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COMMUNICATION FROM THE COMMISSION

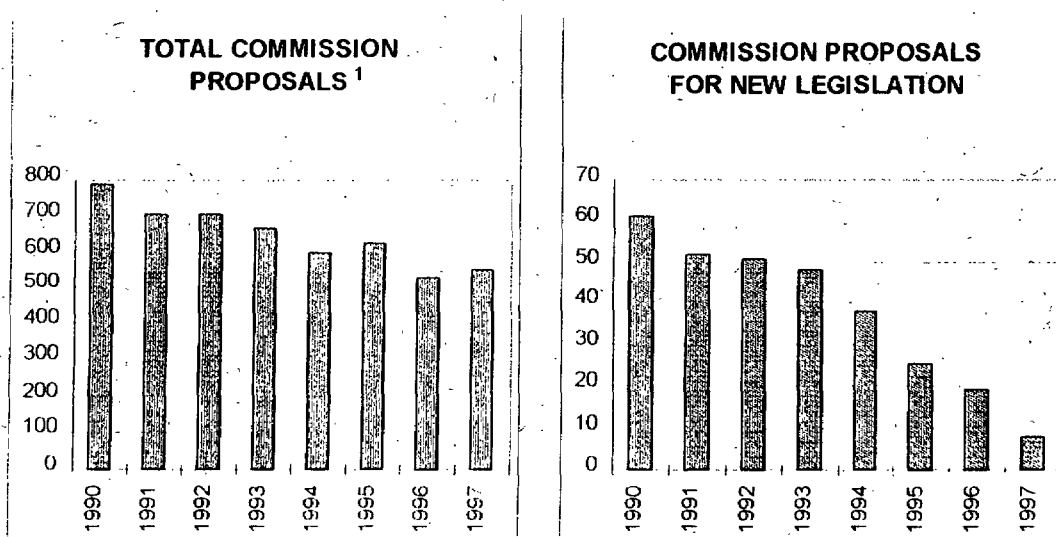
**LEGISLATE LESS TO ACT BETTER:  
THE FACTS**

## LEGISLATE LESS TO ACT BETTER: THE FACTS

### 1) "Legislate less to act better", the motto of the present Commission

#### What is meant by "legislate less to act better"?

- Legislate less: the Commission targets its initiatives, concentrating on political priorities. Its ambitious proposals have been the driving force behind the recent major developments in the European Union. In performing its role the Commission applies strictly the principles of subsidiarity and proportionality; it is producing fewer proposals overall and proposals for new legislation in particular. At the same time the number of Community instruments in force is increasing only slightly.
- Act better: improved consultation procedures, clearer, simpler and more accessible legislation. For the Commission this also means acting in a different way, in order to be more efficient in its role in a changing Europe.



#### What is the purpose?

- To enhance Europe's image in the eyes of the public, to improve the operation of the single market, to strengthen the competitiveness of firms, to manage the European Union on a sounder basis.

### 2) Subsidiarity/proportionality

#### a) Results

The Commission can be said to have achieved something in the application of the principles of subsidiarity and proportionality since the Edinburgh European Council. These achievements went far beyond simply reducing the number of proposals; the following should also be borne in mind:

- As well as proposals for new legislation, Commission proposals also cover implementing measures, continuation of action already started, revision of existing legislation and matters concerning international relations.

- use of all kinds of alternatives to legislation, such as agreements negotiated with industry,<sup>2</sup> self-regulation (agreements between the social partners under the social protocol);

- review of pending proposals: each year proposals which are no longer necessary are withdrawn, and this includes some on the grounds of subsidiarity (61 in 1995, 48 in 1996 and 34 in 1997);

- use of framework directives rather than more detailed directives;

- improvement of impact assessment criteria for its proposals: e.g. the Auto-oil package.<sup>4</sup> With the start this year of the pilot phase of the European business test panel, it will be possible to assess the cost and administrative consequences for businesses, in particular small businesses, of new legislation proposed;<sup>5</sup>

- wide-ranging and open dialogue with interested parties, in particular industry, social partners, government departments, so that all views can be taken into account. This can be done either informally (meetings, discussion forums, conferences)<sup>6</sup> or more formally in the shape of green and white papers which are being targeted more carefully and made more uniform, or in advisory committees.

