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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE  
EUROPEAN PARLIAMENT**

**Better Regulation for Growth and Jobs in the European Union**

{SEC(2005) 175}

# COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

## Better Regulation for Growth and Jobs in the European Union

The challenges facing the European Union and identified in the relaunched Lisbon Strategy are by now well known. The disappointing economic performance of the EU makes meeting these challenges much more difficult and led the Commission to propose making growth and employment the focus of a revised Lisbon strategy. Growth and employment will not be stimulated by carrying on as before. The EU and Member States need to further develop their approach to regulation to ensure that the defence of public interests is achieved in a way that supports and does not hinder the development of economic activity.

The European Union has, over the years, developed a sophisticated body of legislation which continues to deliver economic development, environmental protection and improvements of social standards, notably through the completion of the internal market. As progress towards these objectives is being achieved, it has also become clear that the way in which we regulate has considerable impact on whether we meet these objectives efficiently. The EU's better regulation policy aims to improve regulation, to better design regulation so as to increase the benefits for citizens, and to reinforce the respect and the effectiveness of the rules, and to minimise economic costs - in line with the EU's proportionality and subsidiarity principles.

In the context of the renewed Lisbon Strategy, refocused on growth and jobs, the Commission announced its intention to launch a comprehensive initiative to ensure that the regulatory framework in the EU meets the requirements of the twenty-first century. This initiative builds on the Commission's 2002 initiative for better regulation and reinforces the way in which better regulation contributes to achieving growth and jobs, while continuing to take into account the social and environmental objectives and the benefits for citizens and national administrations in terms of improved governance<sup>1</sup>. This also means that, both for existing legislation and for new policy initiatives, the extent of the legislator's intervention should remain proportionate to the political objectives pursued. The present Communication launches the initiative announced in the mid-term review and, while ensuring coherence with the ongoing action for better regulation, proposes three key action lines:

- By further promoting the *design and application of better regulation* tools at the EU level, notably in so far as impact assessments and simplification are concerned.
- By *working more closely with Member States to ensure that better regulation* principles are applied consistently throughout the EU by all regulators. Action at EU level alone will not be enough: the transposition of EU legislation by the Member States and national regulatory initiatives have a direct effect as well, not just on national administrations and on citizens but also on businesses, particularly SMEs, from across the Union.

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<sup>1</sup> The Commission will shortly be presenting a Communication setting out progress achieved in implementing the Action Plan of 2002 - COM(2002) 278, 5.6.2002.

- By *reinforcing the constructive dialogue* between all regulators at the EU and national levels and with stakeholders.

## 1. INTRODUCTION

### *A. Better regulation is crucial for promoting competitiveness both at EU level and in the Member States*

Over the past few years, European leaders and the Commission have put increasing emphasis on streamlining the EU's regulatory environment in order to increase its effectiveness. A range of initiatives have been launched by the Commission, European Parliament and the Council to codify, consolidate and simplify existing legislation and evaluate better the likely economic, social and environmental impacts of new regulatory proposals.

This Communication is a direct follow-up to the mid-term review<sup>2</sup>, focusing on the priority of improving European and national legislation in order to promote European competitiveness and thus stimulate growth and employment. Indeed, better regulation, which is about ensuring the quality of the regulatory framework, offers win-win opportunities. Better regulation will help make the European Union a more attractive place not only to invest in but also for citizens to work in since it has a significant positive impact on the framework conditions for economic growth, employment and productivity by improving the quality of legislation. This creates the right incentives for business, cuts unnecessary costs and removes obstacles to adaptability and innovation. It also ensures legal certainty and by that efficient application and enforcement throughout the European Union. In addition, it allows that social and environmental objectives are attained without disproportionate administrative costs. As a complement to EU action, Member States should also pursue their own better regulation initiatives.

This Communication intends to raise political awareness about the importance of implementing the Commission's 2002 Better Regulation Action Plan<sup>3</sup> as collective commitment is required, not only from the Commission and/or from the EU legislators, which are already confirmed by an Inter-institutional Agreement (see below), but also, and especially so, from the Member States themselves, which will have to demonstrate their clear commitment to better regulation principles through their National Lisbon Programmes (action plans).

This commitment at all levels is absolutely essential. The quality of Europe's regulatory environment does not only depend on what is done at EU level. International agreements have a bearing on EU legislation, and, indeed, within an internal market any rules - EU or national - have the potential to affect the economic activities of any EU business or citizen. It calls for a comprehensive response.

