

## **HONEY, I SHRUNK THE LEGISLATION!**

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### *Abstract*

Reform of EU regulatory policy has been guided by two distinct policy streams in the wake of the legislative explosion of the Single Market program. Whereas the principle of subsidiarity gave rise to a program of legislative review, concerns as to the competitiveness of European business also prompted greater attention towards legislative and administrative simplification. The paper argues that these reform movements have failed to bring about a radical, horizontal change to regulatory culture. Rather, the political forces which have been unleashed have been mediated by the institutional (organisational, procedural and normative) structure of EU governance. An institutionalist approach is taken to argue that institutional structures mediate political forces even when the object of the force is the institutional structure itself. The European Commission's Simpler Legislation for the Internal Market (SLIM) initiative and changes to Commission standard operating procedures are used as case studies for the institutionalist approach.

## **INTRODUCTION**

The film "Honey, I Shrunk the Kids" provides an unusual metaphor for the reform of EU regulatory policy. The film's story is essentially a tale of the way in which the virtue of scientific endeavour produces its own vices. So too, the virtue of the legislative exercise which has created the single European market, has resulted in the vice of 'regulatory indigestion' and calls for its treatment through reform to EU regulatory policy.

My paper falls into three sections. In the first section I explore the background to EU regulatory reform, concentrating on the period from the legislative review exercise unleashed in the spirit of subsidiarity up to and including the competitiveness concerns of the Molitor (CEC, 1995a) and UNICE (1995) reports on legislative simplification and regulatory reform. The aim of this section is to raise questions as to the efficacy of broad, horizontal reform initiatives, while querying the frequent claim that what is required is a change to regulatory culture within the Commission. An institutionalist approach is adopted to highlight why the reform of EU regulatory policy is, indeed, a difficult task.

The second section highlights the more recent approach to legislative simplification in the form of the Simpler Legislation for the Internal Market (SLIM) initiative (CEC, 1996a; 1996b). The nature of this initiative is discussed and criticisms made of the first pilot projects. Once again, an institutionalist approach is utilised to explore the dynamics of this reform initiative.

The final section marks a change of tack. There can be little doubt that the terms of the regulatory reform debate have been set by the language of reducing burdens on business. Not surprisingly, the voice of business is given access to the policy process in a number of different ways. However, the identity of the European citizen is casually invoked by the institutions and business as a justification for reform, without the voice of the citizen actually being heard. This final section explores the construction of the identity of the European citizen within the discourse of reform and suggests that the reform of EU regulatory policy, as with many other areas of EU policy, is a domain in which the citizen lurks in the shadows.

### **I: REGULATORY REFORM AND REGULATORY CULTURE**

In this section I analyse attempts to reform EU regulatory policy and the regulatory culture which is supposed to underpin the policy. Two principal 'streams' of reform movements are identified. The first stream is associated with the emergence of subsidiarity as a norm to limit/guide the exercise of EU legislative competence. The second stream arises from an increased concern as to the competitiveness of EU business in a global trading environment. It is suggested that while one can point to different streams of reform movement, the policy prescriptions turn out to be broadly the same. Yet, despite this, no overall horizontal reform initiative has emerged to sweep through the corridors of the Commission or, indeed, the other institutional legislative partners. Similarly, whereas there has been a common desire voiced for a change in regulatory culture, on closer examination change appears more as an

incremental bottom-up learning response (albeit supported to some extent by a new top-down political climate).

#### A. A BRIEF HISTORY OF EU REGULATORY REFORM

The term 'legislative and administrative simplification' has emerged as the EU's politically correct way of talking about regulatory reform (particularly as it avoids the use of the word 'deregulation'). The origins of this phrase can certainly be traced back to the later 1980s and the concern of the then SME Task Force with the impact of EU legislation on small business. However, since the mid-1990s, legislative and administrative simplification has been the mantra for those calling for regulatory reform. It brings together two reform streams: the impact of the subsidiarity principle and increased concerns about the competitiveness of European business.