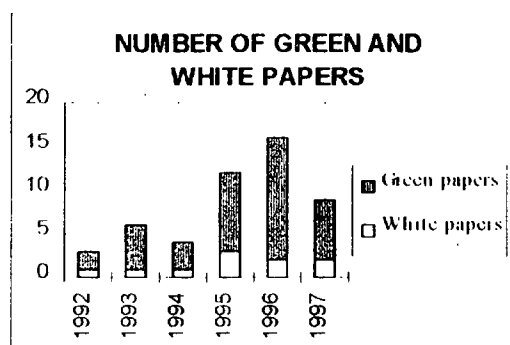
**APPLICATION OF ARTICLE 3b  
(subsidiarity and proportionality)**

**BEFORE AMSTERDAM**  
Guidelines from the Edinburgh European Council

**AFTER AMSTERDAM**  
Protocol on the application of the principles of subsidiarity and proportionality annexed to the EC Treaty in the final act of the Amsterdam Treaty

Main aspects:

- dynamic view of subsidiarity (upwards and downwards)
- criteria of effectiveness and need clarified
- proportionality: quality and if possible quantity indicators



Six agreements (on the environment and energy) are currently being negotiated and will be finalised shortly: reduction of CO<sub>2</sub> emissions for private cars, energy efficiency for television sets, washing machines, reduction of the environmental impact of household detergents, monitoring of perfluoro-carbons, development of paper recycling, reduction of hazards associated with the use of stripping agents.

There have been two agreements of this type, one on parental leave and the other on part-time work. The first was enshrined in Directive 96/34/EC, and the second in Directive 87/81/EC.

This is a package of measures on emission reduction, which, following consultations with the firms concerned, constitutes the best cost-effectiveness relationship for achieving certain air-quality objectives (COM(96) 248, transmitted on 29 August 1996).

Commission communication *The business test panel: a pilot project* COM(1998) 197, transmitted on 30 March 1998.

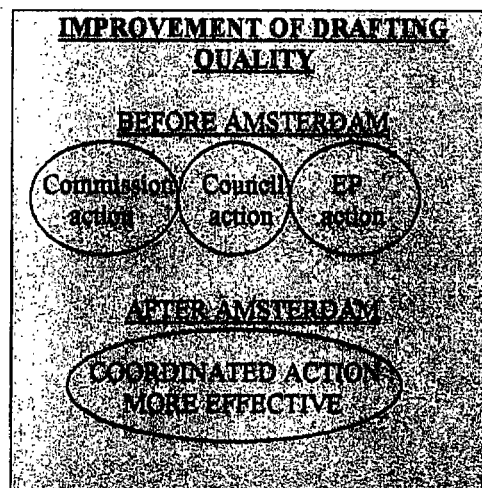
For example, some 20 000 non-government experts attend meetings with the Commission every year.

## b) Outlook

The Commission is determined to give effect to the Protocol on the application of the principles of subsidiarity and proportionality even before the Amsterdam Treaty is ratified. It is currently amending its *General guidelines for legislative policy* and will, in this connection, ensure in particular that the provisions governing impact assessments are complied with. At the same time the Commission would urge the other institutions to pay more attention to the principles of subsidiarity and proportionality, as already provided in the 1993 Interinstitutional Agreement.

### **3) Drafting quality**

Community legislation needs to be worded clearly, consistently and unambiguously, following uniform principles of presentation and legal drafting, so that it will be easier to implement by national authorities and easier to understand for economic operators and the general public. This is made all the more important by the multilingual nature of Community legislation (each year the Commission has to have over 30 000 pages translated into the eleven Community languages) which can cause differences in interpretation.



## a) Achievements

In recent years the three institutions have each adopted measures of their own.<sup>7</sup> These measures have not yet achieved the desired objectives.

## b) Outlook

Efforts need to be coordinated. This was why Declaration No 39 annexed to the final act of the Amsterdam Treaty called on the institutions to lay down guidelines on the quality of drafting and to follow those guidelines in the various stages of the decision-making process. The legal services of the three institutions are working together and before the summer recess will produce draft guidelines. The Commission attaches a great deal of importance to this objective.

