



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.12.2001
COM(2001) 728 final

**COMMISSION REPORT
TO THE EUROPEAN COUNCIL**

BETTER LAWMAKING 2001
**(pursuant to Article 9 of the Protocol to the EC Treaty on the application of the
principles of subsidiarity and proportionality)**

TABLE OF CONTENTS

1.	Introduction.....	3
2.	How the principles of subsidiarity and proportionality are applied.....	3
2.1.	Subsidiarity and proportionality: the legal framework under the Treaty of Amsterdam	3
2.2.	Subsidiarity in 2001.....	4
2.3.	Proportionality in 2001.....	6
3.	The Community's legislative activity in 2001.....	8
3.1.	Consultation.....	8
4.	Quality lawmaking.....	11
4.1.	Legal drafting.....	11
4.2.	Recasting, consolidation and codification.....	11
4.3.	Simplification.....	13
5.	Conclusions.....	15

1. INTRODUCTION

Each year, the Commission presents a report to the European Council, the European Parliament and the Council on the way **Article 5 of the EC Treaty** has been applied. The report also goes to the Committee of the Regions and to the Economic and Social Committee. This is (a) at the request of the **Edinburgh European Council of December 1992** and successive European Councils; (b) in accordance with the inter-institutional agreement of 29 October 1993 on how the principle of subsidiarity should be applied; (c) on the basis of **Article 9 of the Protocol to the Treaty of Amsterdam on the principles of subsidiarity and proportionality**.

The report for 2001 has been written for the Laeken European Council of 14 and 15 December 2001, and describes developments over the past year.

The aim is to give a factual account of how the principles of subsidiarity and proportionality have been applied, using real-life examples from the Community's legislative work.

A more thorough debate on the simplifying and improving the regulatory environment is this year launched with the preparation of a **consultative document** as required by the Stockholm European Council¹.

The **White Paper on Governance** proposed that, from 2002 on, the annual report on subsidiarity and proportionality under the Amsterdam Protocol focus on the European Union's main policy objectives.

2. HOW THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY ARE APPLIED

2.1. Subsidiarity and proportionality: the legal framework under the Treaty of Amsterdam

The principles are defined by **Article 5 of the EC Treaty and by the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty of Amsterdam**.

Article 5 says that:

- The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.
- In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

¹ Communication from the Commission to the Laeken European Council (COM(2001)726).

- Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

The protocol to the Treaty of Amsterdam sets out guidelines on how the principle should be applied. It justifies action on the part of the Community where the issue under consideration has transnational aspects, where action by a Member State alone or lack of Community action would conflict with the requirements of the Treaty, or where action at Community level would produce clear benefits by reason of its scale or effects.

In addition, the Protocol imposes broad consultation, simple legislation and assessments of the financial/administrative impact of measures on the Community, the national governments, the local authorities, economic operators and the public at large.

2.2. Subsidiarity in 2001

The Protocol stresses the dynamic nature of the concept of subsidiarity: on the one hand, it allows Community action to be restricted or even discontinued where it is no longer justified; on the other, it allows it to be expanded within the limits of its powers.

In working towards the new objectives introduced by the Amsterdam Treaty, the Community has put in a great deal of legislative effort, within the limits of its powers, to regulate in these new policy areas or to make Commission action more effective.

With a view to creating an “**area of freedom, security and justice**” in the European Union, as provided for in the Amsterdam Treaty, and in line with the conclusions of the Tampere European Council of 15–16 October 1999 and the *Scoreboard*² on progress made, the Commission proposed important legislative action in this field³. The main initiatives are concerned with laying down a common judicial framework for the **conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employment**⁴, the **status of third-country nationals who are long-term residents**⁵, and a **common European asylum regime**⁶.

