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COMMISSION REPORT TO THE EUROPEAN COUNCIL

Better lawmaking 1999

"Better lawmaking" does not simply mean applying the principles of subsidiarity and proportionality correctly; it also involves making legislation simpler, more understandable and more accessible. The result is greater effectiveness and acceptability of Community actions.

Since the Edinburgh European Council in December 1992, the Commission has been committed to this path, as previous "Better Lawmaking" reports¹ have documented. Today, the Commission is resolute in its intention of pursuing this course and is preparing itself to face new challenges and play an effective role in a changing environment.

In line with the conclusions of the Vienna European Council in December 1998, the "Better Lawmaking" report details the "developments made over the last year" and is presented in advance this year to the "various institutions and bodies concerned (European Parliament, Council, Committee of the Regions, COSAC, Economic and Social Committee)". This will give time for thorough discussion and sufficient preparation of the European Council.

I SUBSIDIARITY AND PROPORTIONALITY

1) A changing background

Current events show, first and foremost, that there are **areas in which more Europe is needed**.

The need for Community action, or action at European Union level, in these areas was conveyed by the new provisions in the Treaty of Amsterdam on public health and on the creation of an area of freedom, security and justice². Recent events have highlighted the need to make real use of these new powers.

The results of the BSE crisis and other events like the problem of dioxins in foodstuffs have made everyone more aware of the importance of a European food safety policy³.

The Tampere European Council of 15 and 16 October, which was particularly concerned with establish an area of freedom, security and justice, underlined the need for a common European policy on asylum and migration, and for a real European area of justice and crime-fighting at EU level.

In the field of foreign and security policy too, the war in the Balkans has shown us how important Community input is, whether it be help in reconstruction⁴ or aid/trade facilities.

These new needs are not in contradiction to the principle of subsidiarity. We have to continue to ask ourselves the question whether the proposed action cannot be tackled well enough by the

¹ These reports are in response to the requests made by the European Council of December 1992 and subsequent European Councils, to the Interinstitutional Agreement of 29/10/1993 on the application of the principle of subsidiarity (Bull. EC 10-1993, p. 128) and to Article 9 of the protocol on the application of the principles of subsidiarity and proportionality. After the first reports of 1993 (COM (93)545) and 1994 (COM(94)533), which were limited to subsidiarity, the Commission decided that the scope should be extended to include all action aimed at improving legislation in the broad sense ("Better lawmaking"). This approach was welcomed by the European Council. Since then, "Better lawmaking" reports have been submitted in 1995 (CSE(95)580), 1996(CSE(96)7), 1997 (COM(97)626) and 1998 (COM(98)715).

² Since the area of JHA came under the compass of the Community, the Commission has presented three Proposals for Regulations (COM(1999) 220, COM (1999) 260 and COM (1999) 348), one Proposal for a Directive (COM (1999) 219) and two Communications (COM (1999) and COM (1999) 239).

³ The Commission is preparing a White Paper on food safety for the end of the year. It will contain a plan of action and, in particular, the measures required to improve Community legislation, to encourage better implementation of legislation and to provide greater transparency to the consumer.

⁴ COM (1999) 312 final

Member States and whether the task should instead be addressed at Community level. The answer will of course depend on circumstances and needs. This is why Article 3 of the protocol on the application of the principles of subsidiarity and proportionality annexed to the EC Treaty (referred to hereinafter as the "Amsterdam Protocol") indicates that subsidiarity is a dynamic concept.

Looked at from another point of view, subsidiarity will assume crucial importance in the context of **enlargement**. The fundamental question is what implications will enlargement have on common policies? The further enlargement goes, the harder it will get to define what really has to be addressed at European level. This is something we should be giving serious consideration, and the principle of subsidiarity will be our guide. Clearly, people will only accept Europe as a legitimate entity if there is a flexible and evolutionary vision of subsidiarity. The Union's priorities must be dynamic, not fixed in stone, and the terms and breadth of its action must be calibrated with flexibility and detail.

2) Results in 1999

The results in 1999 show that the Commission has applied the principles of subsidiarity and proportionality strictly, as required by the Amsterdam Protocol. This is not always easy. Indeed, as the report "Better Lawmaking 1998 – A Shared Responsibility"⁵ pointed out, the other institutions still exert great "legislative pressure" on the Commission. These "demands" for legislation do not always comply with the principles of subsidiarity or proportionality.