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<sup>7</sup> In 1996 the Commission adopted the *General guidelines for legislative policy* (Bull. 1/2-1996, point 1.10.11) and in 1997 it updated its *Legislative drafting manual* to guide Commission departments when drafting legal instruments. The Council adopted a resolution on 8 June 1993 on the quality of drafting of Community legislation (OJ C 166, 17.6.1993). Parliament set up a group of lawyer-revisers in 1997 to check the drafting quality of instruments covered by the codecision procedure.

#### 4) Simplification

The Community system is by nature complex, if only because of the differences in legal culture and the technicality of the matters dealt with. Simplification does, however, remain an objective to be aimed for.

##### a) Achievements

The most spectacular result in terms of simplification has already been achieved by the establishment of the single market, with the replacement of a great many individual and occasionally conflicting national measures.

Specific Comm instruments	Commission proposals	Instruments adopted by the Council
4	61	22

But Community legislation can, in its turn, be slimmed down. The Commission has proposed the simplification of entire rafts of Community legislation, with a total of 61 proposals at 1 March.

Some large-scale initiatives have a knock-on effect in terms of simplification.

However, 22 of these proposals still have to be adopted by the Council and Parliament. The SLIM pilot project (simplifying legislation relating to the internal market); which is based on the work of groups made up of representatives of the Member States, users of the legislation (firms, consumers) and Commission departments, is now producing concrete results: four simplification proposals have been presented under the first phase (two concerning statistics,<sup>8</sup> one ornamental plants<sup>9</sup> and one recognition of qualifications<sup>10</sup>).

<u>SLIM</u>
<u>PHASE I:</u> Intrastat, construction products, recognition of qualifications, ornamental plants.
<u>PHASE II:</u> VAT, combined nomenclature for external trade, banking services, fertilisers.
<u>PHASE III:</u> electromagnetic compatibility, coordination of social security schemes, insurance.

<sup>8</sup> COM (97) 275 and COM (97) 252 transmitted on 4 June 1997 and 2 June 1997 respectively.

<sup>9</sup> COM (97) 708 transmitted on 17 December 1997.

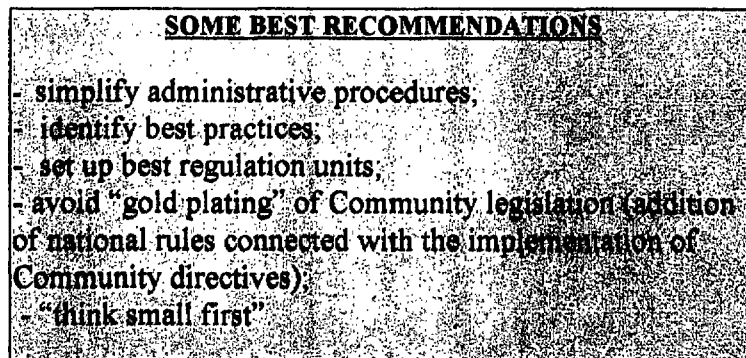
<sup>10</sup> COM (97) 638 transmitted on 3 December 1997.

In connection with the implementation of Agenda 2000 in agriculture, a number of simplification proposals were presented last March.<sup>11</sup>

#### b) Outlook

In 1998 the Commission will be presenting proposals under the second phase of SLIM to follow up the recommendations made by the working parties. It has extended the SLIM initiative to electromagnetic compatibility, the coordination of social security schemes and insurance (third phase), and a fourth phase will start in the first half of 1998. But the SLIM proposals still need to be adopted by Parliament and the Council: in this connection recent experience has shown that the desire to simplify, repeatedly expressed by European Ministers, is sometimes at odds with their attitude to simplification proposals on the table. For example, the solution found in the Council (internal market) for the Intrastat proposal<sup>12</sup> in no way matched up to the simplification objective originally set.

The Business Environment Simplification Task Force (BEST), which the Commission set up to identify the factors acting as a legislative or administrative brake on small businesses has just presented a report.<sup>13</sup> This highlights the need to persuade all levels of public authorities to place the "better lawmaking" principles at the heart of their political strategy. It recommends that Member States consider the appropriate means of meeting these objectives.



The reform of the common agricultural policy in connection with Agenda 2000 will involve new slimming-down proposals, in particular with a view to a radical simplification of regulations in the vine-growing sector, regarded as the most voluminous and complicated of all the agricultural regulations.

