



COMMISSION OF THE EUROPEAN COMMUNITIES

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BETTER LAW-MAKING

**Commission Report to the European Council
on the application of the subsidiarity and proportionality principles,
on simplification and on consolidation**

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INTRODUCTION

Ever since it has been in office, this Commission has been concerned to improve law-making. There are two facets to this.

First, effect must be given to the subsidiarity principle ('... the Community shall take action ... only if and so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore ... be better achieved by the Community').¹ The principle is now entrenched in Commission practice (do less, do it better). The Commission screens every initiative on this basis.

Second, effect must be given to the proportionality principle ('Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty').² Much remains to be done, of course, to make Community legislation simpler and less cumbersome and to boost the competitiveness of the European economy. The Commission for its part has resolutely embarked on the action needed here. But there are three points that must be borne in mind:

- The really important thing is that Community legislation has played a major role in every successful stage of European integration. The *acquis* must be preserved.
- Then, it must be acknowledged that the critics of Community legislation tend to overlook the fact that the Community has been among the prime moving forces for simplification of rules and regulations in Europe. It has opened up markets and liberalized trade to the general benefit of consumers and businesses alike. It has done away with the mountains of administrative paperwork and red tape behind which the authorities used to shield themselves and under which firms used to crumble.
- Nor should it be forgotten that many measures taken by national and regional authorities continue to provoke considerable difficulties in terms both of preserving or raising barriers to trade and of issuing rules and regulations to be complied with. An example is the flow of draft technical rules of which the Commission is notified by the Member States pursuant to Directive 83/189/EEC,³ which represent an annual volume of detailed rules and regulations comparable to the entire volume of single-market legislation enacted by the Community over a period of many long years.

¹ Art. 3b EC, second paragraph.

² *Ibid.*, third paragraph.

³ Council Directive 83/189/EEC of 26 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations: OJ L 109, 26.4.1983, p.8.

The Commission bears these considerations in mind every time it produces a proposal for a new piece of legislation or reviews existing legislation.

Proposals for new legislation

The number of new proposals is in constant decline, from 61 in 1990 to 52 in 1991, 51 in 1992, 48 in 1993, 38 in 1994, 25 in 1995 (position at 10 November) and a forecast 19 in the 1996 work programme.

The practice of advance consultation on future proposals has been greatly extended. In 1995, the number of initiatives to stimulate public debate (21 by 10 November, including 6 White or Green Papers) is close to the number of actual proposals (25 by the same date). There are 35 planned initiatives in the 1996 work programme (including 9 White or Green Papers). These consultation procedures provide access to the views of firms, workers, consumers and other interests, which can be considered before any action is actually proposed.

The Commission has a clear preference for framework directives, which obviate the need for detailed national implementing measures and open the way to alternatives such as voluntary agreements. The review of the Fifth environment programme illustrates this technique.

In this spirit, the Commission has reviewed its outstanding proposals not yet adopted by the Council. In 1995 it withdrew more than 60.

Review of existing legislation and improved accessibility. An effort is needed here too.

Legislation must be made more accessible to firms and the general public by consolidation exercises. The Commission (Publications Office) has made a great effort to provide consolidated texts of major families of Community law so that the reader is spared the need to consult a bundle of separate amended instruments. The results prove the worth of the exercise: around 140 families (totalling nearly 1500 instruments) are to be consolidated this year and made available at the beginning of 1996. The Commission hopes to cover the entire range of Community law in all the official languages by the end of 1996.

The formal or informal consolidation of Community law is an ongoing project. The Commission's annual work programme sets out the areas to be covered. Consolidation proposals entailing the repeal of about 100 instruments are currently before the Council and Parliament. A further set of proposals entailing the repeal of about 250 instruments will be presented before the year is out. There is an accelerated procedure for the scrutiny and adoption of these proposals, adopted by interinstitutional agreement.

Existing legislation is to be reviewed, simplified, recast and in some cases repealed. In December 1993 the Commission announced the 30-point Brussels programme of simplification and recasting, the bulk of which will be completed by the end of 1995. The more extensive use of the recasting technique will depend on the conclusion of an interinstitutional agreement like that applying to consolidation instruments. New projects

have also been started on the basis of experience with the Brussels programme and the Molitor Group. One of them, launched this year, involves the repeal of 14 instruments relating to energy. All this is part of the Commission's ongoing legislative review process.

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What the Union needs is a body of legislation that is enacted at the right levels, is accessible, offers no loopholes for the fraudsters, provides the solutions that are least costly to the citizen, the firm and the public authority and secures a high level of protection for health, safety, the consumer and the environment.

The report on better law-making shows that the Commission has done its share. It now expects the other institutions and the Member States to play their full part.