My concern here, is not with the regulatory reform movement which gave birth to the single European market (the re-allocation of regulation from the national to the EU level), but, in many ways with the consequence of that particular reform movement. The 'success' of the single market programme (at least judged in terms of the production of legislation) combined with the extension of EU policy competence to be heralded in by the Treaty on European Union created its own back-lash in the form of the introduction of the subsidiarity principle as a norm to guide the exercise of legislative competence. The introduction of this principle produced quite a different regulatory reform movement from that of the single market programme. Whereas the single market programme together with the attendant institutional reforms in the form of the Single European Act were supportive of the exercise of EU legislative competence (and indeed legitimated by the support of the Member States not least through Treaty revision), the introduction of the contested concept of subsidiarity sought to contest the legislative activities of the EU while failing to provide a shared normative conception of the future of EU rule-making. Thus, while the principle of subsidiarity was launched as the new normative basis for regulatory reform, it lacked a clear and consistent vision of what manner of reform its invocation should produce.

As Maher has highlighted (1995), the result of the introduction of the subsidiarity principle was a technocratic process of legislative review. This story is by now well known and will not be explored in depth here. Suffice to say, the result of this exercise was the withdrawal of a limited number of proposals and the recasting of others in 'soft law' terms as recommendations. The idea of the preservation of the *acquis communautaire* served as an ideological shield against the repeal of existing legislative measures. Subsidiarity neither produced a radical deregulatory dynamic nor did it provide a clear platform for regulatory reform. Nonetheless, the process of legislative review did open up a conceptual space for the simplification of EU legislation.

The second regulatory reform stream came with concerns about European competitiveness. The completion of the Single Market framework and the expansion of the external dimension of trade begged questions as to the adequacy of this framework to enable European business to compete. In 1993, the Commission produced its own report on *Growth, Competitiveness and Employment* (CEC,

1993a). In 1994, the European employers' group UNICE produced its own competitiveness report (UNICE, 1994). At the instigation of the then Commission President Delors, the Commission also established a group of independent experts whose terms of reference were to,

"assess the impact of Community and national legislation on employment and competitiveness with a view to alleviating and simplifying such legislation" (CEC, 1995a).

The report - the Molitor report (named after its chair Bernhard Molitor) - was produced in 1995 and claimed to be a,

"... contribution to creating a culture of simplification leading to the elimination of unnecessary legal and administrative burdens on business - deeply embedded at EU and national level - stimulating competitiveness and employment" (CEC, 1995a: iii).

In addition, the Commission provided financial support for a study to be done by UNICE, resulting in its 1995 report on *Targeted Regulatory Reform* (UNICE, 1995).

Notwithstanding the importance of drawing appropriate connections between regulation and competitiveness, neither the UNICE nor Molitor reports have proved to be much more than symbolic signposts pointing in the direction of questions rather than revealing answers. Both reports were produced under constraints of time and resources. The UNICE report challenges EU social and environmental policy while acknowledging that many of the regulatory problems actually lie with national regulation. Few of the staff of UNICE have read the report (partly as a consequence of large changes of personnel within the bureau). The Molitor study did not consider national regulation (despite its terms of reference) and its report was criticised by its own members for making undemonstrated assumptions about the relationship between regulation and competitiveness. The groups met six times in six months but barely had the resources to get to grips with the fine details of EU legislation. Further, one finds the rather bizarre situation in which one group of members complain that the tone of the report is too deregulatory while another group argued that the proposal for a minimum set of fundamental social rights was over-regulatory.

Thus, while both reports raise the need for legislative simplification to improve competitiveness, neither report makes a convincing case for what needs to be done. Indeed, the Molitor report often lapses into mere repetition of the simplification and consolidation exercises already underway as a consequence of the legislative review under the subsidiarity and proportionality principles.

In summary, both the subsidiarity and competitiveness concerns produced a public flurry of activity, much of which seems more symbolic than real. To be sure, both reform movements have highlighted a need for legislative simplification. But what they fail to do is to establish concrete parameters for such simplification. Truly, the devil is in the detail of EU legislation. To the extent that these reports engage with the detail they tend to highlight problems that were already apparent rather than casting a new light on hitherto unexposed problems. In this way, the virtue of these reform movements has been as a catalyst for regulatory reform rather than as direct and determinative initiators of reform. Rather, it has been the Commission

supported by the European Council that has sought to operationalise legislative simplification.