Subsidiarity

In areas of shared responsibility between the Community and the Member States, subsidiarity means acting only where **necessary**. More specifically, under Article 5 of the Amsterdam protocol, Community action is justified where both aspects of the subsidiarity principle are met:

- the objectives of the proposed action cannot be sufficiently achieved by Member States' action (the necessity criterion);
- the objectives can be better achieved by action on the part of the Community (the effectiveness criterion).

In terms of environment policy, for instance, the Commission proposed establishing emission ceilings for certain atmospheric pollutants⁶ only after ascertaining that national action was insufficient to deal with the problems of acidification, tropospheric ozone and soil eutrophication. There is still room, however, for the Member States to implement the measure in the light of their own specific situations.

The Commission also continues to explore **alternatives to legislation**. This year, for example, agreements have been concluded directly with industry as part of the Auto Oil II Programme (aimed at establishing environmental objectives for vehicle emissions)⁷ and on the reduction of energy consumption⁸.

The Commission also leaves room for **self-regulation**. This year, within the framework of extensive dialogue with the social partners and in accordance with the Social Protocol, two

⁵ COM (1998) 715 final

⁶ COM (1999) 125 final

⁷ These are agreements with the producers Kama (Korean) and Jama (Japanese)

⁸ These agreements concern television sets, video tape recorders, and also domestic washing machines. The possibility of voluntary agreements and the use of a voluntary quality label have been explored with regard to the reduction in energy consumption of consumer electronic equipment (cf. Communication COM (1999) 120 final)

agreements have been reached on part-time work⁹ and on the organisation of working time of seafarers¹⁰.

Proportionality

The Commission proposes measures which, in accordance with the Amsterdam Protocol, leave **"as much scope for national decision as possible"**. This year, for example, it has proposed a reduced VAT rate on labour-intensive services, giving Member States the possibility of applying it on an experimental basis¹¹. In the area of customs, the Commission has proposed a Decision ("DOUANE 2002")¹² focusing on cooperation between the national customs administrations to ensure the same level of effectiveness.

The form of Community action chosen by the Commission is, as required by the Amsterdam protocol, **"as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement"**. Here are a few examples:

- The Commission reaffirmed the importance of mutual recognition in a Communication on the workings of the internal market, whilst making the changes required to extend its scope. This principle guarantees the free movement of goods and services without the need for harmonisation of national legislation¹³.
- In response to the Council's wishes, the Commission will encourage the use of the principles underlying the new approach to technical harmonisation, as a means of improving the clarity and efficiency of Community legislation.
- In the area of supplementary pensions, the Commission followed up an earlier Green Paper by proposing a coordinated approach (not harmonisation) tailored to the various rules in place in the Member States¹⁴.
- Rather than using more binding instruments, the Commission has put forward a Recommendation in the area of environmental inspections in order to establish a set of minimum provisions acceptable to the Member States¹⁵.

As part of the BEST task force recommendations (simplifying conditions for small businesses), the Commission committed itself in 1998¹⁶ to stronger moves to **analyse the impact** of legislation on businesses. To this end, the Commission is currently reviewing its system for assessing the repercussions of proposals on businesses in order to make them more efficient.

Under the "European Business Panel" pilot project, it has been possible since 1998 to assess, by means of a questionnaire, the impact on businesses of the legislative proposals to be adopted by the Commission, particularly in terms of adjustment costs and the administrative burden. This initiative has involved consultation on three proposal projects of businesses in the Member States.

⁹ This agreement was endorsed by the Commission's Proposal for a Directive, subsequently adopted by the Council (Directive 1999/70/EC, OJ L 175 of 10 July 1999).

¹⁰ This agreement was endorsed by the Commission's Proposal for a Directive, subsequently adopted by the Council (Directive 1999/63/EC, OJ L 167 of 2 July 1999).

¹¹ COM (1999) 62

¹² COM (1998) 644

¹³ COM (1999) 299 final

¹⁴ COM (1999) 134 final

¹⁵ COM (1998) 772 final

¹⁶ Communication COM (1998) 550 final "Promoting entrepreneurship and competitiveness" - The Commission's response to the BEST Task Force Report and its Recommendations

Results have been encouraging. For example, 1744 businesses were consulted on the proposed project on electrical and electronic waste. The results of this consultation will be taken into account when the proposal is finalised.

The Commission can also **assess the risks and costs/benefits before proposing action**. This was the case, for example, in the areas of energy economics and chemical products¹⁷.