2 COM(2001)167 of 24.03.2000; COM(2001) 628 of 30.10.2001.

3 Cf., for example; COM(2001) 388, Proposal for a Council Directive relating to the conditions in which third-country nationals shall have the freedom to travel in the territory of the Member States for periods not exceeding three months, introducing a specific travel authorisation and determining the conditions of entry and movement for periods not exceeding six months - OJ C270E of 25.9.2001. It is worth noting that, for the purposes of achieving the objectives set out in Title VI of the TEU on “police and judicial cooperation in criminal matters”, the Community may, under Article 61 of the TEC, propose measures for preventing and combating crime “in accordance with the provisions of Article 31(e) of the TEU”:

- ◆ COM(2001) 259 of 23.05.2001, Proposal for a Council framework Decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking;
- ◆ COM (2001) 521 of 19.9.2001, Proposal for a Council framework Decision on combating terrorism.

4 COM (2001) 386 of 11.07.2001.

5 COM(2001) 127 of 13.03.2001.

6 COM(2001) 181 of 03.04.2001, COM(2001) 447 of 26.07.2001, COM(2001) 510 of 19.09.2001.

With a view to meeting the objectives laid down in the Treaty concerning asylum and other policies connected with the free movement of people, Community action is justified in that the objectives cannot be met adequately by the Member States but can, because of the scale and effects, be dealt with more effectively at Community level. Such is the case for the **proposal for laying down minimum standards for the reception of asylum seekers in the Member States**. The fact is that common minimum standards on asylum policy constitute an essential element in the common European asylum regime armoury. Having a single Member State responsible for a particular asylum application would be seen by the asylum-seeker as more equitable if all the Member States offered the same minimum standards.

In addition, these minimum Community standards will help to limit the scale of secondary movements of asylum-seekers resulting from disparities in reception conditions from country to country, and will thus have a positive effect on the national systems' effectiveness.

In terms of **environment policy** and **social policy**, the Treaty seeks to achieve comparable levels of safety throughout the Community.

The Commission has tabled a proposal for Community legislation on the traceability and labelling of GMOs⁷ at all stages of their market life. Its aim is to create a harmonised framework for the traceability of these products, and as such it constitutes a source of legal certainty and reflects a logical and consistent approach which will help the internal market to run smoothly.

In terms of **social policy**, Community action aimed at attaining comparable levels of safety and health for workers is the reason for a legislation proposal introducing minimum safety and health requirements for the use by workers of work equipment (in this case, scaffolding)⁸.

The Amsterdam Treaty also lays down new objectives for **combating fraud** and any other illegal activity likely to adversely affect the Community's financial interests (under Article 280 of the Treaty).

The proposal for a Directive on the **criminal-law protection of the Community's financial interests**⁹ is designed to give Community-wide coverage to some of the provisions of the Convention on protection of the Community's financial interests of 26 July 1995¹⁰, which has not yet been ratified by all the Member States and does not therefore apply at European level. The point of the proposal is to achieve convergence of the Member States' criminal law on defining what is meant by fraud, corruption and money-laundering affecting the Community's financial interests, and on the question of criminal-law responsibilities and sanctions. The general objective is to

7 COM(2001) 182, Proposal for a Regulation of the European Parliament and of the Council concerning traceability and labelling of genetically modified organisms and traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC.

8 Directive 2001/45/EC of the EP and of the Council of 27 June 2001.

9 COM (2001) 272.

¹⁰ This Convention is based on Article K3 of the Treaty on European Union, 26 July 1995, OJ C 316 of 27.11.1995.

seek an equivalent level of protection for the Community's financial interests in all the Member States.

Under the EU's **regional policy**, systems of management and vetting under the Structural Funds have been set up without prejudice to the Member States' institutional, legal and financial systems¹¹.

The Member States are responsible for verifying and, primarily, making regular and effective use of Community resources, and for dealing with any irregularities and taking action where there is a major change which is likely to affect the nature or conditions of implementation.