## B. DIFFERENT POLICY STREAMS, SIMILAR POLICY OUTCOMES

Although we can point to one regulatory reform movement as a reaction against the extended allocation and exercise of EU regulatory competence, and another as a reaction to concerns of competitiveness, on closer examination, the policy solutions turn out to be broadly similar. The types of policy prescriptions raised by the Molitor and UNICE reports tend to repeat initiatives already underway in the context of the subsidiarity review or in the context of other initiatives such as those highlighted in the Sutherland Report (High Level Group, 1992) or the 1993 Strategic Programme for the Single Market (CEC, 1993b).

Thus, there is a strong commitment to the completion of the Single Market as a mode of regulatory reform which replaces multiple regulation with increased possibilities for compliance with one set of rules. Similarly, if directives are to be the preferred policy solution then there is a need for effective transposition which does not itself add on additional regulatory burdens. One finds a common preference for rules which set targets and which set frameworks for action rather than command-and-control modes of exhaustive regulation. Increased pre-legislative consultation is considered to be highly desirable with more routine use of Green and White Papers. Legislative proposals are also to be subject to pre-legislative regulatory checklists to determine the need for governmental action, the appropriate level of such action, and the proportionate intensity of such action.

Yet despite the similarity in the policy prescriptions and despite the attempt both under the banners of subsidiarity and competitiveness to adopt a broad, horizontal approach to regulatory reform, no single reform movement or dynamic has been created. In other words, no unified horizontal reform initiative has emerged. In fairness, that role could have been occupied by both the UNICE and Molitor reports but as I have suggested these reports contained serious flaws. Within the Commission itself it has tended to draw a distinction between legislative review under the subsidiarity principle and other reform initiatives. One clear reason for this is that, as expressed in the wording of Article 3b EC Treaty, the subsidiarity principles only applies to areas of non-exclusive competence. This then provides something of a shield for the Commission against what it might see as attacks on its prerogative of legislative initiative. But it has always been strange that the Treaty demands that the Commission justify the need for action in some areas but not in others. The exclusive/non-exclusive competence dichotomy is a rigid means of allocating competence which presupposes a world of clearly divided spheres of competence which does not exist. Nonetheless, the institutionalisation of subsidiarity in this way served to bifurcate regulatory reform initiatives between those concerned with subsidiarity and more wide-ranging reform movements such as those concerned with managing the Single Market more generally, including responding to issues of competitiveness.

That said, the Commission has, since the end of 1995 sought to bring some of the simplification issues together through its annual report on "Better Law Making"

(CEC, 1995a; 1996c). The report takes up President Santer's message of 'do less, but do it better' and this annual report is the Commission's own reference point for simplification initiatives. It is interesting that the tone of the report is more of a summary of the application of the subsidiarity and proportionality principles than a direct response to issues of competitiveness. However, the most recent report does make mention of the Commission's Simpler Legislation for the Internal Market (SLIM) initiative and, as I suggest below this brings together the two different reform streams mentioned. It seems that the competitiveness debate is being focused through the reform of the management of the Single Market and therefore, ties in with the Commission's recent review of the effectiveness of the Single Market (CEC, 1996d) and its 1997 draft Action Plan for the Single Market (CEC, 1997).

### C. CHANGING REGULATORY CULTURE

In the rhetoric of regulatory reform, much has been made of the need to reform the regulatory culture of the Commission. Note that it is the Commission which is either the spoken or unspoken target of this demand rather than the other institutions involved in the legislative process (notwithstanding the joint power of the EP and the Council in preparing joint legislative texts under the co-decision procedure). Take the following examples. I have already noted the Molitor report's desire to create a 'culture of simplification'. It is also stated in its report (1995a: 3),

"Piecemeal reviews and incremental changes will not suffice. We need a wholesale change in the policy culture."