<sup>11</sup> Concerning arable crops, beef, milk (COM(1998) 158), and rural policies (COM(1998) 175).

<sup>12</sup> COM(97) 252 final.

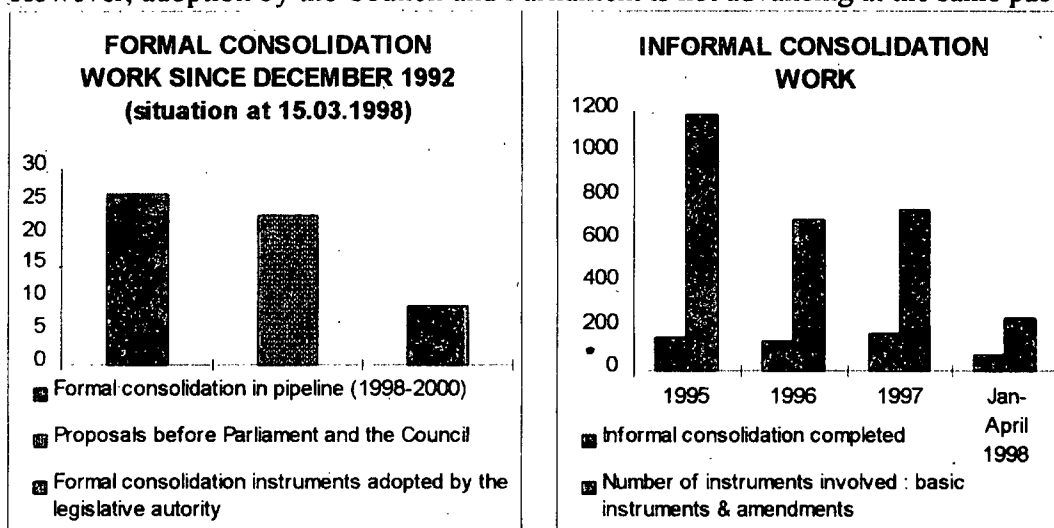
<sup>13</sup> Report of the Business Environment Simplification Task Force (volume I), Office for Official Publications of the European Communities, May 1998.

## 5) Formal consolidation, recasting, informal consolidation<sup>14</sup>

Formal consolidation and recasting involve repealing earlier instruments. Informal consolidation is purely for information purposes and involves no change in Community law.

### a) Achievements

The Commission is continuing to present **formal consolidation** proposals despite the difficulties which exist (number of languages, legislation constantly changing). However, adoption by the Council and Parliament is not advancing at the same pace.



In parallel with the task of formal consolidation, the Commission is still involved in its informal consolidation exercise in order to meet specific requirements of operators and all users of Community law. From 1995 to March 1998 over 384 informal consolidation exercises have been completed, involving the merging of some 2 800 instruments, each in nine or eleven language versions. Most of these texts are gradually being made accessible free of charge on the Internet,<sup>15</sup> via the European Union's Europa server.

### b) Outlook

The Commission intends to continue the progress already made in formal consolidation and has already identified the sectors where a special effort will be required over the period 1998-2000. It would also like to see early agreement between the institutions on **recasting**, a method which ensures constant clarity of legislation. It remains determined to keep up the pace of informal consolidation.

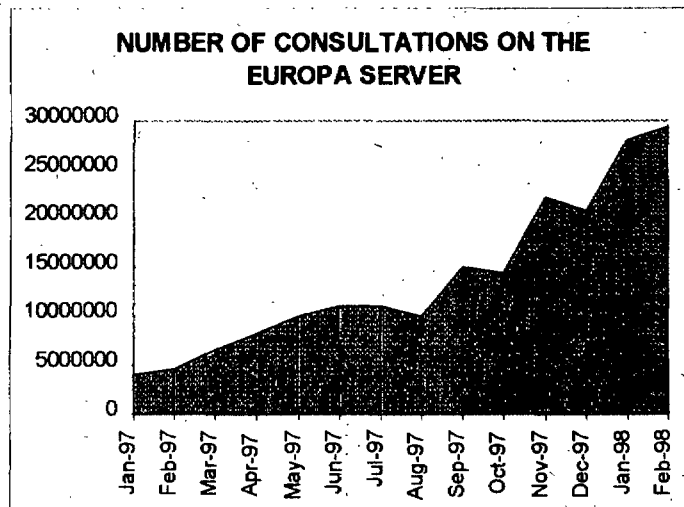
<sup>14</sup> See definitions in the Better Lawmaking 1997 report, COM(97) 626 transmitted on 26 November 1997.