On the **statistics** front, the principle of subsidiarity is behind the creation of a common statistical nomenclature of territorial units (NUTS) with a view to ensuring that regional statistics are comparable throughout the Community¹². It is also worth mentioning a proposal for gathering statistics of rail transport¹³ and a common framework for drawing up, submitting and evaluating comparable labour force cost indices in the Community¹⁴.

On the question of **energy saving**, the Commission tabled a proposal for a Directive on the energy performance of buildings, which gave rise to discussion on how the principles of subsidiarity and proportionality should be applied¹⁵.

2.3. Proportionality in 2001

Subsidiarity and proportionality requirements — *or, to put it more simply, questions of expediency and scale* — are closely intertwined. However, whereas the subsidiarity principle applies only to areas in which the Member States and the Community share competence, the proportionality principle applies to **all areas of Community action**. What it says is that no action by the Community should go beyond what is necessary to achieve the objectives of the Treaty (Article 5, third line, of the TEC).

It is also a reflection of the proportionality principle when, in its policy making, the Community legislates only to the extent necessary (paragraph 6 of the Protocol) and where Community measures leave as much scope as possible for Member States' established decision-making and legal arrangements. Where appropriate, and subject to the need for proper enforcement, Community measures should also provide Member States with alternative ways of achieving the objectives of Community action (paragraph 7 of the Protocol).

At a general level, the Commission focused in 2001 on the scope and method of Community action by reference to two documents: its **interim report** to the Stockholm European Council on **improving and simplifying the regulatory environment**¹⁶ and its **White Paper on European Governance**¹⁷. The

11 Council Regulations No 438/2001 and No 448/2001.

12 COM(2001) 83.

13 OJ C 180 E of 26.06.2001, p.108.

14 OJ C 304 E of 30.10.2001, p. 184.

15 See section 2.3 "Proportionality in 2001".

16 COM (2001)130.

Commission's report on the regulatory environment sets out a framework for in-depth and systematic examination of the way the Community regulates, while the White Paper addresses the issue of effective decision-making and explores the possibility of using different policy instruments to meet Treaty objectives¹⁸. The point of both these initiatives is to help the Commission to update, inform and consolidate its stance on the expediency and scale of Community intervention.

Meanwhile, the Commission continued to explore and apply the proportionality principle in **various specific policy areas**. It conducted a dual assessment of subsidiarity and proportionality requirements in terms of **energy conservation**, where its proposal for a Parliament and Council Directive on the energy performance of buildings¹⁹ is founded on the compelling nature of the proposed measures in terms of achieving the Community's own objectives for reducing energy dependence, on its international obligations to reduce greenhouse gas emissions (under the Kyoto protocol), and on the major differences between Member States' efforts so far in this field.

The Commission found that any Community initiative which did not impose an obligation to act, or to achieve a particular result, would be ineffective in its impact on the substantial potential for energy saving. The proposed Directive — again in accordance with proportionality requirements — is concerned only with laying down general principles and objectives (minimum standards, certification procedures, etc.) and excludes precise details on implementing and monitoring provisions, which are left to the Member States.

Proportionality principles were, however, invoked — in the context of a proposed recast — with regard to a specific area of **internal market legislation**. The Commission's proposal for a European Parliament and Council Regulation on fertilisers²⁰ seeks to ensure that these products can circulate freely within the EU and specifies the characteristics (i.e. composition, labelling and packaging) to which they must conform. The proposal is aimed in particular at large chemical firms which produce mineral fertilisers, and at importers of mineral fertilisers manufactured outside the EU. The Community's proposed action of recasting 18 existing Directives²¹ into a single Regulation was found to be warranted because of the need for harmonised implementing, monitoring and enforcement arrangements for Community legislation in this field.

