commission reiterates its desire for creation of an ongoing **interinstitutional dialogue** so that it can discuss with the European Parliament and Council the measures contained in the Action Plan which fall within their legislative remit and within the remit of the Member States. As it has already announced[11], the Commission is still convinced of the need for an **interinstitutional agreement** on these matters.

This Action Plan must also be seen in the context of the work of the **European Convention on the future of the Union**[12] insofar as the Convention's mandate also covers key points concerning the quality of legislation. The Commission therefore reserves the right to make additional comments on the "distinction between legislative and executive measures" and the problem of which legislative instruments are appropriate.

1. ACTION TO BE TAKEN BY THE COMMISSION

By virtue of the Treaties, the Commission has a virtual monopoly on exercising legislative initiative within areas of Community competence. It therefore falls to the Commission to ensure that legislative proposals are highly relevant and of a high quality, in accordance with the Protocol on the application of the principles of subsidiarity and proportionality[13]. The Commission also seeks to guarantee the proper application of legislation by the Member States.

In view of these responsibilities, the **Commission is committed to taking the following action** in order to improve the quality, relevance and monitoring of its proposals.

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11 COM (2001) 726 final, page 10.

12 Conclusions of the Laeken European Council, Annex 1.

13 Cf. Point 9 of the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty of Amsterdam.

1.1. Improving the quality of legislative proposals

In the White Paper on European Governance, the Commission made a certain number of commitments to the quality and transparency of improving the large number of consultations which it already holds. In this regard, the Commission would point out that this year it is going to publish a list of bodies through which civil society is being consulted and that it plans to implement the protocols signed with the Economic and Social Committee and the Committee of the Regions. Moreover, the Commission will shortly publish guidelines on how expert opinions can be obtained and used by the Commission with a view to ensuring that such opinions comply with the principles of responsibility, pluralism and integrity.

Alongside this Action Plan, the Commission adopts a Communication proposing *minimum standards of consultation*[14]. This Communication is also the subject of consultations and should enable these minimum standards to be adopted by the end of 2002. The Commission would point out that reinforcing the consultation stage which precedes the legislative proposal will have absolutely no impact on the commitments made with regard to the Economic and Social Committee and the Committee of the Regions with a view to obtaining opinions, in appropriate cases, prior to exercising its right of initiative; nor will it have an impact on the special role played by the social partners[15].

Action: Defining minimum standards of consultation

Defining *minimum standards of consultation* by the end of 2002: this will be done in cooperation with the parties concerned and on the basis of the Communication presented by the Commission.

The purpose of this arrangement is to place the consultations instigated by the Commission on a systematic footing and make them more transparent. More particularly, its aim will be to:

– help improve the participation of interested parties and civil society in the consultation process;

– make consultations more transparent as regards the way in which they are conducted and how the results are used by the Commission ;

– ensure that all the Commission's departments adopt a consistent approach to the consultation process.

In particular, one of the standards envisaged by the Commission will stipulate that consultations last for a minimum of six weeks, another will make it easier for interested parties to take part in consultations by establishing a single access point showing the list of consultations in progress.

Remit: Commission

Implementation: as of 2003

Alongside the procedures developed over several years within the OECD and some Member States, the Commission has devised an *impact assessment method* in order to meet the requests made at the European Council summits in Gothenburg and Laeken. The method is

[14] COM (2002) 277 final.

[15] In accordance with Articles 138 and 139 of the EC Treaty.

set out in a special communication adopted alongside the present Action Plan[16]. The Commission plans that this instrument, which brings all existing procedures under one roof[17], should guarantee and justify the validity of its legislative proposals.

Action: Assessing the impact of major legislative and policy initiatives

By the end of 2002, the Commission will implement a *consolidated and proportionate instrument for assessing the impact* of its legislative and policy initiatives, covering regulatory impact assessment and sustainable development (in the economic, social and environmental fields) and incorporating the existing instruments and methods. The impact assessment will make it easier to decide whether action should be taken at Community level, having regard to the Treaty and the Protocol on the application of the principles of subsidiarity and proportionality.

- This instrument will also make it easier to choose the most appropriate instrument or combination of instruments (of both a legislative and non-legislative nature) from the wide range of options available (regulation, directive, recommendation, coregulation, self-regulation, voluntary sectoral agreements, open coordination method, financial assistance, information campaign);

- In principle, all legislative proposals and all other major policy proposals for adoption, i.e. set out in the Commission's work programme, will be subject to the impact assessment procedure. However, only significant proposals will be subject to an extended impact assessment.