<sup>15</sup> <http://europa.eu.int>

## 6) Access to information

### a) Achievements

The Commission is aware of the immense potential offered by new technology to facilitate access to information and will do its utmost to make full use of this technology. Europa,<sup>16</sup> the joint server of the European institutions, already offers access to a wide range of legal instruments and information.



For example, it is now possible to consult recent judgments of the Court of Justice and Community legislation in force (C and L Series of the Official Journal) via EUR-Lex. The Citizens First campaign informs the public about their rights, in particular within the single market.

These initiatives are an undoubted success, as can be shown by the increase in the number of calls on the Europa server. In the first week after the Commission's recommendation on the list of countries qualifying for EMU and its convergence report (25 March 1998) were made available on the Internet, the documents were downloaded over 40 000 times.

### b) Outlook

The Commission has a host of new projects on the stocks. In view of the success of the Citizens first operation, a permanent structure will be set up, via the Internet and freephone numbers, to conduct a dialogue with the public and businesses to inform them of their rights. This "dialogue" has just been initiated in accordance with the provisions of the action plan for the single market. In order to improve the information and support service for small businesses, the Euro-Info-Centre networks will be reinforced: a freephone number is already operational for this purpose in all the Member States.

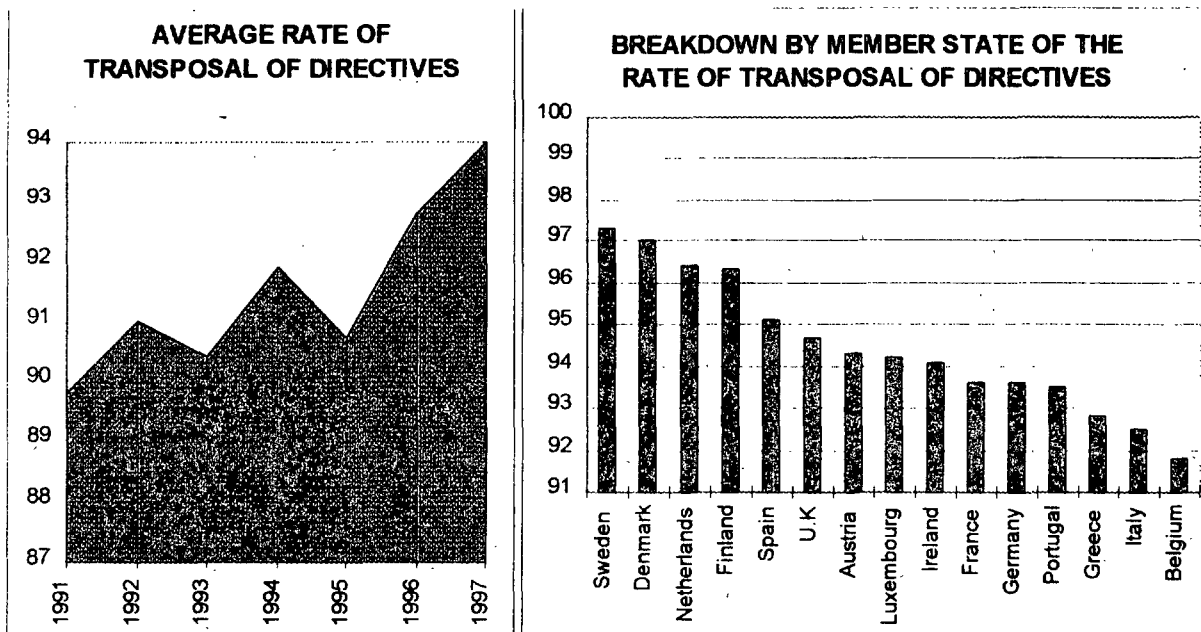
<sup>16</sup>

Address above.