17 COM (2001)428.

18 Consultation on the issues explored in the White Paper runs into the spring of 2002.

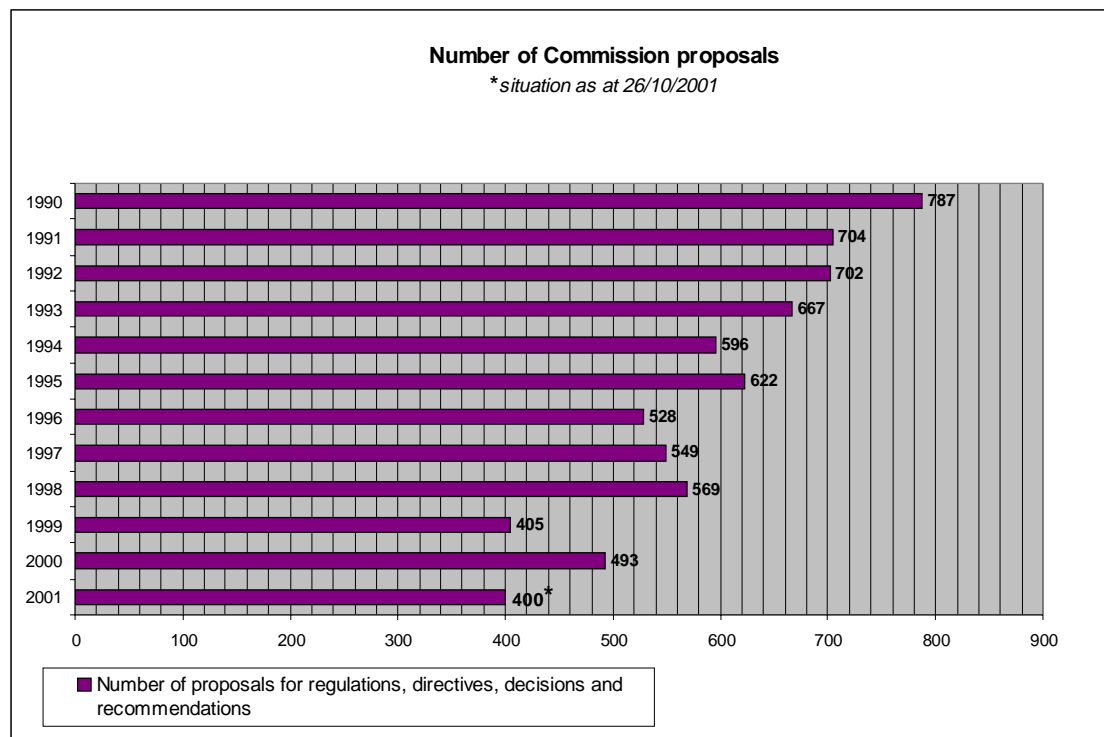
19 COM (2001)226.

20 COM(2001)508.

21 See part 4.2.

3. THE COMMUNITY'S LEGISLATIVE ACTIVITY IN 2001

An analysis of the Commission's legislative activity²² shows that, since 1990, there has been a decline in the total number of proposals, despite the new objectives enshrined in the Treaty.