Therefore, in order to guarantee that legislation is designed and implemented efficiently, under a common strategic approach, Member States must increase their

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<sup>2</sup> COM(2005) 24, 2.2.2005.

<sup>3</sup> COM(2002) 278, 5.6.2002.

efforts in promoting better regulation, in parallel with actions already put in place at the EU level, so that the issue is tackled in a comprehensive manner.

### ***B. Importance has been recognised by all Institutions***

An Inter-institutional Agreement (IIA) on Better Law-Making<sup>4</sup>, agreed in December 2003 by the three EU institutions (European Parliament, Council and Commission), establishes a global strategy for better lawmaking throughout the entire EU legislative process. While recalling the commitments made by the Commission in its Better Regulation Action Plan, the IIA sets out the commitments of Parliament and Council in favour of better lawmaking. Its main elements include improving inter-institutional coordination and transparency, providing a stable framework for ‘soft law’ instruments<sup>5</sup> that should facilitate their future use, increasing the use of impact assessment in Community decision-making, and having Parliament and the Council modify their working methods to accelerate the adoption of simplification proposals.

Furthermore, in December 2004, the Ministers of Finance and Economic Affairs of six Member States<sup>6</sup>, representing their countries in the ECOFIN and Competitiveness Councils, signed a letter aimed at lending new impetus to the process of better regulation. This initiative followed the earlier Four Presidencies’ Joint Initiative of January 2004. The Commission welcomes these initiatives, as well as other similar calls for action, which provide strong political support for the improvement of the quality of legislation in Europe and believes that it provides an important building block in further developing a robust agenda for better regulation across Europe.

## **2. REINFORCING THE MEANS OF ACHIEVING BETTER REGULATION AT EU LEVEL**

A simpler and better regulatory environment will take time to materialize. Although the EU has achieved much in a relatively short period of time, these are but the first steps in what must be a permanent effort. However, given the need to strengthen economic growth and job creation identified in the Commission’s Lisbon Mid-Term Review, this Communication aims at arriving at a step change in the rigour with which this approach is pursued. The policy objectives that we pursue need a comprehensive legal framework to foster growth and jobs by ensuring free movement in an integrated internal market while taking fully into account environmental and social concerns. The Commission believes this can be achieved by building on the existing framework for better regulation and by injecting more commitment and urgency into striking the right balance between the policy agenda and the economic costs of regulation. This includes a careful analysis on the appropriate regulatory approach, in particular whether (legislation is preferable for the relevant sector and problem, or whether alternatives such as co-regulation or self-regulation should be considered. For co-regulation and self-regulation, the Inter-institutional Agreement on Better Law-making provides agreed definitions, criteria and procedures. Overall this will reinforce the effective application of the principles of proportionality and subsidiarity.

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<sup>4</sup> OJ C 321, 31.12.2003, p. 1.

<sup>5</sup> ‘Soft law’ instruments refers to co-regulation and self-regulation.

<sup>6</sup> The original four (Ireland, Netherlands, Luxemburg and UK) were joined by Austria and Finland – the Member States that will hold the Presidency in 2006.

## A. *Impact Assessment*

The Commission's commitment to integrated impact assessment is based on the principle of sustainable development and is designed to allow policy makers to make choices on the basis of careful analysis of the potential **economic, social and environmental impacts** of new legislation. This integrated approach is based upon the principle of a thorough and balanced appraisal of all impacts and allows the presentation of a comprehensive analysis and the identification of trade-offs, where relevant. A key idea is that the depth and scope of an impact assessment, and hence the resources allocated to it, are proportionate to the expected nature of the proposal and its likely impacts. Finally, Impact Assessments must go hand in hand with wide-ranging **consultation** allowing for sufficient time to receive the views of all stakeholders who wish to contribute to the shaping of new rules.

While the existing impact assessment tool provides a solid basis, the Commission believes that the assessment of economic impacts must be strengthened so as to contribute to the objectives of the renewed Lisbon strategy. Deepening the economic pillar of impact assessment does not compromise the importance of 'sustainable development' and the integrated approach, which remains the basis of the Commission's approach. Deepening the economic analysis, which also includes competition aspects, should improve the quality of the assessment of the true impact of all proposals. This will, therefore, make a significant contribution to strengthening competitiveness including effective competition while continuing to properly assess social and environmental consequences of proposed measures. This approach will be confirmed and translated in the context of the general update of the **Impact Assessment Guidelines** to be applied from April 2005. Moreover, the following actions are deemed necessary:

- The Commission has decided that, as a rule, initiatives set out in its Legislative and Work Programme 2005 – key legislative proposals as well as the most important cross-cutting policy-defining non-legislative proposals - should be the subject of an integrated impact assessment<sup>7</sup>. Transparency will be enhanced by the publication of *Impact Assessment Roadmaps*, which give a first indication of the main areas to be assessed and the planning of the subsequent analyses. The Roadmaps for the 2005 Legislative and Work Programme are already publicly available<sup>8</sup>. The Commission intends to explore ways for an earlier and more strategic use of Roadmaps in the planning and programming of Commission initiatives, especially in terms of public consultation. The Commission will thus ensure that legislative proposals are fully assessed for all their potential impacts.
- The Commission will explore how to better integrate the measurement of **administrative costs** in its integrated impact assessments as well as the possibility for developing a common approach to assessing administrative costs between EU institutions and Member States. The importance of measuring the administrative

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<sup>7</sup> Acts that fall under the executive powers of the Commission (for instance competition decisions or acts which scope is limited to the internal sphere of the Commission) are normally not subject to impact assessment.

<sup>8</sup> [http://europa.eu.int/comm/secretariat\\_general/impact/practice.htm](http://europa.eu.int/comm/secretariat_general/impact/practice.htm)

costs has been underlined by the ECOFIN and the European Council<sup>9</sup>. For this purpose, the Commission is launching a pilot phase<sup>10</sup>, aimed at testing methods for the quantitative assessment of such burdens associated with existing and proposed Community legislation. Initial results will be available in the autumn of 2005. After completion of the exploratory work, the Commission will determine whether and how to integrate this aspect more fully in its standard methodology.

- The Commission will reinforce the early external validation of the methodology for its impact assessments. To this end, the Commission will launch, by early 2006, a comprehensive independent **evaluation of the Impact Assessment system** as it has evolved and been implemented since 2002 and, in that context, draw on external expertise to advise it on the methodology of its impact assessments (see section 4). In parallel, it is important to reinforce the quality control by Commission departments of impact assessments before releasing these for inter-departmental scrutiny.
- Impact assessments, at the European level, are not only the responsibility of the Commission. The **Inter-institutional Agreement on Better Law-making** acknowledges the importance of impact assessments in improving the quality of Community legislation and also sets out<sup>11</sup> that, where the co-decision procedure applies, the European Parliament and the Council may have impact assessments carried out prior to the adoption of any substantive amendment they make<sup>12</sup>. The Commission believes that it is vital that this be done and hopes to soon agree with the the European Parliament and the Council on the key elements of a common approach to assessments carried out at the different stages in the legislative process.

### ***B. Screening of pending legislative proposals***

The Commission intends to carry out from 2005 a more thorough assessment of pending proposals than was previously the case. To that end, the Commission intends to screen proposals that are pending before the Council/Parliament with regard to their general relevance, their impact on competitiveness and other effects. This could lead the Commission to consider the possible modification, replacement or even withdrawal of such pending proposals. This action will also take into account the views of the enforcers and the users of legislation and of stakeholders in general wherever possible. The screening will focus on proposals adopted before 1 January 2004, and in particular those

- Which have not made substantial progress in the legislative process for a significant period of time;

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<sup>9</sup> Ecofin Council of 21 October 2004 and European Council of 4-5 November 2004.

<sup>10</sup> See SEC(2005) 175. The pilot projects will include areas such as statistics and construction products.

<sup>11</sup> OJ C 321, 31.12.2003, p. 4, point 30.

<sup>12</sup> The first such impact assessment took place in 2004 on an amendment of the Council to the Batteries Directive proposed by the Commission. Overall, Member States welcomed this pilot process, which will be formally assessed in 2005 by the Luxembourg presidency.

- For which impact assessments were not carried out, or whose impact assessments have revealed substantial weaknesses in the light of a significant number of converging contributions from the co-legislators, stakeholders and/or experts;
- Where substantial new scientific evidence, market developments or societal changes justify a review of the approach initially chosen.

### ***C. Simplification of existing EU legislation***

In February 2003, the Commission launched a framework of actions to reduce the volume of the Community *acquis*, to improve the accessibility of legislation and to simplify existing legislation. On this basis, the Commission has developed a rolling programme for simplification<sup>13</sup> and presented about 30 initiatives which have simplification impacts for economic operators, citizens and national administrations. In the Interinstitutional Agreement on Better Lawmaking, the institutions acknowledged the importance of simplifying existing EU legislation whilst maintaining the substance of Community policies.

