



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 September 2004

12339/04

COMPET 142

NOTE

| | |
|------------------|--|
| from: | Presidency |
| to: | Permanent Representatives Committee (Part 1)/Council (Competitiveness) |
| No. prev. doc. : | 9995/04 COMPET 88 IND 71 INST 160 MI 178 RECH 114 |
| Subject : | Better regulation - Simplification of legislation - Progress report |

In preparation of the forthcoming session of the Competitiveness Council on 24 September 2004 the Presidency herewith submits in Annex to this note a Progress report on the above subject.

The Presidency recalls that the Competitiveness Council adopted Conclusions on Better regulation at its session on 17/18 May 2004, stating its intention to consider priority areas for simplification of legislation in September with a view to agreement before the end of 2004. As a step towards identifying priority areas the Member States were invited by letter from the Irish and Dutch Presidencies on 10 June 2004 to submit concrete proposals. The response to this invitation has been very positive and a great number of proposals for simplification, covering several legislative sectors, have been received, with still more likely to come. These proposals need to be examined carefully before a draft priority list can be drawn up. The Presidency intends to pursue this work actively in the Working Party and in the Permanent Representatives Committee during the weeks ahead.

At this stage the Presidency has considered it most useful to submit the attached Progress report as a basis for the policy debate which the Council is invited to hold on the subject, with a view to endorsing the Presidency's approach for the continued work leading up to the envisaged agreement at the November session on priorities for simplification, to be handed over to the Commission.

Conclusion

The Permanent Representative Committee is invited to forward the Presidency's progress report to Council (Competitiveness) as a basis for the Council's policy debate on the subject of Better regulation/Simplification of Legislation and with a view to the Council endorsing the approach set out by the Presidency for the continued work.

Better regulation - Simplification of legislation
Presidency Progress Report

1. Introduction

At its meeting on 17/18 May 2004 the Competitiveness Council adopted Conclusions on better regulation (doc. 9995/04) aimed at increasing Europe's competitiveness by improving the quality of its legislation. These conclusions were in response to the request by the March 2004 European Council that the Council should identify priority areas for simplification. In its conclusions, the Competitiveness Council committed itself to doing so before the end of the year.

In a letter of 10 June 2004 the Irish and then incoming Dutch Presidencies of the Competitiveness Council asked delegations to submit to the Council Secretariat concrete suggestions for simplification, based on their own national experiences. The letter further stated that, on the basis of the input received, a list of Council's suggestions would be compiled, which could then be used by the Commission in the future planning of its rolling programme for updating and simplifying the *acquis communautaire*. In doing so, the Council would respond to the invitation which the Commission has extended on a number of occasions since the launch of its simplification initiative in February 2003¹ to present concrete suggestions that could be used as input for this programme.

2. Analysis of input received

2.1 Number and nature of the proposals

By 13 September 2004 concrete suggestions had been received from 17 Member States: Belgium, Denmark, Germany, Estonia, Spain, Ireland, Cyprus, Latvia, Luxembourg, Hungary, the Netherlands, Austria, Poland, Portugal, Slovenia, Sweden and the United Kingdom. Three more

¹ 6591/03 MI 40 - COM(2003)71.

Member States were in the process of finalizing their input: France, Italy and Finland. The total number of concrete suggestions exceeds 200, many of which are elaborated in quite some detail.

A first analysis of the material shows that the large majority of the suggestions meet the criteria set out in the letter of 10 June: that the suggestions should target specific Directives or Regulations rather than broad areas of legislation; that they should provide a precise analysis of the problem, including indications as to how the situation could be improved. The annex to the letter specified a further set of criteria for the selection of simplification proposals, which was copied from the Commission's Communication on simplification of February 2003. These criteria are a good starting point for the identification of priority proposals.

Some suggestions have not been taken into account because they belong to one of the following three categories:

- 1) The suggestion is already part of the Commission's simplification program (phases 1 to 3). This is for instance the case for the 6th VAT Directive and fisheries Regulations.
- 2) The suggestion does not concern existing legislation, but proposals for legislation that are still under examination in Council. This is for instance the case for REACH.
- 3) The suggestion goes beyond the scope of simplification by calling into question the political goals or the usefulness of a particular legal act.