3.1. Consultation

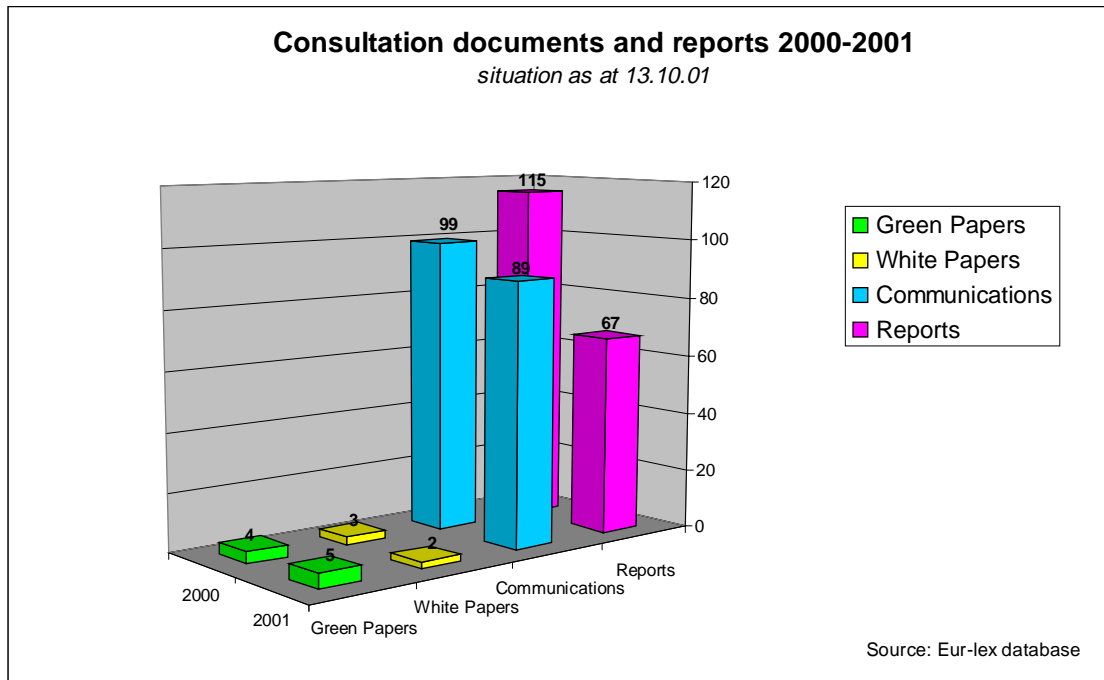
Under the Community decision-making process, the aim of which is to create “an ever closer union among the peoples of Europe”, all decisions have to be taken “as closely as possible to the citizen”. The principle of subsidiarity plays its part in meeting this basic democratic requirement, which features in Article 1 of the Treaty on European Union.

The first indent of Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality states that, before proposing legislation and without prejudice to its right of initiative, the Commission should “consult widely²³”.

22 In 2001, the Commission adopted, on the basis of its programme of work, 139 legislative proposals. Some 90% of all the Commission's proposals are conditioned by external constraints, viz.:

- ◆ the Community's international obligations (approx. 30%)
- ◆ instruments deriving from Treaty obligations and secondary law (between 10% and 15%)
- ◆ adapting existing Community legislation (approx. 20%)
- ◆ resolutions of the Council or the European Parliament or requests from the social partners and economic operators (between 20% and 25%).

23 See part 2.1.



The Commission's **White Paper on Governance**²⁴ proposes making the European Union's policy-making process more open so as to get more people and organisations involved.

Article 138 of the EC Treaty states that any proposal in the **social policy** field requires the prior consultation of the social partners. In 2001, the social partners' opinion was requested on the possible direction of Community action on the protection of workers' personal data and on the proposals for modernising and improving work relations, protecting the health and safety of self-employed persons at work, and on the risks associated with exposure to asbestos at work.

Negotiations between the social partners on temporary work failed to reach a conclusion in 2001.