While the UNICE report also echoes this theme it makes a somewhat broader argument in asking for a change in attitudes not only of government but also society (UNICE, 1995: 55),

"Action needs to be taken to change the attitudes of the public and governments towards the methods by which governments intervene in the activities of business, particularly their apparent preference for the use of regulations ... Achieving this change in attitudes will depend primarily upon political leadership."

The previous UK Conservative government, in setting out its priorities for regulatory reform to the 1995 Madrid Council noted (UK, 1995),

"Ultimately we are looking for a change in the regulatory culture in Brussels".

And later having discussed principles by which to guide regulatory reform, the UK argued (UK, 1995),

"In some areas, the Commission already observes these principles. However, if quality regulation is our aim, we must get them on to the desk and into the heart of every official involved".

All of which raises the question of how one changes the culture of an organisation. Where does the culture of an organisation reside? Does it live in the value systems of particular individuals or does it inhabit the world of organisational procedures and routines? It is clear in the policy prescriptions of those seeking reform that changes need to be made to organisation routines. These include increased resort to pre-legislative consultation, the use of regulatory checklists and post-legislative evaluations. The strategy therefore is to alter the standard operating procedures of

legislative institutions in order to symbolise the need for a higher level of justification for action.

One important consequence of this desire to change standard operating procedures is that any such change can only be operationalised by the institutions themselves. And, as I suggest below, the political forces which are pressing for such change must themselves be mediated through the institutional structure of the legislative institutions. One consequence of this is that prevailing institutional structures place their own imprint on attempts at regulatory reform.

#### D. AN INSTITUTIONALIST ANALYSIS OF REGULATORY REFORM INITIATIVES

Institutionalist approaches to policymaking emphasise the way in which institutional structures (organisational, procedural and normative) shape political forces and policy outcomes (for an institutionalist approach to the governance of the single European market see Armstrong and Bulmer, *forthcoming* 1997). This type of approach is useful in analysing two dimensions of the reform process. One dimension concerns the attempt to construct broad, horizontal reform initiatives. The second dimension concerns the reaction of EU institutions to such reform movements.

As we noted above, the attempt both by UNICE and Molitor to put together wide-ranging regulatory reform initiatives failed to produce clear reform programmes. In respect of UNICE, the report is in one sense quite problematic in that it highlights the problem of national regulatory barriers but, as a European level lobby group, its task is to seek reform at the EU level. In this way, the problems it identifies are not necessarily useful in carrying out its task. However, one should not over-state this as the report makes a clear challenge to EU social and environmental regulation. Nonetheless, given the speed with which the report was prepared few of the directors of UNICE had time to read the report before it was approved by the delegations and subsequent staff changes have also resulted in few of the bureau's staff having actually read the report. Indeed, given the few resources available to the bureau, the individual departments must focus their work on particular proposals rather than trying to set out a broad policy agenda. In this sense, the horizontal approach taken by the report is largely symbolic and the more direct approach to regulatory reform rests with responding to vertical policy initiatives.

In respect of the Molitor report, again the group had few resources to hand and tended to rely on the Commission to come up with areas in which it felt reform might be required. As a consequence the report tends to highlight areas which the Commission already knew to be problematic and its policy prescriptions tend to repeat initiatives already undertaken by the Commission.

Turning to the second dimension, namely the reaction of the EU institutions, we can point to institutional change through e.g. the Inter-Institutional Agreement on Subsidiarity. However, given that the focus has been on the Commission's drafting of proposals, the actions of the other partners in the legislative process has tended to be ignored. Under the new co-decision procedure, power has shifted from a Commission-Council dialogue to an increased dialogue between the Council and

the EP through the Conciliation Committee. The need for political compromises within the Council have often been a source of legislative complication through exemptions and exclusions and through vague drafting. For its part, the European Parliament has little disincentive to attach amendments to proposals. Thus, while attention has been focused on the Commission, regulatory reform may need to take a clearer account of the inter-institutional system of decision-making which is the dominant institutional characteristic of EU governance.

If we focus on the Commission, we can point to changes to the standard operating procedures and routines. In 1996 the President's office issued *General Guidelines for Legislative Policy* (CEC, 1996e) As these guidelines note, various instruments do exist to guide Commission staff on the drafting of legislation:

- the Commission's rules of procedure,
- the Secretariat-General's Institutional Vademecum,
- a Legal Service manual for Commission departments on 'Legislative Drafting',
- the Commission reports on subsidiarity and better law-making, and
- documents relating to openness and transparency.