Prior consultation

The Commission intends to continue its practice of prior consultation, a procedure it has already followed for several years. To this end, a host of public forums and debates are held on the opportunities for action (round-table discussions, seminars, Green Papers and White Papers). This year, the Commission has published a further two Green Papers¹⁸ and two White Papers¹⁹, as well as several other discussion and consultation documents (communications and reports). These initiatives promote the exchange of different points of view and perspectives and help to tailor action to needs.

II OTHER MEASURES

1) Growing political interest

It is noticeable that efforts to make legislation clearer, simpler and more accessible are currently acquiring pre-eminence on the political agenda, both at Community level and at the level of the Member States as the main producers of legislation²⁰. However, this must result in genuine progress, and for this a change of outlook is required.

The Commission's contribution takes the form of better drafting, simplification, consolidation, recasting, and improvements in access to legislation.

The Commission stresses the need for more effective internal coordination.

The Commission is aware of the need for and encourages exchanges of views and dialogue on these points with the other institutions²¹ and with the Member States²².

2) Results in 1999

Quality of drafting

For Europe to be more transparent and closer to its citizens, Community legislation must be understandable to those it is intended for. Texts must be clear, coherent and unambiguous, if only to ensure that legislation is applied uniformly in all the Member States.

¹⁷ Communication on a review of the policy on chemical products (to be presented before the end of the year).

¹⁸ Green Paper on public sector information in the information society, COM (1998) 585 final, and Green Paper on liability for defective products, COM (1999) 396 final

¹⁹ White Paper on commerce, COM (1999) 6 final, and White Paper on modernisation of the rules implementing Articles 85 and 86 of the EC Treaty, COM (1999) 101 final

²⁰ From the application of Directive 98/34/EC of 22 June 1998, formally consolidating Procedure 83/189 for the provision of information in the field of technical standards and regulations, it appears that the number of national regulations applying to products in the internal market is on the increase (the number of notifications rose from 438 in 1995 to 620 in 1999, based on a projection to 20 October 1999). (See also Internet site <http://europa.eu.int/comm/dg03/tris/>).

²¹ On 18 December 1998, the European Parliament adopted a Resolution on the Commission report "Better lawmaking 1997", OJ C 98 of 9 April 1999. On 16 September 1999, the Committee of the Regions adopted an Opinion on the Commission report "Better lawmaking 1998: A Shared Responsibility".

²² Following the conferences on "Better lawmaking" organised by the Presidencies of the United Kingdom and Austria in 1998, this year has seen two informal meetings between national and Community experts at The Hague and Rome.

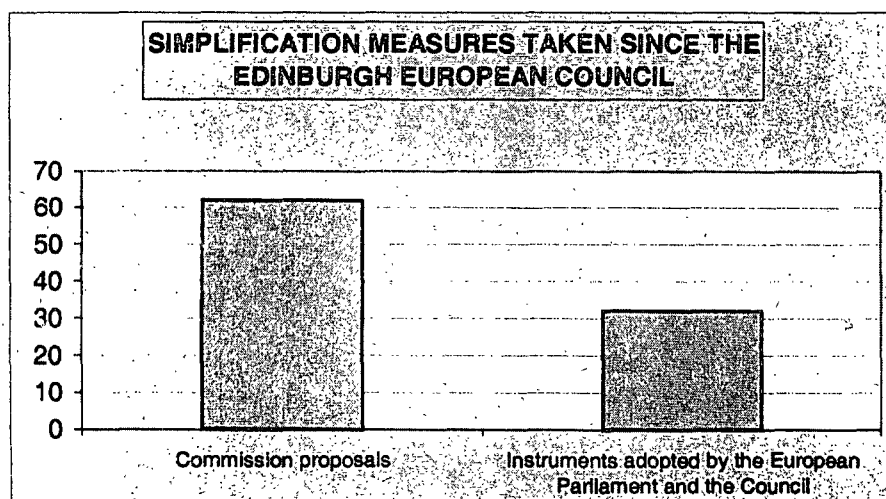
With this in mind, an interinstitutional agreement on the quality of drafting was adopted in December 1998 and published in March 1999²³ based on important collective work between the legal services of the Commission, the Council and the European Parliament. This agreement was adopted pursuant to Declaration No 39 on the quality of legislative drafting, which was annexed to the Final Act of the Amsterdam Treaty and calls on the institutions to draw up common guidelines. The institutions are now preparing to implement this agreement and are drawing up a joint practical guide for people drafting legal texts. The Council has already taken these developments into account in its new rules of procedure²⁴. The Commission has set up a network of legislative coordinators to supervise the quality of draft legislation prepared in each Directorate General.

Finally, the Commission has introduced two computer tools to rationalise the drafting and presentation of legal documents: Greffe 2000 and LegisWrite.