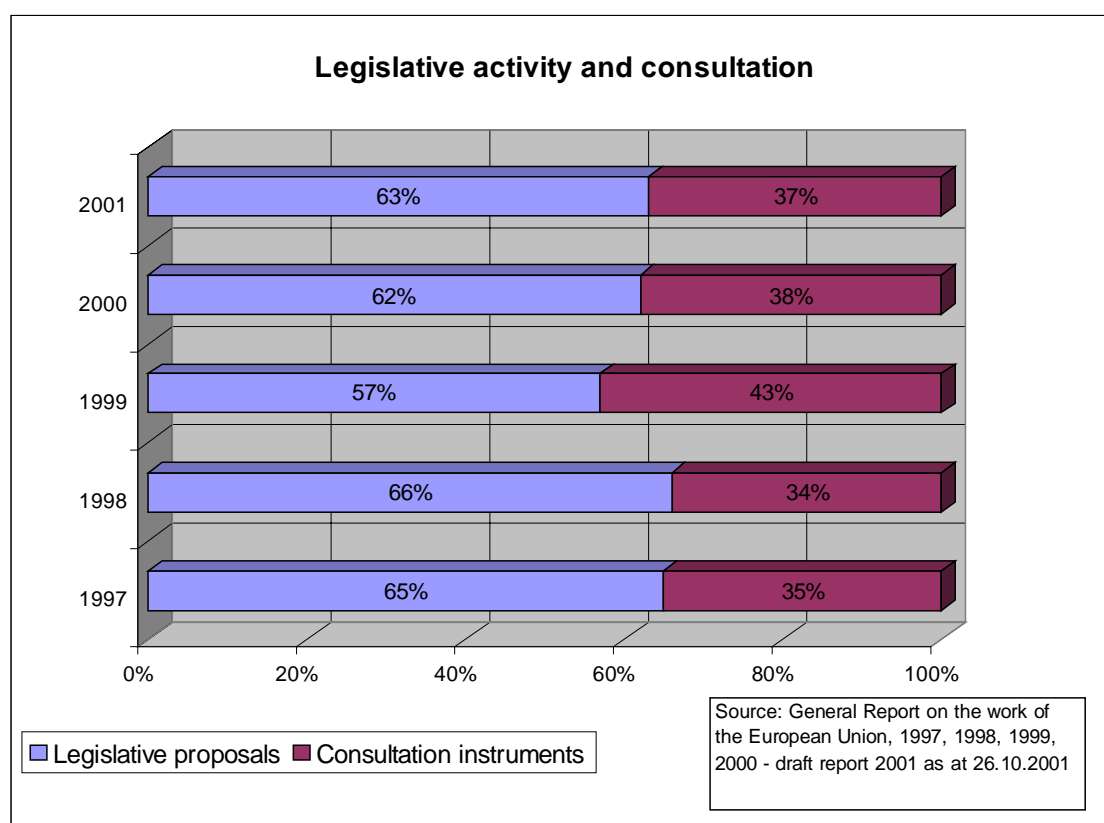
The Commission did a lot of prior consultation of interested parties in the course of 2001, the aim being to enhance transparency and achieve greater involvement on the part of civil society and economic operators.

This was the case with the **European Forum on energy and transport**, which the Commission set up on 12 July 2001. The Forum comprises operators, users, consumers, trade unions, and representatives of environmental protection, road safety and academic interests, and will be consulted on forthcoming proposals from the Commission or, alternatively, later on, providing feedback and acting as a monitoring centre for Community policies.

24 COM(2001)428.

Consultation documents include:

- The **White Paper on European Governance**²⁵, inviting reactions from the EU institutions, the Member States, local authorities and civil society on openness, participation, accountability, effectiveness and coherence in the workings of the EU institutions.
- The **Green Paper on consumer protection in the European Union**²⁶, which prompted broad public consultation on the general lines of future consumer protection policy to prevent the varying forms of national regulation having such a restrictive effect on the internal market.
- The **White Paper on “European transport policy for 2010: time to decide”**²⁷, which proposes Community action to restore balance to the European transport system, favouring means of transport which are more environment-friendly, encourage a more intermodal approach, and deliver more effectiveness and quality for users.



²⁵ See footnotes 16 and 22.

²⁶ COM(2001) 531 of 3.10.2001.

²⁷ COM (2001)370 of 12.09.2001.

4. QUALITY LAWMAKING

4.1. Legal drafting

The *Joint practical guide for persons involved in the drafting of legislative texts*, which was called for by the interinstitutional agreement,²⁸ has been finalised in all the official languages and is now accessible on the Internet (europaTEAM). The guide gives practical, accessible and clear advice to anyone involved in the legislative drafting process. In addition, and in compliance with the instructions given under point (b) of the internal organisational measures under the agreement:

“b) [the institutions] shall organise their respective internal procedures in such a way that their legal services, including their legal/linguistic experts, may, each for their own institution, make drafting suggestions in good time, with a view to applying these guidelines...”

