



COMMISSION OF THE EUROPEAN COMMUNITIES

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Commission interim report to the European Council
on the application of the subsidiarity and proportionality principles

INTRODUCTION

1. Discussing the Commission's annual report for 1995 "Better Law-making - Report to the European Council on the application of the subsidiarity and proportionality principles on simplification and on consolidation",¹ the Madrid European Council asked the Commission to produce an interim report in advance of its 1996 annual report and asked it "to report to the European Council at its meeting in Florence on the application of the principles of subsidiarity and proportionality to current EC legislation and to proposals under consideration".²
2. While acknowledging the difficulty of applying these principles, this paper shows that the Commission is trying to find appropriate ways of improving its organization, and that tangible progress has been made since December.

LEGISLATIVE PROPOSALS

3. As stated in its report to the Madrid European Council, in January 1996 the Commission adopted "general legislative-policy guidelines" with internal operational instructions for giving effect to the concept of "better law-making".
4. The purpose was to consolidate a legislative culture based on strictness, coherence and openness. A legislative "check list" guides Commission departments in the preparation of all new instruments. Conformity with the subsidiarity and proportionality principles and the objective of legislative and administrative simplification are among the criteria to be applied.
5. Within these guidelines, **prior consultation** continues to play a significant role. Prior consultation enables the Commission to enter into discussions with interested parties on the need for an initiative at Community level in a given area and to base its action on the broadest possible dialogue. The Commission has accordingly taken an increasing number of initiatives aimed at stimulating debate. To give but a few examples:
 - since the beginning of the year, it has so far published four Green Papers³ and two White Papers⁴ on such diverse topics as *legal protection for encrypted services in the internal market*,⁵ the review of the *Merger Regulation*,⁶ *commercial communications*,⁷ *financial services*,⁸ *energy policy*,⁹ and *air traffic management*.¹⁰

¹ CSE(95)580, presented on 24 November 1995.

² Bull. 12-95, point I.14.

³ Green Papers set out ideas for reflection in a given area where Community action might be envisaged.

⁴ White Papers set out more detailed guidelines for Community action.

⁵ COM(96) 76 final, presented to the Council on 8 March 1996.

⁶ COM(96) 19 final, presented to the Council on 2 February 1996.

⁷ COM(96) 192 final, presented to the Council on 13 May 1995.

⁸ COM(96) 209 final, presented to the Council on 22 May 1995.

⁹ COM(95) 682 final, presented on 18 December 1995.

¹⁰ COM(96) 57, presented to the Council on 8 February 1996.

- the communication on *taxation in the European Union*¹¹ calls for a set of new measures or changes to the present tax system and the establishment of more coordination among the Member States on fiscal strategy.
6. The downward trend in the number of legislative proposals actually sent to the Council and Parliament, which has been apparent in recent years, is continuing in 1996. The application of the subsidiarity principle helps. In areas where the Community does not have exclusive powers, the Commission is pursuing its efforts to target its activities and limit proposals for measures to areas in which Community action is really necessary. On the other hand, it announced its intention of withdrawing, in accordance with the commitments given to the Edinburgh European Council, its proposal for a directive on the *definition of Community shipowner*¹² in the context of a general review of *Community shipping policy*.¹³ The same document announced the withdrawal of the proposal for a Council Regulation establishing a *Community ship register*.¹⁴
7. The Commission's recent actions also reflect its respect for proportionality, tailoring legislation to match its goals:
- it prefers to make its initiatives more selective as regards the type of action to be taken, making greater use of framework directives, which obviate the need to go into detail as to national implementation. In line with its commitment to the Edinburgh European Council, the Commission has revised its proposal on *takeover bids*¹⁵ and has presented a proposal for a framework directive which allows Member States considerable latitude so they can retain their national structures (where they are tried and tested, as in the United Kingdom) and, for the most part, their customs and traditions;
 - common minimum measures were encouraged in the Commission's proposal on *injunctions for the protection of consumers' interests*.¹⁶ This proposal establishes criteria for the mutual recognition of consumers' associations or entities acting in the collective interest, to enable them to take action before the Member States' national courts against practices that are contrary to Community law;
 - the social protocol allowed the social partners to reach an agreement, based on "self-regulation" by the representatives of economic and social forces, on *parental leave*, subsequently confirmed in a Commission proposal¹⁷ which was the subject of a political agreement in the Council on 29 March 1996. Under the same procedure the social partners have been consulted on and are discussing *flexible working hours* and *the burden of proof in sex discrimination cases*.

¹¹ SEC(96) 487 final, adopted by the Commission on 20 March 1996.

¹² COM(89) 226 final, presented to the Council and Parliament on 29 May 1989.

¹³ COM(96) 81 final, presented to the Council on 9 April 1996.

¹⁴ COM(89) 266 final, amended by COM(91) 54 final and COM(91) 483 final.

¹⁵ COM(95) 655 final, presented on 8 February 1996.

¹⁶ COM(95) 712 final, presented on 16 February 1996.

¹⁷ COM(96) 26 final, presented on 29 February 1996.