Simplification

Firstly, an effort must be made to avoid unnecessarily complex provisions. The Commission is striving to work towards this goal wherever possible. Regrettably, there are cases where the Commission's proposals have become more unwieldy during their passage through the other institutions²⁵. The other institutions therefore also have a duty to remain vigilant and work in the same direction.

The Commission is pursuing the process of simplifying Community legislation, which was started several years ago, in all areas (although, as the table below shows, the Council has not advanced at the same pace in adopting the Commission's proposals):



²³ OJ C 73 of 17.3.1999

²⁴ Council Decision of 31 May 1999 adopting the Council's Rules of Procedure, OJ C 147 of 12.06.1999

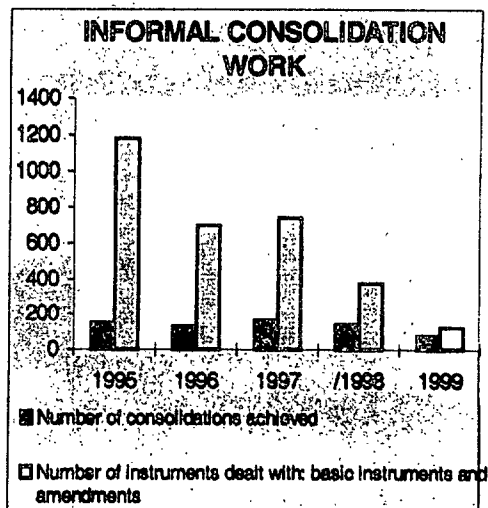
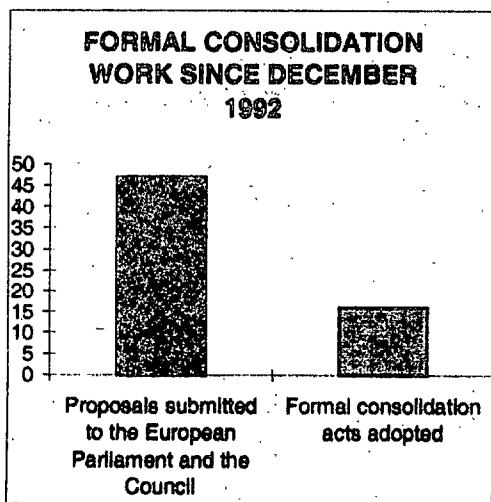
²⁵ For example in the CAP reform as part of Agenda 2000, a number of the proposals were the result of considerable effort to simplify legislation. However, the final agreement no longer included these proposals; instead, new overwritten sections were added for the arable crops, beef and veal and milk sectors (see the conclusions of the Berlin European Council, 25 March 1999). Recently, in the case of the proposal on the procedure for attesting the conformity of glass construction products, most of the Member States wanted to introduce a more onerous and expensive attestation procedure than that proposed by the Commission (COM(1999) 314 final)

This year, the Commission has launched important initiatives, enumerated in a report on the simplification of agricultural legislation²⁶, as part of the simplification of the CAP. In this context, the Commission has repealed 13 Regulations concerning the European Agricultural Guidance and Guarantee Fund²⁷ and fruit and vegetables²⁸.

- The fifth EC and Euratom framework programmes on research²⁹ present improvements aimed at establishing a simpler, more transparent and more flexible legal framework and, in particular, at streamlining the standard contracts.
- The SLIM initiative³⁰ (simpler legislation for the internal market) is one of the most conspicuous examples of the ongoing simplification work. This project has already enabled 11 simplification proposals to be presented. In order to make it more effective, the Commission has launched an assessment programme in cooperation with the Member States, and recommendations will be made on this subject. As the Commission Communication on the strategy for Europe's internal market³¹ suggests, the SLIM approach must be applied to Community Directives and to the national transposition measures alike.
- The Commission is also committed to the modernisation of competition rules. In a White Paper published this year³², it urged the abandonment of its monopoly in granting exemptions under Article 81 of the EC Treaty and proposed the full involvement of the Member States' competition tribunals and authorities in implementing Articles 81 and 82 EC.

Formal and informal consolidation, recasting

This year, the Commission has adopted eight **formal consolidation** proposals entailing the repeal of 130 legislative instruments. However, in many cases adoption of the proposals is delayed by the fact that the instruments themselves are constantly changing, thus requiring the consolidation proposals to be amended likewise.