- On the basis of a preliminary impact assessment at the stage of the Annual Policy Strategy a year before adoption of initiatives, the Commission will identify the proposals subject to a more detailed Impact Assessment. The Directorates-General must have completed the impact assessment by the inter-departmental consultation stage at the latest. In cases where proposals require in-depth assessment, the Directorates-General will on their own initiative start the process even before the proposal is included in the Annual Policy Strategy.

Remit: Commission

Implementation: gradually from the end of 2002 onwards with a view to being applied in full in 2004/2005

Under the Protocol on the application of the principles of subsidiarity and proportionality, the Commission is required to include details in the explanatory memoranda accompanying legislative proposals justifying the relevance of its proposals with regard to the principle of subsidiarity and explaining their financial implications[18]. In order to ensure that its proposals can be properly understood and that the action mentioned above is implemented consistently, the Commission proposes to take the additional step of *improving the content of the explanatory memorandum*.

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16 COM (2002) 276 final.

17 Over the last few years, the Commission has developed several special impact assessment instruments and methods: Business Impact Assessment ; Regulatory Impact Assessment ; Sustainable Impact Assessment, and prior appraisal in order to take account of the objectives of the Treaty, such as sustainable development, environmental protection and health.

18 Cf. Protocol, *ibid.*, point 9, second indent.

Action: Expanding the explanatory memoranda accompanying legislative proposals

In the *explanatory memorandum* accompanying a legislative proposal, the Commission will include the following five pieces of information, possibly on the basis of a standard format: consultations held and results obtained, impact assessments carried out, reasons for choosing the proposed instrument (particularly with regard to the principles of subsidiarity and proportionality), and the budgetary implications of the proposal.

Remit: Commission

Implementation: gradually from 2003 onwards

Finally, the quality of the legislation must be maintained at the implementation stage too. The question of adjusting legislation to changes in the issues concerned — a question which is raised by the Member States and the parties involved in applying the legislation — is a major challenge and must be addressed during the drafting stage. Doing so should also help make legislation less complex (cf. Part II).

Action: Including a review clause in legislative acts

Without prejudice to its right of initiative, the Commission will take steps to add, where appropriate, a *review clause*, or even a revision clause, to its legislative proposals, particularly those which are subject to rapid technological change, so that legislation can be updated and adjusted regularly. The Commission will draw up a report using the information provided by the Member States and the parties concerned and will, where necessary, propose that the legislation concerned be amended. Action of this kind should be based on effective cooperation with the national authorities (cf. Part IV), particularly when it comes to the ex post evaluation of how the legislation has been applied in the Member States. In appropriate cases, the Commission will seek to identify ways of simplifying the substantive aspects of legislative acts after they have been reviewed. In proposing a review clause, the Commission will seek to preserve legal certainty for operators.

Remit: Commission

Implementation: immediate

1.2. Monitoring the adoption and application of legislative acts

The adoption of legislative acts is essentially the prerogative of the Community legislator. The Commission, for its part, should play a more decisive role in this process:

- by giving the European Parliament and Council greater encouragement to come to an agreement quickly, in cases where this is appropriate, and to do so where possible during the first reading in cases where the codecision procedure is applicable. For this to happen, the Commission will have to be more systematically involved in the early stages of the negotiations. It will use the consultations and impact assessments it conducted earlier in order to rally support for its proposals;

- by calling on the Council to vote by qualified majority, wherever provision is made for this, rather than making excessive efforts to reach a consensus, which

too often leads to the procedure being drawn out and results in complicated compromises.

The Commission will also take the following action to ensure the quality and relevance of law-making:

Action: Commission making greater use of the opportunities to withdraw legislative proposals

In full observance of existing interinstitutional rules and practice, the Commission will make greater use of the opportunity to *withdraw a legislative proposal* where one of the following two criteria applies:

– a proposal is pending and has not been discussed for several years by the Council and European Parliament and no longer has current relevance (it is already the case that the Commission regularly withdraws such proposals in order to simplify the law-making process and lighten the burden of legislative work)[19].