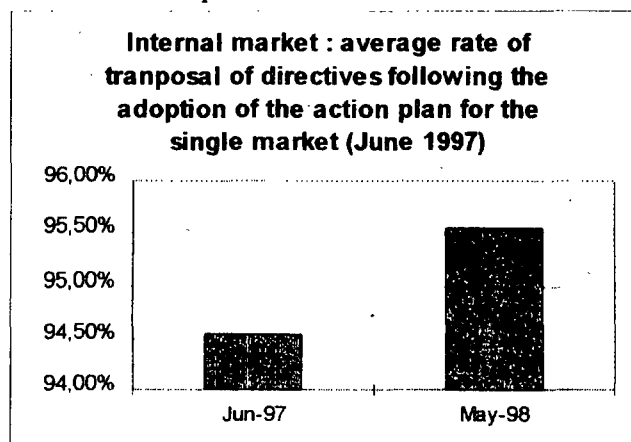


## 7) Transposal

The Commission spares no effort in seeing that legislation is properly transposed in the Member States (despatch of Article 169 letters every two months, constant contacts with national authorities). Although the performances of individual Member States differ, these efforts have produced a rise in the percentage of directives for which Member States have informed the Commission of national implementing measures. The average figure at 31 December 1997 was 94%.



In the internal market, in particular, the action plan for the single market produced a distinct improvement in the transposal of directives.



## 8) Shared responsibility

"Better lawmaking" is one of the keys to more effective management of European integration, to a Europe closer to the citizen, and to a renewed spirit of initiative and enterprise, as was confirmed by the "Better government: more effective regulation" conference organised by the UK Government last March.

Substantial progress has already been made by the Commission. The process must therefore be continued and stepped up. The other institutions cannot shirk their share of responsibility. They need to be far more discriminating when they ask the Commission to present proposals and avoid making proposals more complex. The principles of subsidiarity and proportionality and the need for simplicity must always be taken into account. The following cases are worth considering:

- **zoos**: acting on the principle of subsidiarity and at the request of the Edinburgh European Council, the Commission replaced its proposed directive<sup>17</sup> by a proposal for a recommendation.<sup>18</sup> Parliament insisted on a directive. The Council (environment) has again considered the possibility of adopting a directive;

- **animal welfare**: at the request of the Council (agriculture), the Commission has presented a number of proposals on animal welfare. The Council has not confined itself to the essential but has expanded the arrangements proposed by the Commission, adding points for which there is not necessarily any justification in terms of subsidiarity and proportionality (e.g. minimum and maximum temperatures in vehicles carrying animals).<sup>19</sup> Similar additions are also envisaged on the animal welfare proposals for stock farming, where Member States' requests go far beyond the Council of Europe recommendations on which the Commission based its proposals;

- **foodstuffs intended for particular nutritional uses**: in accordance with Directive 89/398/EEC,<sup>20</sup> the Commission was to propose the adoption of specific directives for nine categories of foodstuff intended for particular nutritional uses. At the request of the Edinburgh European Council, the Commission proposed in 1994 that the number of directives be limited to four.<sup>21</sup> The deliberations of Parliament and the Council have produced a return to the nine areas of legislation initially envisaged;<sup>22</sup>

- **technical rules**: the Council common position<sup>23</sup> on the proposal for a third amendment of Directive 83/189 contains some far more complex formulas than the initial proposal: in particular the Council has changed two definitions of a few lines into a very lengthy text (see Annex).

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<sup>17</sup> COM(91) 177.

<sup>18</sup> COM(95) 619.

<sup>19</sup> Council Regulation (EC) No 411/98 on additional animal protection standards applicable to road vehicles used for the carriage of livestock on journeys exceeding eight hours, OJ L 52, 21.2.1998.