In response to suggestions from the Member States to identify EU legislation that might benefit from simplification, a Council priority list of around 20 items of legislation (grouped into 15 priorities) was agreed at the November 2004 Competitiveness Council. The Commission has already brought forward proposals for three of the priorities and intends to reply to the others as soon as possible. The Commission will seek to examine whether additional legislative measures ripe for simplification can be identified from among the proposals made by Member States and accepted by the Council but which were not included in the priority list.

Enhancing the contribution of better regulation to growth and competitiveness also calls for an assessment of the continued relevance and proportionality of EU legislation and, in particular, the consideration of the real and cumulative impact in the Member States, once they implement and apply EU legislation. The Commission proposes to take the following action:

- To reinforce the mechanisms for identifying legislation that requires simplification; that is legislation which careful assessment shows to be disproportionately burdensome and complex for EU citizens and businesses in relation to the public interests that the legislation aims to safeguard. Evidence from infringement procedures will also be considered in this context. The assessment will involve consulting lawmakers, regulatory enforcers, businesses, citizens and stakeholders in general as to which pieces of legislation should be the prime targets for simplification. When such an assessment clearly confirms that public interests might be equally well served by simpler means, the modification or repeal of the legislation should be considered. This action will aim at seeking to identify significant improvements in a broad range of key policy areas and its success will depend on a strong political commitment by all regulators to produce concrete results.

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<sup>13</sup> “Updating and simplifying the Community Acquis” - COM(2003) 71 du 11.2.2003.

- The Commission will develop integrated sectoral action plans for simplification where appropriate. In some sectors, such as fisheries, agriculture and technical regulations for products, the Commission has already begun to develop such action plans, which allow more flexibility, coherence and continuity in our efforts towards simplification. Results in these areas might already be seen in 2005. A communication reflecting on these issues will be presented in October 2005, followed by the launching of a new phase of the Commission's simplification programme in 2006/2007<sup>14</sup>.
- Promoting the use of European standards as technical support to European legislation or as alternatives to legislation.

### 3. REINFORCING BETTER REGULATION AT THE MEMBER STATES' LEVEL

#### A. *Better Regulation in the Member States*

Recognising the link between better regulation and achieving stronger growth and more and better jobs, the Commission has already proposed that "Better Regulation" becomes part of the national "Lisbon" programmes and recommends that Member States report on their current activities, and those actions that they intend to take. The Commission will attach great importance to progress in this area as part of its evaluation of economic reforms in the Union and will report on this matter in its Annual Progress Report under the proposed new governance structure of the Lisbon strategy.

Better regulation is not a matter for the European Union alone. It cannot be achieved only by action at EU level. There are some Member States where legislative proposals are already subjected to an impact assessment, but not all Member States have such a system in place. The Commission recommends that all Member States establish national Better Regulation strategies and, in particular, impact assessment systems for the integrated assessment of economic, social and environmental impacts, along with the supporting structures adapted to their national circumstances. Such national systems would allow due account to be taken of the full impact of new legislative proposals, including their impact on competitiveness as requested in the Lisbon Action Plan<sup>15</sup>. In addition, national sectoral enquiries are useful tools for improving the quality of existing national legislation with a view to giving it a more pro-competitive orientation, while retaining the basis policy objective which is pursued<sup>16</sup>. The Commission will encourage Member States to aim for a scope of coverage for impact assessment which is similar to that of Commission integrated impact assessments. When drafting new national legislation, Member States are invited to take into account, as much as possible, the consequences of such legislation on the internal market and for other Member States.

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<sup>14</sup> The Framework for Action launched by the Commission in February 2003 expired by the end of 2004 and orientations for the Commission's future simplification work therefore need to be defined.

<sup>15</sup> See page 14 of SEC(2005) 192 which accompanied the mid-term review of the Lisbon Strategy, see note 2 above.

<sup>16</sup> Idem.

## ***B. Simplification of national legislation***

Simplification of national measures is the responsibility of the Member States. The Commission recommends that Member States set up simplification programmes and supporting structures adapted to their national circumstances. Exchange of best practices and peer reviews on this issue is strongly encouraged. The Commission will also encourage such simplification when scrutinising national measures for compliance with Community law, notably in the contexts of the implementation of Community directives, infringement proceedings under Article 226 EC and the notification of new technical regulations under Directive 98/34/EC<sup>17</sup>.