ADAPTING EXISTING LEGISLATION

8. New processes and methods have been introduced for **simplification in relation to the single market**. The aim of this pilot project (SLIM)¹⁸ is to present by November 1996 practical suggestions on ways of simplifying legislation in four sectors of the internal market: Intrastat, the system for gathering statistics on intracommunity trade; technical specifications for products for use in the construction industry; legislation on the mutual recognition of diplomas; and legislation on ornamental plants. This new working method brings together representatives of the Commission, the Member States and "consumers" of legislation. A report on the pilot project is to be presented to the Council (Internal Market) at the end of 1996. The Dublin European Council will also be kept informed in the 1996 Annual Report (Better Law-making).
9. In three areas, the simplification process already in progress has been pursued:
 - **reducing formalities and the administrative burden for small firms:**
 - . the Commission suggested more specific and concrete procedures for business impact assessments in its proposal for a Council decision on *a third multiannual programme for small and medium-sized enterprises (SMEs) in the European Union (1997-2000)*;¹⁹
 - . it also adopted a recommendation for a *common definition of small and medium-sized enterprises*²⁰ in order to enhance the effectiveness and coherence of all policies affecting small businesses and thereby reduce the risk of distortions of competition;
 - in 1995 the Commission, continuing its vast project of **simplification in the field of energy**, presented the Council with a preliminary report on the review of energy legislation. It proposed the repeal of 15 instruments (relating to oil and the rational use of energy) and the recasting of a regulation.²¹ So far the Council has decided to repeal three regulations and five recommendations. A second, more comprehensive report, which includes a review of general legislation, petroleum legislation and legislation on natural gas, electricity and energy efficiency, is in the process of finalization. This new report calls for five subsequent instruments to be repealed;
 - **simplification of environment legislation:** the Commission announced a new strategy for policy on water, to be followed by a framework directive that will replace at least five existing directives.²²
10. Finally, the Commission adopted the following specific initiatives for simplification or recasting:

¹⁸ COM(96) 204 final, presented on 13 May 1996.

¹⁹ COM(96) 98 final, presented to the Council on 22 March 1996.

²⁰ C(96)280; OJ L 107, 30.4.1996.

²¹ Council Regulation 1056/72 of 18 May 1972 on notifying the Commission of investment projects of interest to the Community in the petroleum, natural gas and electricity sectors, OJ L 120, 26.5.1972.

²² COM(96) 59 final, presented on 6 February 1996.

- the proposals for simplifying six directives relating to certain food products (*honey, coffee extracts and chicory extracts, preserved milk products, cocoa and chocolate, fruit juices and similar products, certain sugars and preserves*).²³ The aim of this simplification is to delete those clauses now covered by horizontal legislation on labelling, additives, hygiene, etc.;
 - the new regulation on the application of Article 85(3) of the Treaty to certain categories of *technology transfer agreements*,²⁴ which combines and simplifies the provisions of two regulations (repealed by the new one) on patent licensing and know-how licensing agreements;
 - a proposal for an amendment to Directive 90/219²⁵ on the *contained use of genetically modified micro-organisms*,²⁶ which greatly simplifies procedures in this field;
 - the proposal for a directive *establishing a mechanism for the recognition of qualifications in respect of professional activities covered by liberalization directives and laying down transitional measures*,²⁷ which seeks to improve and simplify formalities in trade and craft industry activities. It would entail the repeal of 35 existing directives;
 - Commission Regulation (EC) No 658/96,²⁸ which enters into force on 1 July 1996, replacing 27 implementing Regulations enacted over the years as regards *arable farming*, the volume of legislation in force will be correspondingly reduced.
11. The Commission observes that the Council's examination of the proposal for simplifying Community legislation on *dietary foodstuffs*,²⁹ transmitted as requested in the conclusions of the Edinburgh European Council, has not yet produced the simplification sought.
12. Measures to secure greater accessibility of Community legislation complete the picture. The Commission has published a handbook containing fourteen veterinary Directives applicable to production, marketing and importing animal products for human consumption as a valuable means of making the current legislation easier to read and understand and as a first step towards simplifying it. In its 1996 report on Better Law-making, the Commission will take stock of the year's activities in respect of consolidation, codification and recasting.³⁰
13. The Commission wishes to reiterate the point made in the introduction to its 1995 Better Law-making report that fuller use of the recasting procedure will depend on the

²³ COM(95) 722 final, adopted on 17 April 1996.

²⁴ Regulation (EC) No 240/96, OJ L 31, 9.2.1996.

²⁵ OJ L 117, 8.5.1990, p.1.

²⁶ COM(95) 640 final, presented on 28 March 1996.

²⁷ COM(96) 22 final, presented on 9 February 1996.

²⁸ OJ L 91, 12.4.1996.

²⁹ COM(94) 97 final, presented on 28 March 1994.

³⁰ Annex I to the report in COM(95)580 (Better Law-making, presented on 24 November 1995) describes these three instruments.

conclusion of an interinstitutional agreement. If the European Council agrees with this, it should call on all the institutions to do whatever is necessary to make such an agreement possible, as it did at Edinburgh for consolidation.

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14. As the Council pointed out in its Declaration on the Commission's legislative programme for 1996, "all Community legislative activity is now increasingly guided by the principle of subsidiarity".³¹ The Commission will continue its efforts to translate the principles of subsidiarity and proportionality into Community practice. However, ensuring compliance with these two principles is an ongoing task, and the Commission expects the other institutions to carry out their share of the work.
15. Furthermore, the most immediate cause of the legislative and administrative burden on business is often national legislation. For example, as can be seen from the practical application of the 1983 directive on an information procedure for technical rules and standards,³² in recent years the national technical legislation applying to products within the internal market have been far more numerous, extensive and complicated than Community measures. To be effective, the Community's efforts must be supported by similar measures in the Member States.

³¹ (4473/96) adopted on 2 February 1996.

³² Directive 83/189/EEC (OJ L 109, 26.4.1983), as amended by Directive 88/182/EEC (OJ L 81, 26.3.1988) and Directive 94/10/EC (OJ L 100, 19.4.1994).