<sup>20</sup> OJ L 186, 30.6.1989

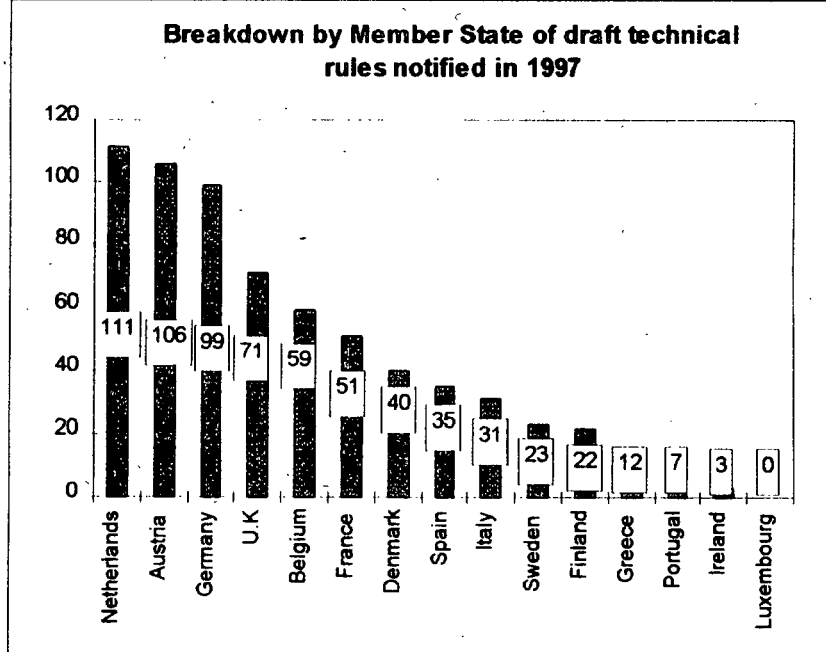
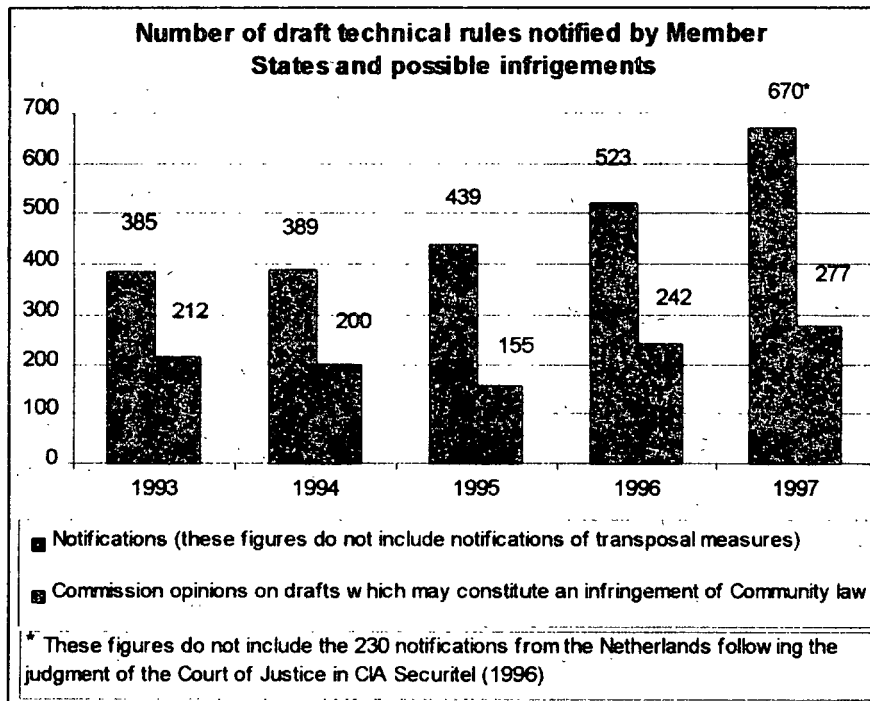
<sup>21</sup> COM(94) 97 transmitted on 28 March 1994.

<sup>22</sup> The common position (OJ C 297, 29.9.1997) provides for the adoption of specific directives in six areas (actually covering seven of the original areas) and requests that additional provisions be laid down for gluten-based and sodium-based foodstuffs.

<sup>23</sup> Council common position (EC) No 11/98 with a view to adopting a European Parliament and Council Directive substantively amending for the third time Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations, OJ C 62, 26.2.1998.

## 9) Production of national legislation: no sign of a let-up

The Member States continued to be the main producers of legislation and hence the most direct cause of the burden on firms. For instance, application of Directive 83/189<sup>24</sup> laying down a procedure for the provision of information in the technical standards and regulations has resulted in an increase in national regulations on products in the single market which exceed by far, in number, volume and complexity, measures adopted at Community level. What is more, many of these instruments may be in breach of Community law.