– amendments introduced by the European Parliament and/or the Council denature the proposal, introduce a level of complexity which is incompatible with the objectives and provisions contained in the Treaty or appear to contradict the Protocol on the application of the principles of subsidiarity and proportionality.

Of course, whether or not these measures are applied will be at the Commission's political discretion. The adoption of legislative acts, particularly the most important ones, sometimes requires a long process of negotiations as well as complicated compromises.

Remit: Commission

Implementation: immediate

The Commission also seeks to ensure that Community legislation is applied properly and takes action against perceived infringements. In this context, it is pleased about the cooperation it has achieved on these issues with the European Parliament, through its Petitions Committee, and with the European Ombudsman.

Action: Following up infringements

In keeping with the commitments made, the Commission has already codified the administrative measures in force concerning the processing of complaints.[20] This is an important first step which should be extended to include infringements.

The Commission will therefore shortly lay down the criteria which will be used to *establish priorities for examining possible breaches of Community law*. This will be based on the points already proposed in the White Paper on European Governance and will not limit the Commission's discretionary powers (the effectiveness and quality of transposition of directives; the compatibility of national law with the fundamental principles of Community

[19] The Commission has withdrawn several proposals in recent years: 34 in 1997; 58 in 1999; and 108 in 2001.

[20] COM(2002) 141 final, adopted on 20 March 2002.

law; cases which seriously affect the Community interest; recurrent problems associated with the implementation of a particular legislative instrument in a Member State; and problems relating to Community financing).

The Commission will also further reinforce its *checks on the transposition of legislation*, in particular by establishing a periodic table on the transposition of Community legislation and by taking action against possible infringements.

Remit: Commission

Implementation: 2002

1.3. General coordination and implementation

To make its legislative proposals more consistent and to take the action described here, the Commission will set up an internal network on "better lawmaking". This will make it possible to combine and coordinate the work of existing networks and working parties in accordance with the Commission's desire to simplify its working methods.

Action: Setting up an internal network in the Commission

The Commission will put in place an *internal network for "better lawmaking"* which will involve all the Directorates-General which have regulatory responsibilities and will be coordinated by the Secretariat General[21].

This network, which will be loosely structured, will have the key task of coordinating and reinforcing the existing instruments and bodies and providing a general approach to the implementation and monitoring of this Action Plan. Specifically, the network will have the following mandate:

– Monitoring compliance with the principles of subsidiarity and proportionality and the commitments made by the Commission in this Action Plan as regards methodology and providing assistance with regard to the implementation of the Action Plan;

– Identifying and averting problems which might arise concerning the application of the principles of subsidiarity and proportionality and the action set out in the Plan. When necessary, any such matter calling for policy negotiation will be referred by the network, via Secretariat-General, to the Directorates-General or even the College;

– It will also be responsible for coordinating the preparation of the annual assessment of the quality of legislation and of national reports (see Part IV);

– The network will finally have to ensure that the Commission adopts a consistent position within the interinstitutional network and in its relations with Member States (see Part IV).

Remit: Commission

Implementation: immediate

[21] The Commission already relies on the Secretariat General and internal consultations as an important way of ensuring that its policies are coordinated. The commitments undertaken in this Action Plan and the increased need for good-quality legislation make the creation of this type of coordination network both necessary and justifiable.

2. ACTION PROPOSED TO THE EUROPEAN PARLIAMENT AND COUNCIL

Improving and simplifying Community legislation is also largely the responsibility of the Community's legislative authority, i.e. the European Parliament and the Council, which, strictly speaking, exercise their prerogatives mainly during the discussion and adoption procedure.

The Commission feels that the quality of legislation cannot be improved without the strong commitment of the legislator. The Commission would stress the need to discuss this at interinstitutional level so that, if the other institutions agree, an *interinstitutional agreement* can be drawn up. Such an agreement should be concluded, if possible, by the end of 2002 in view of the schedule for taking action thereafter.

Without prejudice to its right of initiative, the Commission therefore proposes the following action to the Community institutions:

2.1. Making more appropriate use of legislative instruments

The Commission has undertaken to explain how the lawmaking instruments to which it has access are chosen and used[22]. This subject is covered by the mandate of the European Convention and might result in the Treaty being amended during the subsequent Intergovernmental Conference[23]. In these circumstances, the Commission does not feel that it is appropriate to put forward a proposal in this Action Plan and reserves the right to make a submission to the Convention at a later date.