In addition to the checks on the substantive nature of the draft legislation, the quality of legal drafting has been improved by getting the Legal Service’s lawyer-linguists group systematically involved at the interservice consultation stage.

4.2. Recasting, consolidation and codification

Making Community law accessible is one of the major political objectives of the Community, as was reflected in the conclusions of the Edinburgh European Council of December 1992.

The White Paper on European Governance stressed the need for the EU to pay constant attention to making legislative instruments better, more effective and simpler.

Recasting is one way of addressing this problem. Adopting a more structured approach will make legislation more accessible.

At its meeting in Helsinki in December 1999, the European Council called for an inter-institutional agreement on the more structured use of the recasting technique to be concluded as quickly as possible.

On 12 September 2001, the Commission adopted an inter-institutional agreement (between the three institutions) for a more structured use of the recasting technique for legal acts²⁹.

Having recourse to this technique will make it possible to adopt a single legislative text which makes the required changes, codifies them with provisions remaining unchanged from the previous act, and repeals the previous act. This technique will thus prevent the proliferation of isolated amending acts which often make the corpus difficult to understand. It will also make the legislation clearer for the new Member States and their citizens.

28 The agreement was published in OJ C 73 of 17.03.1999, p. 1.

29 SEC(2001)1364.

In addition, the Commission put forward an important recasting initiative on **fertilisers**:

the proposed Regulation embraces four directives and various acts amending them³⁰.

In **agricultural policy**, the Commission presented **nine** recasting proposals with a view to amending **29** legislative acts³¹.

Codification is a legislative technique for clarifying legal instruments which have undergone multiple, substantial amendments by setting out the updated text of the various instruments.

This year, the Commission has presented **seven** proposals for codification with a view to replacing **78** legal acts; **three** of these have been adopted, replacing **13** legal acts.

Proposals for codification pending

- Directive on the marketing of fodder beet seeds – COM(2001) 177
- Directive on the marketing of fodder plant seeds – COM(2001)193
- Directive on the marketing of cereals seeds – COM(2001)196
- Directive on the marketing of potato seeds – COM(2001)192
- Directive on the marketing of the seeds of oil and fibre plants – COM(2001)195

30 COM(2001) 508 of 14.09.2001.

31 Commission Regulation (EC) No 213/2001 of 9 January 2001 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards methods for the analysis and quality evaluation of milk and milk products and amending Regulations (EC) No 2771/1999 and (EC) No 2799/1999; Commission Regulation (EC) No 214/2001 of 12 January 2001 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in skimmed-milk powder; Commission Regulation (EC) No 449/2001 of 2 March 2001 laying down detailed rules for applying Council Regulation (EC) No 2201/96 as regards the aid scheme for products processed from fruit and vegetables; Commission Regulation (EC) No 609/2001 of 28 March 2001 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards operational programmes, operational funds and Community financial assistance, and repealing Regulation (EC) No 411/97; Commission Regulation (EC) No 883/2001 of 24 April 2001 laying down detailed rules for implementing Council Regulation (EC) No 1493/1999 as regards trade with third countries in products in the wine sector; Commission Regulation (EC) No 884/2001 of 24 April 2001 laying down detailed rules of application concerning the documents accompanying the carriage of wine products and the records to be kept in the wine sector; Commission Regulation (EC) No 1282/2001 of 28 June 2001 laying down detailed rules for the application of Council Regulation (EC) No 1493/1999 as regards the gathering of information to identify wine products and to monitor the wine market and amending Regulation (EC) No 1623/2000; Commission Regulation (EC) No 1554/2001 of 30 July 2001 laying down detailed rules for the application of Council Regulation (EC) No 1260/2001 as regards marketing sugar produced in the French overseas departments and equalising the price conditions with preferential raw sugar; Commission Regulation (EC) No 1557/2001 of 30 July 2001 laying down detailed rules for the application of Council Regulation (EC) No 814/2000 on information measures relating to the common agricultural policy.