<sup>24</sup>

Council 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/EEC, OJ L 100, 19.4.1994.

It is therefore of fundamental importance that the Member States too should embark on additional measures to reduce the mass of legislation so that the slimming-down objective being pursued at Community level will be fully achieved.

## DEFINITION OF SERVICE

### Commission proposal

**Service:** "any service provided at a distance, by electronic means and on the individual request of a service receiver".

### Council common position

**Service:** "any Information Society service, that is to say any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

*For the purposes of this definition:*

- "at a distance" means services provided without the parties being simultaneously present,
- "by electronic means" means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means,
- "at the individual request of a recipient of services" means the services provided through the transmission of data on individual request.

*An indicative list of services not covered by this definition is set out in Annex III.*

*This Directive shall not apply to:*

- radio broadcasting services,
- television broadcasting services covered by point (a) of Article 1 of Directive 89/552/EEC.

### Annex III

#### Services not covered by Article 1

##### 1. Services not provided "at a distance"

Services provided in the physical presence of the provider and the recipient, even if they involve the use of electronic devices:

- medical examinations or treatment at a doctor's surgery using electronic equipment where the patient is physically present,
- consultation of an electronic catalogue in a shop with the customer on site,
- plane ticket reservation at a travel agency in the physical presence of the customer by means of a network of computers,
- electronic games made available in a video-arcade where the customer is physically present.

##### 2. Services not provided "by electronic means":

Services having material content even though provided via electronic devices:

- automatic cash or ticket dispensing machines (banknotes, rail tickets);
- access to road networks, car parks, etc., charging for use, even if there are electronic devices at the entrance/exit controlling access and/or ensuring correct payment is made,

- "off-line" services: distribution of CD-ROMs or software on diskettes,

Services which are not provided via electronic processing/inventory systems:

- voice telephony services,
- fax/telex services,
- telephone/fax consultation of a doctor,
- telephone/fax consultation of a lawyer,
- telephone/fax direct marketing.

**3. Services not supplied "at the individual request of a recipient of services":**

services provided by transmitting data without individual demand for simultaneous reception by an unlimited number of individual receivers (point to multi-point transmission):

- television broadcasting services (including near-video-on-demand services), covered by point (a) of Article 1 of Directive 89/552/EEC,
- radio broadcasting services,
- (televised) teletext.

## DEFINITION OF THE RULES ON SERVICES

### Commission proposal

**rule on services:** "a requirement relating to the taking-up and pursuit of service activities within the meaning of point 2 of this article, and in particular provisions concerning the service provider, services and the service receiver, to the exclusion of any rules that are not specifically aimed at the service defined within this same point".

### Council common position

**rule on services:** "a requirement of a general nature relating to the taking-up and pursuit of service activities within the meaning of point 2, in particular provisions concerning the service provider, the services and the recipient of services, excluding any rules which are not specifically aimed at the services defined in that point.

*This directive shall not apply to rules relating to matters which are covered by Community legislation in the field of telecommunications services, as defined by Directive 90/387/EEC as amended.*

*This directive shall not apply to rules relating to matters which are covered by Community legislation in the field of financial services, as listed non-exhaustively in Annex IV to this directive.*

*For the purposes of this definition:*

- a rule shall be considered to be specifically aimed at information society services where, having regard to its statement of reasons and its operative parts, the specific aim and objective of some or all of its individual provisions is to regulate such services in an explicit and targeted manner;
- a rule shall not be considered to be specifically aimed at information society services if it affects such services only in an implicit or incidental manner".

### Annex IV

**Financial services referred to in Article 1:**

- investment services,

- insurance and re-insurance operations,
- banking services,
- operations relating to pension funds,
- services relating to dealings in futures or options.

Such services include in particular:

- investment services referred to in the annex to Directive 93/22/EEC, services of collective investment undertakings,
- services covered by the activities subject to mutual recognition referred to in the annex to Directive 89/646/EEC,
- operations covered by the insurance and re-insurance activities referred to in:
  - Article 1 of Directive 73/239/EEC,
  - the annex to Directive 79/267/EEC,
  - Directive 64/225/EEC,
  - Directives 92/49/EEC and 92/96/EEC.

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