In harmonised areas, to improve the timely and correct transposition of directives and to avoid ‘gold-plating’ (the introduction of procedures that are not automatically required by a directive), the process of preventive dialogue between the Commission services and Member States<sup>18</sup> is being further developed to discuss how best to implement measures where such problems seem likely to occur.

In non-harmonized areas, while eliminating provisions that are or would be contrary to Community law, infringement proceedings and the preventive controls of Directive 98/34/EC should help to improve the quality of national regulation, in terms of their enhanced transparency, readability and efficiency. In relation to the free movement of goods, they enable the Commission to ensure that national legislation permits economic operators to reap the benefits of mutual recognition<sup>19</sup>.

The transparency of the notification procedure of Directive 98/34/EC<sup>20</sup> allows not only the Commission and other Member States to intervene, but also any interested stakeholders. The Commission will encourage Member States to exchange views on the regulations they have already adopted and on best practices and regulatory approaches. In newly regulated sectors (closely linked to scientific and technological development), the Commission will expand the use of this Directive to influence the development of national rules. This would strengthen the application of the subsidiarity principle, help to improve national provisions and provide increased evidence of any need for harmonisation.

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<sup>17</sup> Directive 98/34/EC obliges Member States to notify in draft any new technical regulation relating to products and information society services in the non-harmonised area. The aim is to prevent the introduction of new obstacles to the internal market in these sectors. It is planned to extend the scope of the Directive to other services.

<sup>18</sup> “Better Monitoring of the Application of Community Law” - COM(2002) 725, 16.5.2003.

<sup>19</sup> To a considerable extent, the principle of mutual recognition – under which there is a presumption that a product lawfully manufactured or marketed in one Member State should be capable of being marketed in all other Member States - is able to cope with hindrances to the free movement of goods caused by divergences in the legislation of the Member States. This applies to national rules in the non-harmonised area and also in the harmonised area, where implementing rules go beyond the minimum requirements of Community directives without constituting non-compliance.

<sup>20</sup> This legislation provides a “transparency mechanism” allowing the Commission and Member States to examine draft technical rules notified by a Member State before they enter into force in order to identify possible infringements of Treaty rules or the creation of new barriers in the internal market.

#### 4. ADVICE FROM REGULATORY EXPERTS AND STAKEHOLDERS

To facilitate the development of Better Regulation measures at both national and EU levels, the Commission will set up in the course of 2005 a **group of high-level national regulatory experts**. The mandate of this group will be to advise the Commission on better regulation issues in general, in particular simplification and impact assessment, taking into account all relevant aspects, including implementation and enforcement questions (given the fact that legislation is normally executed at the Member State level). The group should look at both EU and national legislation and would, therefore, provide an efficient interface between the Commission and key governmental authorities. It will aim at improving the regulatory environment for enterprises, industry, consumers, the social partners and citizens at large, allowing for social and environmental objectives to be delivered cost-effectively and at contributing to the spread of best practices and know-how within the EU on better regulation issues.

Through this high-level group, the Commission will strengthen cooperation with Member States by assisting them in their initiatives for fostering national implementation of better regulation (in particular, indicators of regulatory quality and peer reviews of regulatory management capacities in Member States). Hereby, the quality of implementation of EU legislation at Member States level will be improved, for example by a joint examination of the extent to which EU legislation is subject to so-called “gold-plating” by Member States (i.e. the introduction of requirements or procedures in the course of the transposition of EU legislation which are not required by that legislation). The group will also allow the Commission to use the implementation experience on the ground in the design of future legislation.

The Commission intends to discuss in this group the development of a coherent set of **common indicators** to monitor progress as regards the **quality of the regulatory environment** both at EU level and in the Member States themselves, as a basis for benchmarking. The Commission will encourage Member States to adopt such indicators to define targets and priorities for their better regulation programmes for the coming years in their national Lisbon programmes. In this context, the Commission also intends to work with Member States to enhance the comparability and compatibility between national programmes.

Another network, independent from the previous one, will be set up to advise the Commission, composed of experts in better regulation issues, including academics and practitioners from the economic, social and environmental fields. It will allow the Commission to call on external expertise and advice on technical issues. It may be invited on a case by case basis to advise on the scientific rigour of the methodology chosen for specific impact assessments. This will enable the Commission to take a better informed decision on the shape and scope of its impact assessment.

It follows from what precedes that these groups will advise on general and methodological issues, but that they will not add an additional level of systematic screening of individual draft legislative proposals.