Further, when the SME Task Force was set up in the 1980s, a system was put in place to require that Directorates explain the business impact of proposed legislation. After a review of this *fiche d'impact* system, the need for a business impact assessment is now tied to the Commission's annual legislative programme and proposals are highlighted if an assessment is required. This form of assessment is now managed through DGXXIII (although the actual assessments are carried out by the DGs piloting the proposals).

The Guidelines seek to add to these existing instruments in a number of ways. Inter-service co-ordination is highlighted as important to ensure the efficient management of legislative proposals. The problems of policy co-ordination have been made more difficult with the expansion of policy competencies brought about by the SEA and TEU. The density of policy linkages, therefore, makes policy co-ordination more important. There is also a need for more systemic consultation of interested parties rather than ad hoc or improvised consultation. Emphasis is also placed upon pre-legislative assessments of proposals, particularly in the form of business and environmental impact assessments. Post-legislative assessment is also highlighted in the sense that legislation ought to be periodically reviewed.

Thus, the Guidelines set out a regulatory checklist against which explanatory memoranda are to be measured. The criteria in the checklist deal with issues of justification for action, legal basis, user-friendliness, subsidiarity and proportionality, simplification, policy consistency, external consultation, assessment (including assessment of fraud risks), and, financial implications.

There is an important institutional story to the development of these policy guidelines. Although they were drafted by the Secretary-General's Office, the pressure for these guidelines came from DGIII and DGXV. Officials in both DG's talk of a shared regulatory culture between these Directorates (they were of course within the same DG at the time of the SEM programme). There was some disappointment that the Guidelines had been watered down in discussions at *Cabinet* level. DGXXIII was also involved in preparing the guidelines, especially in



terms of seeking to promote the use of impact assessments. However, there is something of a tension between, on the one hand DGXXIII which is viewed as representing the views of industry and, on the other, DGs III and XV which are viewed as seeking to change industry to meet the demands of a Single Market. This manifests itself in some scepticism as to the role of business impact assessments. Each legislative proposal must be accompanied by an explanatory memorandum and, where necessary, the business impact assessment. As one Commission official put it to me, the impact assessments tend to be filled in at the last minute. As it was put, any head of section who cannot fill in the impact assessment form, has not done the work in support of the explanatory memorandum in the first place.

It seems clear that DGXXIII is not going to fulfil a role as the guardian of legislative simplification through business impact assessments. It has not power to command the support of the other DG's. Nor does the Secretary-General's office have the power to monitor the activities of the individual DG's. It has been remarked, drawing on UK experience of regulatory reform, the Secretary-General's office is neither the Cabinet Office, nor is DGXXIII the Deregulation Unit.

I want to suggest, therefore, that one cannot simply identify the political forces for change in the form of regulatory reform movements and seamlessly move to policy outcomes in the form of legislative review initiatives or changes to organisation routines. As with any other form of policy initiative, pressures for regulatory reform are mediated through prevailing institutional structures. As I have noted, the inter-institutional system of legislating may severely undermine reform initiatives aimed solely at the Commission. Moreover, the structure of the Commission itself has its own impact on policy outcomes.

## **II SIMPLER LEGISLATION FOR THE INTERNAL MARKET (SLIM)**

The launch of the SLIM initiative can be seen as a crystallisation of the forces for legislative and administrative simplification. In this section I give an outline of the origins and history of this initiative. Attention then turns to an evaluation of the success or failure of the first pilot projects. Finally, an institutionalist analysis of the initiative is offered.