- Directive on the common catalogue of varieties of agricultural plant species – COM(2001)191
- Directive on the marketing of vegetable seeds – COM(2001)194

Proposals for codification adopted

- Directive 2001/23/EC of 12.3.2001 concerning the safeguarding of workers' rights in the event of a transfer of ownership
- Directive 2001/25/EC of 4.4.2001 concerning the minimum level of training for seafarers
- Directive 2001/34/EC of 28.5.2001 on the admission of securities to official stock exchange listing and on information to be published on those securities

The consolidation effort is being vigorously pursued, and the number of consolidated measures should have reached **1 240** by the end of 2001, compared with 1 030 at the end of 2000.

4.3. Simplification

The Community has continued along the road to simpler legislation, with the aim of making Community laws more accessible to the citizen.

Commission Regulation (EC) No 993/2001³² on rationalising and simplifying the rules for **customs regimes**;

Commission Regulation (EC) No 1557/2001³³ harmonising application arrangements for **information measures under the common agricultural policy** for various sectors of products;

Council Regulation (EC) No 973/2001 laying down certain technical measures for the conservation of certain stocks of highly migratory species³⁴;

Directive 2001/19/EC of the European Parliament and of the Council on the general system for the recognition of professional qualifications³⁵;

Proposal for a European and Council Directive on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States³⁶;

32 Commission Regulation (EC) No 993/2001 of 4 May 2001 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, OJ L 141 of 28/05/2001.

33 Commission Regulation (EC) No 1557/2001 of 30 July 2001 laying down detailed rules for the application of Council Regulation (EC) No 814/2000 on information measures relating to the common agricultural policy, OJ L 205 of 31/07/2001, p. 0025 – 0032.

34 OJ L 137 of 19.05.2001, p. 1.

35 OJ L 206 of 31.07.2001, p. 1.

36 COM(2001) 257 of 23.05.2001.

Communication on completing the **internal energy and natural gas market**³⁷, incorporating a package of legislative proposals requiring the repeal of a series of texts;

Proposal for a Regulation concerning the **common organisation of markets in the goat and sheep meat sectors**³⁸, the aim being to replace compensatory payments by a fixed-sum payment with a view to simplifying the ewe premium: the introduction of a fixed, predictable amount will facilitate management of the premium scheme and avoid the cumbersome procedures of monitoring prices and carrying out complicated calculations.

Over recent years, the Commission has made **simplification** one of the guiding principles in its work on reform of the common agricultural policy.

Against this background, the Commission presented a **report on the simplification of agricultural legislation**³⁹, setting out the progress made in the field since adoption of the first report on simplification in April 1999.

To this end, the Commission has decided to concentrate on two aspects, viz.

- making agricultural legislation clearer, more transparent and accessible
- minimising the administrative workload which the common agricultural policy imposes on farmers and other parties, and on the national and Community authorities.

The Commission has intensified its efforts under the **SLIM**⁴⁰ (simpler legislation for the internal market) programme. The fifth phase of **SLIM**⁴¹ was launched in April 2001.

Policy sectors selected for this fifth phase are:

- **transfer of radioactive waste**
- **cosmetics**
- **pesticide residues.**

37 COM (2001) 125 of 13.03.2001.

38 COM(2001) 247.

39 COM(2001) 48.

40 COM(96) 204.

41 SEC(2001) 575.

5. CONCLUSIONS

This report indicates to what extent the Community has applied the principles of subsidiarity and proportionality in its legislative work in 2001.

With effect from 2002, this annual report on the application of the principles of subsidiarity and proportionality will, as proposed in the White Paper on Governance, address the main objectives of European Union policies.