Each commissioner will create a public better regulation window in the websites of the services under his or her responsibility. This will give businesses, NGOs and

citizens the opportunity to identify administrative or bureaucratic burdens resulting from legislation under their respective areas of responsibility so that these views can be taken into account. These windows will be advertised through links on the Commission's central website.

## 5. CONCLUSION

The efficient functioning of markets and enterprises is in the interest of public authorities, businesses, citizens and the social partners. It is increasingly determined by the regulatory frameworks in which they operate. European legislation takes place in areas where competences are shared with Member States (such as the internal market, social and environmental policies, consumer protection) or in areas where its role consists rather in coordinating and complementing national actions (such as health and industry policies). Therefore, better regulation initiatives must be enhanced at all administrative levels, and Member States have an important responsibility to foster better regulation in areas where European competitiveness is at stake.

With this in mind, the Commission will:

- Ensure that future legislative proposals are fully assessed for all their potential impacts;
- Screen proposals that are pending before the European Parliament and the Council with regard to their impact on competitiveness and other impacts, and take the appropriate decisions;
- Propose further simplification of existing EU legislation, taking into account the views of stakeholders on the basis of a communication planned for October 2005;
- Encourage Member States to further develop better regulation at their own level, when drafting new national legislation (impact assessment), through simplification of existing national legislation and through improved implementation of EU legislation at national level;
- Involve Member States, by setting up a group of high level national regulatory experts, to advise the Commission and to develop a common better regulation agenda;
- Create better regulation websites to allow input from stakeholders;
- Improve the intrinsic quality of the impact assessment of EU legislation by ensuring on a case by case basis the ex ante validation by external scientific experts of the methodology used for certain impact assessments;
- Review the results of the measures set out in this Communication at the latest in 2007.

## ANNEXES

### *ANNEX 1*

#### **Overview of Better Regulation measures implemented at EU level**

Over the last four years, the EU has launched a broad strategy to improve the regulatory environment and thus provide a more effective, efficient and transparent regulatory system for the benefit of citizens and reinforce competitiveness, growth and sustainable development.

First, the institutions have taken the steps necessary to comply with Declaration 39 adopted by the Heads of State and Government at the Intergovernmental Conference in Amsterdam in 1997. They adopted drafting guidance in the Inter-institutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation. They have ensured that those guidelines are applied by taking the necessary internal organisation measures as required by Declaration 39. A practical guide on drafting has been made widely available in official languages to all those within and outside the institutions who are involved in the drafting process. Internal procedures in the Commission in particular have been reorganised to enable the staff of the Legal Service to improve the quality of proposed legislation at an early stage by checking its lawfulness and compliance with all the formal rules, by structuring the rules clearly and correctly and by revising the drafting. The Legal Service offers training in legislative drafting to the staff of other Commission departments and organises seminars to promote awareness of the need for good-quality legislation. Translation services also play a role in drafting original legislative texts, so as to ensure clear, unambiguous texts and coherent terminology.

On a broader point of view, guided by the reactions to the Commission's White paper on European Governance<sup>21</sup>, while bearing in mind the recommendations of the intergovernmental "Mandelkern Group"<sup>22</sup>, the Commission proposed in June 2002 a comprehensive Action Plan for 'simplifying and improving the regulatory environment'<sup>23</sup>. This Action Plan was in line with the aim set out at the Gothenburg European Council that "policy-makers must identify likely spill-over – good and bad – onto other policy areas and take them into account. Careful assessment of the full effects of a policy proposal must include estimates of its economic, environmental and social impacts inside and outside the EU"<sup>24</sup>. This Action Plan represents the most comprehensive and ambitious efforts yet in pursuit of these objectives.

To ensure high-quality new legislation, a new **Impact Assessment** system was introduced to integrate and replace all previous single-sector assessments, as un-integrated analyses had been found to have little effect on the quality of policy-making. It requires the Commission to systematically assess, on an equal basis, the likely economic (including competitiveness), environmental and social implications of its proposals and to highlight the potential trade-offs. This new impact assessment system aims at helping the Commission to improve the quality and transparency of its proposals and to identify balanced solutions consistent with Community policy objectives. The depth and scope of the assessment respects the **principle of proportionate analysis**, i.e. more Impact Assessment resources will be allocated to those

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<sup>21</sup> COM(2001) 727, 5.12.2001.