### **A. THE ORIGINS OF THE SLIM INITIATIVE**

A common criticism of the Molitor report was that the limited human and time resources allocated to the study made it impossible for the group to come up with concrete proposals. The attempt to produce a broad, horizontal initiative produced anodyne results. It was the desire for a more concrete initiative that led to the launching of the SLIM initiative. At an informal meeting of Internal Market ministers in Rome in February 1996, it was clear that a new initiative was required in order to implement the Commission and Council commitments to legislative and administrative simplification. A number of areas were suggested by the ministers for further work. The Commission launched its SLIM initiative in May 1996 (CEC, 1996a) guided by three principles:

- simplification should be targeted on a few areas in order to produce concrete proposals,

- business and other interested parties should be involved in the work, and,
- a progress report should be available for submission to the Council by the end of 1996.

The strategy was, therefore, for vertical pilot projects to be established which would examine the possibilities for simplification. The Commission chose not to include areas mentioned by the Council where other work was already underway (e.g. the Commission was already in the process of preparing a Green Paper on public procurement). Instead, the Commission consulted its own services and asked for suggested areas of study. The result was an eclectic group of four pilot projects:

- INTRASTAT
- construction products
- mutual recognition of diplomas
- ornamental plants

It is hard to imagine a less likely group of areas for a pilot project.

The Commission made clear from the outset that the SLIM teams would themselves be SLIM. Of importance, not all the Member States would be represented. Instead, the teams would be chaired by a Commission nominee and composed of equal numbers of representatives (four) from the Member States and from business (or other interested parties). All Member States were, however, invited to give written submissions and were kept informed about progress through existing advisory committees e.g. the Standing Committee on Construction. In order to prepare their reports in time for the November 1996 Council meeting, the teams had very little time to undertake their studies. The Commission budgeted for five one day meetings, although some of the teams only met three times. In November 1996, the Commission published its report on the pilot projects (CEC, 1996b).

## B. EVALUATING SLIM

In many ways, the SLIM report is typical of EU reform initiatives. It was put together and carried out in haste. Little resources were allocated to it. On the other hand, the projects had the virtue of seeking to identify concrete problems in specific areas. Or perhaps a better way of looking at these projects is to view them as a mechanism by which problems could be given increased policy saliency. The eclectic nature of these pilot projects owes much to the fact that work was already underway in some of these areas and their adoption as SLIM projects was designed to increase their visibility and saliency. For example, the review of the INTRASTAT system of data collection was already well underway. The Construction Products Directive has been ineffective since it was agreed in 1989 and its operation was already being reviewed. The choice of mutual recognition of diplomas was chosen less because of a need to simplify the legislation (though this issue is addressed), and more because the Commission itself feels that the numerous advisory committees set up under the legislation are costly and amount to a subsidy of professional lobbying. The ornamental plants legislation was drafted in haste and was well recognised as being ambiguously worded.

The specific recommendations of the SLIM teams are not of direct concern here. The general response of the Commission is that it will come up with proposals in

light of the studies. What is clear is that the Commission is keen to extend the approach. In March 1997, the Commission announced that a second wave of projects would be launched covering the areas of:

- Value Added Tax
- Financial Services (banking and assurance)
- the Combined Nomenclature for external trade.

It is intended that the SLIM teams will have a full six months to undertake their reviews and for which six meetings per team have been budgeted.

Two comments can be made on SLIM. First, there is a shift towards a vertical, policy sector approach in which pre-existing problems can be clearly identified and concrete options for simplification suggested. Second, it is clear that it is through a review of the management of the Single Market that the Commission is seeking to respond to concerns about competitiveness. In this respect it is also significant that the Commission is seeking to take control of the agenda by focusing attention on what is required to make the Single Market more effective. In this way, the SLIM initiative connects with two other Commission programmes. The first of these is the review which the Commission has undertaken on the impact and effectiveness of the Single Market (CEC, 1996d). The second is the action plan for the Single Market which the Commission is drawing up for submission to the European Council in Amsterdam. The draft plan (published in April 1997: CEC, 1997) contains four strategic targets. The first of these targets concerns 'Making the Rules More Effective'. More specifically the Commission commits itself to establishing:

"... a permanent rolling programme of simplification and improvement of Single Market legislation, combining SLIM and other simplification exercises."