²⁶ Report on the simplification of agricultural legislation, COM (1999) 156 final
²⁷ Regulation EC 1608/1999 (JOL 190 of 23 July 1999, page 12).
²⁸ Regulation EC 982/1999 (JOL 120 of 8 May 1999, page 22).
²⁹ Decision No 182/1999/EC of 22 December 1998 concerning the fifth framework programme of the European Community for research, technological development and demonstration activities (1998 to 2002) and Council Decision of 22 December 1998 concerning the rules for the participation of undertakings, research centres and universities in the implementation of the fifth framework programme of the European Atomic Energy Community (Euratom) (1998-2002), OJ L 26 of 1.2.1999
³⁰ Communication from the Commission "Simpler legislation for the internal market (SLIM): a pilot project", COM(96) 204 final
³¹ COM (1999) 464 final.
³² White Paper on modernisation of the rules implementing Articles 85 and 86 of the EC Treaty, COM (1999)-101 final.

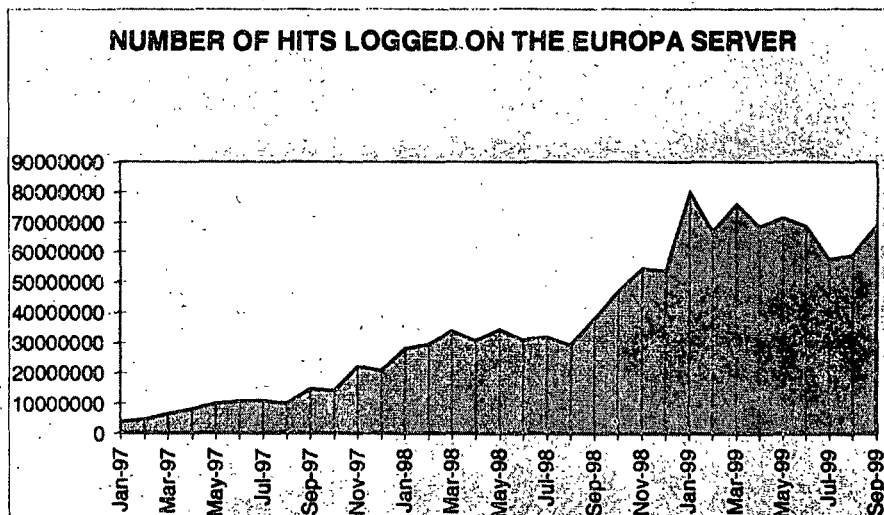
In terms of the Common Agricultural Policy (Agenda 2000), the Council this year adopted measures, proposed by the Commission in 1998, for **recasting** a large number of basic instruments. The legal departments of the European Parliament, the Council and the Commission have continued to work towards an interinstitutional agreement on a more structured approach to recasting.

Major work continues to be done on **informal consolidation**, which was introduced to satisfy the requirements of all users of Community law. This year, the texts of around 500 consolidated instruments have been made available to the public in all language versions on the Eur-Lex³³ and Celex³⁴ sites. The Eur-Lex and Celex sites will eventually be merged into a single site providing integrated access to the texts of Community law.

Access to information

For the Union to serve its citizens, it is essential that their needs be put first, particularly with regard to accessing information on Community law.

Although several information brochures and guides are distributed to users, mainly via the relay offices and information networks, the latest technology now offers powerful tools for accessing information, and the Commission is determined to make full use of them. Proof of this is the growing success of the Europa server³⁵.



The various sites on the Europa server are regularly made more user-friendly and more accessible. As an example, the free, multilingual Internet page on "Dialogue with business"³⁶, went online in January to enable businesses to make better use of the opportunities offered by the single market. The Commission is also improving the Internet page "Dialogue with the citizens"³⁷ to provide more information on people's rights. The dialogue enables the shortcomings at national level which hinder the exercise of these rights to be identified and solutions to be proposed, by simplifying, for example, the administrative procedures.

³³ <http://www.europateam.ec.ccc/eur-op/ojol/index.html>
³⁴ <http://www.ec.ccc/elixint/index.htm>
³⁵ <http://europa.eu.int>
³⁶ <http://europa.eu.int/business/>
³⁷ <http://europa.eu.int/citizens>

The CORDIS server³⁸ provides access to legislation and to additional information explaining the fifth framework programmes on research and on the implementation arrangements.

The Commission is also progressively implementing a new question and answer service, called EUROPE DIRECT. Using this service, citizens can quickly obtain the information they require on the activities of the European Union by dialling a free number or by using electronic mail, fax or the postal service.

³⁸ <http://www.cordis.lu>

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DOCUMENTS

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