The Commission nevertheless takes the opportunity to point out that regulations and directives should be used in accordance with the spirit and letter of the Treaties: a regulation should only be used for action which must be applied in a uniform manner in the Member States; a directive must become, in other cases, an instrument establishing a legal framework and objectives which must be met.

The Commission would also stress that appropriate use can be made of alternatives to legislation without undermining the provisions of the Treaty or prerogatives of the legislator. There are several tools which, in specific circumstances, can be used to achieve the objectives of the Treaty while simplifying lawmaking activities and legislation itself (coregulation, self-regulation, voluntary sectoral agreements, open coordination method, financial interventions, information campaign).

Self-regulation concerns a large number of practices, common rules, codes of conduct and voluntary agreements which economic actors, social players, NGOs and organised groups establish themselves on a voluntary basis in order to regulate and organise their activities. Unlike coregulation, self-regulation does not involve a legislative act (see below).

The Commission can consider it preferable not to make a legislative proposal where agreements of this kind already exist and can be used to achieve the objectives set out in the Treaty. It can also suggest, via a recommendation for example, that this type of agreements be concluded by the parties concerned to avoid having to use legislation, without ruling out the possibility of legislating if such agreements prove insufficient or inefficient.

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22 COM(2001)428 "White Paper on European Governance" and COM(2001)726 "Simplifying and improving the regulatory environment".

23 See above.

These voluntary agreements constitute one form of self-regulation. Voluntary agreements can also be concluded on the basis of a legislative act, i.e. in a more binding and formal manner in the context of co-regulation, thereby enabling parties concerned to implement a specific piece of legislation.

The Commission will continue to inform the legislator of the choice of instruments which it favours by including information to this effect in the annual Work Programme and/or through existing procedures for dialogue with the legislator.

Finally, as the Commission is aware that Community legislation has become increasingly detailed — which sometimes make it difficult to understand and put into practice — it intends to avoid making its legislative proposals unwieldy, in accordance with the Protocol on the application of the principles of subsidiarity and proportionality[24].

Action: Limiting directives to the essential aspects of legislation

The Commission plans to *revert to the original definition of the directive as laid down in the Treaty*. It therefore wants to ensure, as far as possible, that directives are general in nature and cover the objectives, periods of validity and essential aspects of legislation. It will be for the legislator to decide what form these essential aspects should take, by making a policy decision, and to ensure that technicalities and details are a matter for executive measures.

Limiting directives in this way with a view — among other things — to simplifying legislation will be done without undermining the legislative prerogatives of the European Parliament and the Council; on the contrary, it will enable them to concentrate their discussions on the fundamental aspects of legislation. In the Commission's view, action of this kind should go hand in hand with deliberations between the institutions on how implementing powers should be delegated. The Commission reserves the right to make additional proposals on this subject[25].

Remit: institutions.

Implementation: in the course of 2002.

As illustrated by the debates in the European Parliament, *coregulation* is one of the most sensitive issues faced not only by operators and organisations representing particular sectors but also by the institutions. Within the framework of a legislative act, coregulation makes it possible to ensure that the objectives defined by the legislator can be implemented in the context of measures carried out by parties recognised as being active in the field concerned. With a view to simplifying legislation, the Commission remains convinced that it is a method whose implementation — circumscribed by criteria laid down in a joint agreement — can prove to be relevant when it comes to adjusting legislation to the problems and sectors concerned, reducing the burden of legislative work by focusing on the essential aspects of legislation, and drawing on the experience of interested parties, particularly operators and social partners. In this regard, the Commission points out that Articles 138 and 139 of the Treaty make provision for specific forms of coregulation which are not affected by this Action Plan.

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[24] Cf. Protocol, *ibid.*, point 6.

[25] COM (2002) 275 final.

Action: A framework for coregulation

The Commission will propose to the legislator that coregulation be used more frequently in accordance with the following criteria:

- The Commission proposes to the legislator that *coregulation be used on the basis of a legislative act*. Thus, all proposals on the subject concerned will be referred to the legislator. Without prejudice to its rights of initiative, the Commission will inform the legislator in advance, through its Annual Work Programme and/or existing procedures for dialogue, of its intentions to use the coregulation mechanism. The legislator can therefore decide, on a case by case basis, whether this mechanism should be used.