<sup>22</sup> Adopted in November 2001. See <http://ue.eu.int/pressData/en/misc/DOC.68853.pdf>

<sup>23</sup> COM(2002) 278, 5.6.2002.

<sup>24</sup> A sustainable Europe for a better world, A European Union Strategy for Sustainable Development.

proposals that can be expected to have the most significant impacts. Transparency is ensured by the publication of the **Impact Assessment Roadmaps**, giving a preliminary indication of the main areas to be assessed and the planning of subsequent analyses. Instruments which provide an **alternative approach to legislation**, such as co-regulation and self-regulation, have to be considered when assessing options.

Since the system's introduction in early 2003, more than 50 extended Impact Assessments of proposals have been completed. In 2005, all initiatives in the Commission's Legislative and Work Programme<sup>25</sup> (around 100) will be accompanied by an impact assessment.

As an integral part of the impact assessment procedure, the Commission has also adopted<sup>26</sup> a set of "Minimum standards for **consultation** of interested parties". These minimum standards are intended to enhance transparency, to widen consultation practices and to ensure better information, participation and dialogue. The Commission has also adopted guidelines for collecting and using **expert advice** to provide effective expertise in developing policies and to ensure transparency as to how the Commission uses external advice<sup>27</sup>.

The Commission took the initiative in early 2005 to launch a pilot phase with a view to developing a common approach to measure **administrative costs**. The results of the pilot phase are expected by the end of 2005. Once the results of the pilot phase have been assessed, the Commission will decide on whether and how to best integrate the approach into the impact assessment method and examine how it could help in process of simplification of existing legislation.

To streamline and simplify the regulatory environment, the Commission launched in 2003 an ambitious programme<sup>28</sup> to **up-date and simplify existing EU legislation**. This aims to reduce the substance of EU legislation as well as to reduce its volume (through consolidation, codification and removal of obsolete legislation) and to provide more reliable and user-friendly organisation and presentation of the *acquis*. Since February 2003, the Commission has presented 30 proposals with simplification impacts, 10 of which have been adopted, the remainder being still pending before the European Parliament and Council. The Prodi Commission's target of a 25% reduction in the volume of the Community *acquis* by 2005 has not been achieved, mainly because the codification programme has been delayed owing to translation bottlenecks in the new Member States. In recent years, the Commission carried out several rounds of **withdrawals of pending proposals** that were no longer topical (in 2004, about 100 pending proposals were withdrawn). During 2005-2009, the Commission intends to carry out such withdrawal exercises each year.

The Commission has also given priority to **improving transposition and application of EU law** by the Member States. In a Communication of 2002, it set out an action plan on working more proactively with the Member States to reduce the number and seriousness of cases.

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<sup>25</sup> Acts that fall under the executive powers of the Commission (for instance competition decisions or acts whose scope is limited to the internal sphere of the Commission) are normally not subject to impact assessment.

<sup>26</sup> COM(2002) 704, 11.12.2002.

<sup>27</sup> COM(2002) 713, 11.12.2002: Communication on the collection and use of expertise; Principles and guidelines: "Improving the knowledge base for better policies".

<sup>28</sup> 'Updating and simplifying the Community *acquis*' – COM(2003) 71, 11.2.2003.

Recognising that better regulation requires an effort throughout the regulatory cycle, in December 2003 the European Parliament, the Council and the Commission concluded an **Inter-institutional Agreement on Better Law-making**. Its main elements are the improvement of inter-institutional coordination and transparency<sup>29</sup>; common definitions<sup>30</sup> and agreed conditions of use for alternative instruments such as co-regulation and self-regulation; increased use of impact assessment in Community decision-making; and the commitment to set a binding time limit for the transposition of directives into national law<sup>31</sup>.

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<sup>29</sup> The three institutions will reinforce their coordination through their respective annual legislative timetables with a view to reaching agreement on joint annual programming.

<sup>30</sup> The Interinstitutional Agreement on better lawmaking provides the following definitions: Co-regulation: "... the mechanism whereby a Community legislative act entrusts the attainment of the objectives defined by the legislative authority to parties which are recognised in the field (such as economic operators, the social partners, NGOs or associations)"; Self-regulation: "the possibility for economic operators, the social partners, NGOs or associations to adopt amongst themselves and for themselves common guidelines at European level (particularly codes of practices or sectoral agreements)". The rules on the functioning of the social dialogue (Articles 138 and 139 TEC) and standardisation according to the "New Approach" are not affected by this agreement.

<sup>31</sup> Each directive should indicate a time limit which should be as short as possible and generally not exceed two years.