The Commission wants to be seen to be doing something to respond to movements for regulatory reform and initiatives like SLIM have two strategic goals. The first goal is to bring reform initiatives within the control of the Commission in order to deflect criticism of alleged over-regulation. The second goal is to use the Commission's actions as a mechanism for turning the spotlight onto regulation at the national level. As the draft action plan notes,

"Member States will be called upon to commit themselves to a parallel programme of simplification, including the use of more comprehensive regulatory impact analysis procedures and to simplify national regulatory and administrative procedures for business start-ups."

In this way, the SLIM initiative is both a reaction to the desire for reform, but also a shift away from a defensive post-Maastricht position to a more proactive extension of the regulatory reform initiative brought about by the Single Market programme.

### C. INSTITUTIONALIST ANALYSIS

The story of SLIM is one of inter-institutional dialogue. On one reading, the Member States started the process through the request of the Internal Market ministers for a new simplification initiative. But as I have suggested, it is the operationalisation of the SLIM initiative within the Commission that is also significant. It is important not to give reductive accounts of policy development which become bogged down in trying to find the spark that lit the flame and thereby reduce all that follows from that first spark. It is preferable to recognise that the development of SLIM is a matter of

inter-institutional dialogue. It is worth noting that the European Parliament has also been broadly supportive of the SLIM initiative.

One can make sense of the SLIM initiative in terms of a top-down desire for policy solutions meeting a bottom-up identification of policy problems. SLIM is a mechanism by which these flows of policy problems and solutions can be brought together. In adopting a vertical policy sector approach to simplification, this type of reform initiative more closely matches the differentiated (indeed fragmented) style of policy-making that is the hall-mark of EU governance. Moreover, the SLIM initiative fits within the prevailing norms and values of the Commission in the sense that it connects with and compliments the approach taken to the management of the Single Market beginning with the 1993 Strategic Programme (CEC, 1993b) and continuing through to the review of the impact and effectiveness of the Single Market (CEC, 1996d) and the 1997 Action Plan (CEC, 1997).

The weaknesses of the SLIM approach are also typical of EU policymaking. The EU has often sought to occupy the field and then deal with the consequences later. Much of the Single Market legislation was hastily drafted and pushed through quickly. It is not surprising that those same defects permeate attempts at reform. The pilot projects were hastily assembled, conducted quickly and their results less concrete than one might have wished. The desire to be seen to be doing something may have assumed a higher priority than actually tackling problems. It is, therefore, important to keep in mind the symbolic nature of politics.

### **III CITIZENSHIP AND REGULATORY REFORM**

My paper has sought to paint with a broad brush in exploring the institutional dynamics of regulatory reform. There is a danger that in doing so, sight is lost of the underlying substance of regulatory reform. However, when we come to analysing the substance of reform there is an equal danger in merely tapping in to one type of discourse: the discourse of removing the regulatory burdens on business. Therefore, I take it as given that there is a familiarity with the terms of this discourse. My interest is, rather, in the construction of the citizen in the regulatory reform debate.

I have argued above that there is much to be gained from analysing the reform of EU regulatory policy from an institutionalist perspective. Elsewhere, I have suggested that the inter-institutional style of policymaking which is characteristic of EU governance poses problems for the construction of the EU citizen as more than a passive identity (Armstrong, 1996). Here I suggest that this view is confirmed by an analysis of the discourse deployed in relating regulatory reform to ideas of citizenship.

#### **A. THE EU CITIZEN: ABSENT PRESENCE**

The creation of the Single Market has largely been achieved through the vesting of economic rights in business. The Treaty rules on free movement have been used by economic undertakings in order to challenge national rules which inhibit trade. The role of the citizen in this process has often been constructed in terms of the rational

consumer able to make decisions about products without the need for paternalistic interference from national governments (see Armstrong, 1995). Nonetheless, the citizen as consumer is a passive identity. To be sure, consumer policy measures have been adopted and it would be disingenuous to simply dismiss these measures. Rather, my suggestion is that the dominant discourse is one in which the European citizen reaps benefits from European integration through the removal of barriers to trade and distortions to competition. In this regard, the citizen is more beneficiary than participant.