- The coregulation mechanism, within the framework of a legislative act, must be in the interests of the general public. Using this mechanism can be appropriate in cases where flexible and/or urgent measures are necessary, provided that they do not require a uniform application in the Community and that they do not affect the conditions for competition.

- Within this regulatory framework, the legislator establishes the essential aspects of the legislation: the objectives to achieve; the deadlines and mechanisms relating to its implementation; methods of monitoring the application of the legislation and any sanctions which are necessary to guarantee the legal certainty of the legislation.

- The legislator determines to what extent defining and implementing the measures can be left to the parties concerned because of the experience they are acknowledged to have gained in the field. These provisions, such as sectoral agreements, must be compatible with European competition law.

- In cases where using the coregulation mechanism has not produced the expected results, the Commission reserves the right to make a traditional legislative proposal to the legislator.

- The principle of the transparency of legislation applies to the coregulation mechanism. Members of the public must have access to the act and to the implementing provisions. Sectoral agreements and modalities for implementation must be made public in accordance with arrangements which have yet to be defined.

- The parties concerned must be considered to be representative, organised and responsible by the Commission, Council and European Parliament.

Remit: Institutions – Even where the Commission proposes a legislative act in which provision is made for coregulation, the proposal must be adopted by the European Parliament and the Council.

Implementation: 2002

2.2. Simplifying and reducing Community legislation

The body of Community law runs to over 80 000 pages and already applies to operators and citizens. There are already several ways of reducing and simplifying the volume of legislation

(consolidation, codification, redrafting and simplification)[26]. The Commission has launched trials in certain sectors for simplifying the substance of texts which; however, in spite of the progress made, these are limited and the results do not always reflect the Commission's work (e.g. SLIM programme). At the same time, a major codification programme has just been launched and should make it possible to reduce the volume of Community law, make legislation easier to read and to apply and provide tangible results[27].

Further steps should undoubtedly be taken by creating a programme for simplifying legislation alongside the codification programme. Both programmes, together with the implementation of the interinstitutional agreement on recasting, should make it possible to set an ambitious objective for simplifying and reducing the volume of Community legislation.

The support of the European Parliament and the Council is a *sine qua non* in this respect. The Commission therefore proposes the following:

Action: Simplifying and reducing the volume of Community legislation

The Commission feels that, with the support of the Council and European Parliament, the following twofold objective should be set: *simplifying the body of Community law and reducing its volume*[28]. In order to achieve this, the following steps must be taken:

– The institutions must jointly define a *programme for simplifying* the substance of Community legislation. The Commission will have to identify the sectors which could be used for this exercise and inform the legislator accordingly. The European Parliament and the Council, which as the legislator will ultimately have to adopt the proposals for simplified legislative acts, should change their working methods by creating, for instance, *ad hoc* bodies which have the specific responsibility of simplifying legislation[29]. The Commission considers it essential that an interinstitutional agreement on simplification be drawn up, particularly as regards those procedures which allow the legislator to speed up

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26 *Consolidation* means grouping together in a single non-binding text 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 on codification 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 adopted on 17 April 2002 for a more structured use of the recasting technique for legal acts [SEC(2001) 1364] 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. Legislative acts which undergo codification, recasting or simplification must be *submitted to the legislator for adoption as their structure or substance has been changed.*

27 COM (2001) 645 final.

28 COM (2001) 726 final. The Commission felt that this volume should be reduced by at least 25% in terms of the number of pages and/or the number of legislative acts by January 2005, when the term of office of the present Commission comes to an end.

29 Experience with the SLIM programme has shown the need for such bodies as it is often difficult for those who have contributed to the adoption of a piece of legislation to simplify it subsequently. Specific bodies therefore need to be set up. Moreover, simplified legislative proposals often need to undergo several legislative readings before they are adopted and may even require a conciliation procedure. The Commission believes that the legislator should take steps to speed up its procedures on these legislative proposals.

its examination of simplified legislative acts. An agreement of this kind could be reached by the end of 2002.

– The codification programme, launched by the Commission in November 2001[30], must be supported, by drawing up accelerated adoption procedures, at the first reading, of codified legislative proposals submitted by the Commission. The Commission, for its part, will undertake preparatory work, in tandem with the European Parliament and the Council, so that an agreement of this kind can be reached.

Remit: Institutions.