## ANNEX 2

### **Broad assessment of Better Regulation implementation in Member States**

Many Member States have launched various initiatives on regulatory reforms. Information available on these matters is mainly based on Member States' self-assessment and is somewhat partial; it therefore needs, to be complemented by independent and/or peer review evaluations. The table below comes from the *Report on the implementation of the European Charter for Small Enterprises in the Member States of the European Union*<sup>32</sup> and shows that a large majority of Member States (20) have already developed some type of better regulation programme, which very often includes obligatory impact analysis of new legislation (14) and consultation of stakeholders (14). However, it is not clear to what extent these exercises are integrated assessments of economic, social and environmental impacts nor the extent to which they are pursued in practice rather than being 'paper' exercises. Moreover, there may be further initiatives taken by Member States not yet contemplated in the table.

In the ten new Member States, a joint EU-OECD project is currently under way: it is the SIGMA project (Support for Improvement in Governance and Management). The objective of the project is to promote and improve the development and implementation of better regulation practices in these countries. The project consists in a general peer review exercise designed to examine the institutional framework of the new Member States, to establish the state of introduction, development and practical use of better regulation practices and to identify potential problems and gaps. The peer reviews should be finished by the end of 2005.

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<sup>32</sup> Commission Staff Working Paper: Report on the implementation of the European Charter for Small Enterprises in the Member States of the European Union - SEC(2005) 167, 8.2.2005, p. 36.

Overview of measures in the area of Better Regulation and impact assessment<sup>33</sup>

	Better regulation programme	Specific RIA policy	Obligatory RIA	Alternative instruments considered	Guidelines on RIA	Coordinating body for RIA	Consultation part of RIA	Formal consultation procedures	Direct stakeholder consultation	Tests of impact on small enterprises	Exemptions for SMEs	Total Y+(Y)
Belgium	(Y)	N.A.	(Y)	N.A.	(Y)	(Y)	N	(Y)	(Y)	(Y)	N	7
Czech Republic	Y	N.A.	N	Y	N.A.	N.A.	N.A.	N.A.	N.A.	(Y)	N	3
Denmark	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	10
Germany	Y	N.A.	N.A.	N.A.	Y	Y	Y	Y	N.A.	N.A.	N.A.	5
Estonia	N	N	Y	Y	Y	N.A.	N.A.	N	N	N.A.	Y	4
Greece	(Y)	(Y)	N	N	N	N	Y	N	N	N	N.A.	3
Spain	Y	(Y)	Y	Y	(Y)	(Y)	N	N	N	N	N.A.	6
France	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	0
Ireland	Y	N	N	(Y)	(Y)	N	(Y)	(Y)	N	N	N	5
Italy	(Y)	Y	N	(Y)	Y	(Y)	(Y)	N	Y	(Y)	N	8
Cyprus	N	N	N	N	N	N	N	N	N	N	N.A.	0
Latvia	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	N	9
Lithuania	N.A.	Y	Y	Y	Y	N.A.	N.A.	N.A.	N	N.A.	N.A.	4
Luxembourg	Y	N.A.	Y	Y	N.A.	Y	Y	Y	N	N	Y	7
Hungary	Y	(Y)	Y	N	N	Y	(Y)	(Y)	N	N	N	6
Malta	Y	N.A.	N.A.	N	N.A.	(Y)	N	N	Y	N	Y	4
Netherlands	Y	Y	N.A.	Y	Y	Y	N	N	Y	(Y)	Y	8
Austria	Y	Y	Y	Y	Y	N	Y	Y	Y	N.A.	N	8
Poland	Y	Y	Y	Y	Y	Y	Y	Y	(Y)	N	Y	10
Portugal	N	N	N	N	N	N	N	N	N	N	N	0
Slovenia	Y	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	1
Slovakia	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	(Y)	N.A.	N	1
Finland	Y	Y	Y	Y	Y	(Y)	Y	Y	Y	N.A.	N.A.	9
Sweden	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	9
United Kingdom	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	10
<b>Total Y+(Y)</b>	<b>19</b>	<b>13</b>	<b>12</b>	<b>15</b>	<b>15</b>	<b>14</b>	<b>12</b>	<b>12</b>	<b>11</b>	<b>7</b>	<b>5</b>	

Legend

<b>Y</b>	Measures exist	<b>(Y)</b>	Measures planned/ Available partially	<b>N</b>	No measures exist	<b>N.A.</b>	Information not available
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