Support for this view can be found in the simple assertion of the Molitor report that (CEC, 1995a: ii),

"Legislative simplification can also help to bring the EU closer to its citizens." No further explanation is given of this assertion which is then left to hang in mid-air. The UNICE report is more patronising. As I noted above, the change in regulatory culture is not merely to be brought about through changes in the attitude of government but also through changes in the attitudes of the public. Such a change in attitude is to be brought about through political leadership, all of which smacks of a perception that what is really required is a (re)education of the masses. Further, in its proposals on employment regulation, UNICE objects to the harmonisation of social systems and laws. It is one thing to have economic rights which vest in business but another to have social rights vested in citizens.

Even, the European Parliament - the one institution which is directly elected by EU citizens - draws a strange connection between citizenship and simplification. For the EP, one goal of simplification is to make EU legislation more clear and readable for EU citizens. How many EU citizens sit down with a pile of directives as part of an evening's entertainment?

An important issue, therefore, concerns the voice of the citizen. Do the changes which have been made to standard operating procedures ensure that the voice of the citizen is heard, transforming the citizen from passive identity to participant?

#### B. WHOSE VOICE IS IT ANYWAY?

As I have noted above, one of the signals which the Commission is keen to make is in terms of increased pre-legislative consultation. Such an increase in access to the policy formation stage is to be welcomed. On the other hand, in key areas such as social policy, there has been little by way of legislative proposals upon which to be consulted! Concerns as to competitiveness have already had their impact. Even where social action has been forthcoming through the social dialogue, there are clear issues as to the representativeness and responsiveness of the social partners. It is not clear to me that the social dialogue is one in which the citizen has much of a voice.

Indeed, if changes are being made to the style of regulation this has important consequences for the style of representation. It would indeed be ironic if, at the moment when the EP gains greater involvement in the EU's legislative process, much of the decision-making moves out from the EU legislative organs. For instance, the Commission has, in a recent Communication, suggested the use of

environmental agreements as an alternative to EU regulation or in implementation of EU law. The conclusion of national environmental agreements may give individual citizens greater direct participation in decision-making, but much depends on how such arrangements occur in practice.

In short, if there is a change in the model of EU governance away from direct EU regulation to increasingly flexible forms of regulation (including self-regulation), then the forms of participation and access to decision-making must also change.

In terms of the management of regulatory reform it is interesting to note the 'target population' highlighted in the Financial Statement accompanying the SLIM initiative. It states (CEC, 1996a: 13),

"The pilot project is targeted on the needs of businesses and professional people throughout the Community for clear, simple and proportionate regulation that allows them to exercise their Single Market rights without unnecessary restrictions or excessive expense."

Thus, at best the EU citizen is a 'professional person' exercising economic rights. However, it is clear that it is the voice of business which is heard loudest in the regulatory reform debate.

Indeed, there is a danger that it is in the areas of social and environmental law that attempts at regulatory reform will have a direct and negative impact upon the lives of citizens while also denying them the voice to protest at the EU level. The Commission must be careful not to merely respond to the pressures from business and Member States, while undermining the legitimacy of the entire integration project by excluding the voice and values of EC citizens.

## CONCLUSION

Political forces and policy outcomes are shaped by institutional structures. That remains true even where the forces are aimed at reform of those very same institutional structures. In this way, attempts to reform the regulatory culture of the EU through changes to organisational structures and standard operating procedures are themselves shaped by prevailing organisational, procedural and normative structures. As I have argued, horizontal reform initiatives are unlikely to succeed in that they fail to take account of the differentiated regulatory structure of the EU fragmented both within organisations, between organisations and between EU and national levels.

I argue that while the SLIM initiative has its failings, it nonetheless corresponds more closely to a style of incremental vertical policy development that is consistent with the workings of the Commission. I also suggest that the initiative fits within the norms and values which have underpinned the management of the Single Market from the Sutherland report, through to the Strategic Programme and now to the Action Plan to be presented to the Amsterdam Council. It is arguable that taken together, these initiatives might prove to be a mechanism for shedding light on the issue of *national* regulatory reform.

Finally, I contend that the voice of the citizen is one which has largely been absent from the regulatory reform debate. Moreover, policy prescriptions which might allow greater consultation of citizens may be inadequate in light of more fundamental changes to the governance of the EU.

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