Completion date: January 2005. An interim report will be drawn up at the end of 2003.

2.3. Ensuring the quality of legislation which has been adopted

In recent years, the institutions have adopted a number of agreements which place them under an obligation to ensure the quality of legislation[31]. The Commission considers it essential that a greater effort be made to put these principles into practice.

As a result of their deliberations, the European Parliament and the Council adopt amendments which sometimes introduce substantial changes to the Commission's initial proposal. Without calling into question the democratic legitimacy of this procedure, the Commission has a duty to point out that some amendments, because they have been drafted in a complicated manner or because they are too precise or not precise enough, can change the quality of the legislative act itself. This can adversely affect the way in which the act is applied, for operators, citizens, national legislators and administrations.

The Commission feels that it is essential to maintain high standards as regards the quality and consistency throughout the entire legislative process. Without making the decision-making process excessively cumbersome, it would undoubtedly be beneficial, in the case of "last minute" agreements, for instance, to introduce a period during which the proposal can be reread by lawyer-linguists before it is finally adopted. The legislators could thus correct the wording without calling into question the substance of a political compromise.

More specifically, the Commission proposes the following:

Action: Assessing the impact of substantial amendments by the European Parliament and Council

In keeping with the Commission's approach to its own proposals and as suggested by the report of the Mandelkern Group, measures should be adopted at interinstitutional level or an interinstitutional agreement drawn up to ensure that substantial modifications introduced by

30 COM (2001) 645 final.

31 Cf. Protocol on the application of the principles of subsidiarity and proportionality, *ibid.;* Final Declaration and Interinstitutional Agreement on the quality of drafting of Community legislation, OJ C 73 of 17 March 1999.

the European Parliament and Council to Commission proposals during the first reading undergo an evaluation or an impact assessment[32].

Although an additional assessment of this kind might seem likely to slow down proceedings in certain cases, it should nevertheless ensure that the legislative act which is ultimately adopted is well founded, proportionate and does not entail excessive costs for the parties concerned.

Remit: The European Parliament and the Council will carry out the assessments and will be responsible for their amendments. The Commission will conduct an initial impact assessment on the legislative proposal and will continue to deliver an opinion on the amendments of the European Parliament, in accordance with the Treaty.

Implementation: gradually from 2003 onwards.

3. ACTION CONCERNING THE MEMBER STATES

The Member States, at both governmental and parliamentary levels, also have an important political responsibility when it comes to simplifying and improving the regulatory environment. Apart from their activities within the Council, they are responsible for applying and, sometimes also transposing, Community legislation at national level. It is also important that Community legislation be put into practice more effectively. The transposition and application of legislation in practice must therefore play its rightful role in the efforts to improve and simplify the regulatory environment.

It is nevertheless the Commission's responsibility to check that Community legislation is being transposed properly and to ensure, in close cooperation with the Member States, that the legislation has a real impact as well as coordinating and supporting efforts to put it into practice.

This dual level of responsibility throughout the entire period during which the legislation is applied calls for a more systematic distribution of roles and a number of coordination measures:

- in line with the strategy defined at the Lisbon European Council, the Member States must seek to ensure that Community acts are *transposed into their national legislation correctly and within the set deadlines*, in accordance with the conclusions of the Stockholm and Barcelona European Councils[33]. This is basic to the Community functioning effectively; to the certainty and consistency of the regulatory environment for operators and to the credibility of the European Union in the eyes of its citizens;

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[32] In view of the time limits which apply to legislative procedures after the first reading, it would be difficult to carry out an appropriate impact assessment at a later stage. Assessments of legislative proposals should be carried out after the consultation and codecision procedures.

[33] Conclusions of the Barcelona European Council on 15 and 16 March 2002: "*Although progress has been made, the interim transposition target of 98.5% set in Stockholm has only been achieved by seven Member States. Efforts need to be stepped up. The European Council calls on Member States to make further efforts to meet that target and for a transposition target of 100% to be achieved by the Spring European Council in 2003 in the case of directives whose implementation is more than two years overdue.*"

- the Member States should also rationalise their internal procedures by introducing mechanisms which ensure that *their authorities* (at central, regional and local levels) which are responsible for transposing and applying directives *are involved* as early as possible in the legislative process;

- in general terms, the Member States would benefit from appointing correspondents responsible for coordinating the transposition and application of Community acts.