2.2 The content of the proposals

Initial analysis of the proposals shows that the suggestions cover almost all the different aspects of simplification. Difficulties are signalled in implementing legislation because of successive amendments, overlapping or conflicting requirements and potential legal uncertainty resulting from inconsistent definitions or terminology. In other cases the administrative implementation and compliance costs appear disproportionate in relation to the benefits sought by the EC legislator. More specifically the following types of simplification emerge from the suggestions that Member States have submitted:

- Codification and consolidation of legislation (mainly in transport)
- Reduction of reporting and information requirements (mainly in statistics)
- Reduction of overregulation and accumulation of regulations (mainly in e-commerce)
- Exempting certain types of businesses or activities (mainly in social and environment)
- Rules concerning accessibility of European programmes (structural funds and education)

The suggestions put forward by Member States cover a wide range of legislative sectors, with particular emphasis on transport, statistics, environment, agriculture, fisheries, e-commerce and financial services.

3. Work ahead

3.1 Two step approach

The list of the approximately two hundred proposals which remain after application of the criteria listed above needs to be examined further, with a view to compiling a shortlist of proposals that can be submitted to the Commission as Council's priorities for simplification. The Competitiveness Council committed itself in May to finalize this work before the end of the year, which means conclusion at its meeting in November.

Because of the large number of suggestions, the Working Party intends to follow a two-step approach: first it will determine – on the basis of the number and nature of suggestions received – which legislative areas seem to offer the greatest scope for simplification. In a second step, the proposals within the identified high-potential areas will be examined more closely. From these, the Council's list of priorities will be selected.

3.2 Further criteria for selection

In order to be able to prioritize between suggestions, several delegations in the Working Party suggested to focus on the impact that a simplification proposal would have on companies and competitiveness. Such a focus is in line with the annex to the letter of 10 June, as well as with the

context in which the European Council's request was made and the main responsibilities of the Competitiveness Council. This leads to a fourth selection criterion, in addition to the three referred to in the annex to the letter of 10 June:

4) Priority proposals should directly relieve the regulatory and administrative burden for companies.

It was also suggested in the Working Party that regulation which has been in place for some years should have priority over regulation that was adopted and implemented fairly recently. For this latter category it can be argued that adaptation problems are a normal phenomenon after new legislation has come into force, and that simply allowing companies some more time to adapt and get used to the new rules might solve most of the problems mentioned. This point, that was also made in the 10 June letter, gives rise to a fifth criterion:

5) Priority proposals should cover legislation that has been in force long enough to allow sufficient experience to have been gained.

On the basis of the identification of priority sectors for simplification (the two step approach) and the five criteria mentioned in this report, it should be possible to reduce the list of over 200 proposals to a more manageable size, from which Council's priorities can be selected.

3.3 Proposals that are not prioritised

Although not all proposals can be selected as priorities, proposals that are not selected as Council priorities may still be brought to the attention of the relevant Commission services as suggestions from individual Member States. This is especially useful for suggestions relating to legislation that is already being examined by the Commission services, either in the context of the simplification programme or in the context of some other review. As the Council is likely to continue to give high priority attention to simplification of legislation, the remaining suggestions could provide useful input at a later stage.

4. Progress in other areas of better regulation

4.1 Competitiveness testing

A so-called “virtual group” under the High-Level Group on Competitiveness and Growth has prepared a recommendation on how the competitiveness dimension in the Commission’s impact assessment procedure might be further strengthened. This recommendation was approved by the High-Level Group, and formally presented to the Commission through Coreper. The Commission will in October inform the Council about the results of an internal review that the Commission has conducted simultaneously.

4.2 Measurement of administrative burdens

An initial discussion has been held in the Economic Policy Committee (EPC) on the feasibility and requirements of a measurement tool for administrative burdens. Work is under way aimed at presenting to the Ecofin Council in October the outlines of a possible EU method for measuring administrative burdens.

4.3 Impact assessment of Council amendments

As a follow-up to the Interinstitutional Agreement on Better Lawmaking², Coreper decided last July that a pilot project should be conducted in order to develop a workable procedure through “learning by doing”. With firm support from the Commission and the Council Secretariat, this pilot project on the draft Batteries directive³ is now well under way. The lessons to be learned from this pilot project are likely to be presented to Coreper well before the target date of May 2005.

² OJ C 321, 31.12.2003, p. 1.

³ 15494/03 ENV 655 ENT 221 CODEC 1704 + ADD 1.