Alongside these recommendations, the Commission proposes that the Member States take the following action:

Action: Transmission of national notifications

The Member States will provide notification of transposing measures electronically, using a standard form, proposed by the Council's informatics working party. In line with the conclusions of the Lisbon European Council, the Member States should also draw up, for their own benefit and in the interests of the Community, their own concordance table when providing notification of national transposing measures.

Remit: Member States and Commission.

Implementation: gradually from 2003 onwards.

Action: Consultations and impact assessments in the Member States

- In order to improve the quality of national transposing measures, the Member States should establish consultation and impact assessment standards for any supplementary provisions added to legislative acts. This is particularly important in cases where the Member States would make the act transposing a directive too unwieldy (cf. Part I). It goes without saying that the content of the act adopted at Community level should not be changed nor should there be any delay in the transposition of the act by the Member States. The Commission should be informed about action of this kind and notified of national transposing measures so that feedback can take place at Community level. The Member States should also guarantee members of the public access to these results.

- Following the recommendations of the Mandelkern Group, the Commission feels that the Member States should also carry out impact assessments on draft national laws which they notify to the Commission[34].

- By analogy with the obligations concerning the Commission's right of initiative set out in the Protocol on the application of the principles of subsidiarity and proportionality, the Commission feels that the Member States should also carry out consultations and impact assessments when they exercise their right of initiative and make legislative proposals under

[34] In accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, OJ L 204 of 21.7.98 (modified by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998, OJ L 217 of 5.08.1998).

Title VI of the Treaty on European Union and Title IV of the Treaty establishing the European Communities.

Remit: Member States

Implementation: gradually from 2003 onwards

4. DEVELOPING A COMMON LEGISLATIVE CULTURE WITHIN THE UNION

The specific measures proposed in this Action Plan must be backed up by coordination work, in accordance with the conclusions of the Lisbon European Council.

It is necessary to decompartmentalise the developmental cycle of legislative acts and make it easier to follow the progress of an act from its drafting by the Commission to its adoption by the legislator and, from there, to its adoption and application by the Member States. This requirement must also be of benefit to members of the public.

In this context, the Commission plans to take the following action:

Action: Creating a legislative network between the institutions and the Member States

The Commission proposes that a legislative network be created at two levels: on the one hand, between the Community institutions and, on the other, between the Community, as represented by the Commission, and the Member States.

Thus the Commission, the European Parliament and the Council, *which share responsibility for the quality of legislation at Community level*, should set up, on the basis of the existing working part on interinstitutional cooperation, a permanent mechanism in order to implement this Action Plan and to ensure the quality of legislation. The mandate of this network should be defined in the future interinstitutional agreement.

Alongside these measures, steps should be taken to break down the divisions between the Community and national levels by *improving coordination and the exchange of information* between the Commission and national authorities. This should be done by appointing *"transposition and application" correspondents* to make it easier to monitor the transposition of Community law; by ensuring *ongoing evaluation of how directives and regulations have been applied in practice*; by *improving feedback from Member States*; and by exchanging good practice such as legislative impact assessments and consultation standards. In this respect, the Commission and the Member States should work together with a view to pooling current rules and practices and developing a joint approach to monitoring and applying Community legislation.

Remit: Community institutions and Member States

Implementation: 2003

Action: Annual assessment of the quality of legislation

In the *annual report on the application of the principles of subsidiarity and proportionality*[35], the Commission will include an *assessment of the implementation of the Action Plan* and then of the application by the institutions and Member States of approved principles and action. In drafting this report, the Commission will be supported by its internal network and will draw on the discussions within the interinstitutional network.

With a view to achieving positive convergence and the exchange of good practice, the Commission will, by the same token, draw up national reports on a particular group of countries in turn.

Remit: Commission

Implementation: 2003

Action: Public access to legislation

The Commission, together with the other Community institutions, will improve the accessibility and transparency of Community legislation, whether in preparation or already adopted, by *expanding public access to EUR-Lex*[36]. This website, which acts as a single portal, should enable members of the public to access documents easily throughout the entire Community decision-making process. Other options, such as Internet forums, could also be explored. The traditional info-centres and contact points for Community information should also be mobilised more widely.

Remit: Institutions

Implementation: 2003

[35] Cf. Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality, *ibid.*

[36] http://www.europa.eu.int/eur-lex/en/index.html