I. DEVELOPMENTS IN 1995

A. NEW INITIATIVES

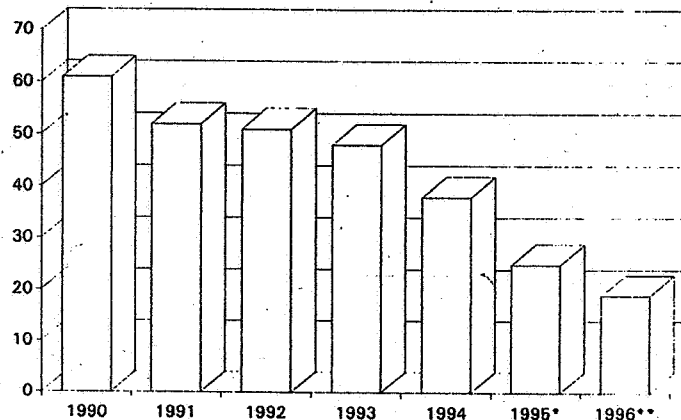
1. A more selective approach to new legislation

(a) Subsidiarity - acting at the right level

(i) *New legislative proposals*

As in 1994, there was a steady fall in the number of proposals for "new" legislation - a trend that is not due to chance. The completion of the major programme of legislation for the internal market a few years ago has helped, but the Commission's resolve to be more selective in proposing new legislation is manifested in the trend. This does not mean that the Commission has been inactive. On the contrary, it has been busily pursuing measures launched in previous years and exercising its power of initiative in a number of key fields: as UNICE's recent report on the internal market pointed out, Europe still needs legislation.⁴ Increasingly, the Commission has been applying the principle, "less action but better action" see Table 1.

Number of proposals for new legislation referred to in the annual work programmes and adopted by the Commission since 1990



1990: 61; 1991: 52; 1993: 48; 1995: 25*; 1996: 19**

*situation as at 10.11.1995

**forecast (COM(95)512)

In areas where it does not enjoy exclusive powers, the Commission must make policy choices based on an appraisal of how necessary the proposed measures are (can the objectives be satisfactorily attained by the Member States?) and how effective they will be (can the objectives be better attained by action at Community level?). The two criteria are linked and between them determine the Commission's legislative strategy. In practice the Commission now restricts itself to specific fields and opts for legislation only where

⁴ "Releasing Europe's Potential Through Targeted Regulatory Reform" - 1995, p. 57.

the Union's objectives cannot be satisfactorily attained by and in the Member States and would therefore be achieved more effectively by the Community.

Thus, in certain cases the Commission has identified a need to *propose Community legislation* in order to remedy obvious shortcomings at national level and prevent barriers being erected in the internal market, for example:

- Proposals to improve *safety on ferry services* and the quality of *ships' equipment* on the basis of standards developed by the International Maritime Organization and accepted by the Member States.⁵ The Commission felt it necessary to establish common minimum rules to ensure that the Member States, who are reluctant to recognize each other's standards, do not diverge in the way they comply with the standards of the IMO, which leave a wide margin for manoeuvre. These proposals will avoid the danger of creating obstacles to the internal market.

- A proposal for common rules on the *development of postal services in the Community*.⁶ There is no guarantee that, in connection with the internal market in postal services, Member States will be able to achieve satisfactory results as regards technical standardization and cross-border mail through bilateral agreements, which can be difficult to secure. There is a danger that postal services in Europe will develop at two speeds. The Commission has therefore decided that Community action is indispensable.

To be effective and credible in its appraisal, the Commission must study each case individually, taking into account the interests of the Union, the business world and ordinary Europeans.

The Commission intends to step up its efforts to explore possible *alternatives to legislation*. It has drawn up a new strategy on *accounting standards* which recommends greater use of the Accounting Directives Contact Committee with a view to making financial information more readily comparable and ascertaining whether there is a real need for legislation.⁷ The Commission is currently studying whether and if so how *voluntary agreements with industry on the environment* ought to be envisaged (without prejudice, of course, to the implementation of existing directives). It has made appropriate contacts with several industries (chemicals, electronics and the recycling industry (for certain products)). The *Social Protocol* also provides possible alternatives in the form of agreements between the two sides of industry.

One way of avoiding further legislation and, in particular, the overlapping of legal instruments is by *integrating policies more effectively with one another*. Having already endeavoured to adhere to this approach in the environmental field, the Commission laid down a new strategy on *consumer protection*, which seeks to intensify collaboration with other policy sectors, ensure that consumer protection requirements are properly taken on board, limit the proliferation of texts and reduce the potential for contradictions.⁸

⁵ COM(95)28 final, presented on 17 February 1995, and COM(95)269 final, presented on 22 June 1995.

⁶ COM(95)227 final (to be presented).

⁷ COM(95)508 final, presented on 17 November.

⁸ COM(95)519 final, presented on 3 November.

(ii) *Withdrawal and revision of proposals pending*

Since Edinburgh the Commission has not hesitated to withdraw or revise some of its proposals. It regularly withdraws batches of proposals. This year it withdrew 61 proposals that were pending,⁹ including one that was on the Edinburgh list - on *DSRR (frequency bands to be designated for the coordinated introduction of digital short-range radio)*.¹⁰ Before the end of the year, it will withdraw its proposal on *zoos*,¹¹ which was also on the Edinburgh list and is to be replaced by a recommendation. It will revise its proposal on *takeover bids*,¹² transforming it into a draft framework directive.¹²

(b) *Proportionality: tailoring legislation to match its goals*

Apart from reducing the number of proposals, the Commission has also concentrated on improving their quality and making them proportionate to the goals being pursued. As a result proposals are now better targeted, clearer and more accessible.

In some cases the Commission has chosen to use *framework instruments that leave Member States as much latitude as possible* to lay down the detailed arrangements for implementation, such as framework directives and action programmes, which pass both the subsidiarity and proportionality tests. A good example of this approach is the review of the *5th framework programme on the environment*, to be completed by the end of the year.¹³

Common minimum rules and mutual recognition have long been standard techniques in Community legislative practice. In its proposal on *open network provision in the telecommunications sector (voice telephony)*,¹⁴ the Commission opted for rules of principle and in its new proposal on the *granting of licences for telecommunications services*, it has decided to maintain the present system of mutual recognition of national licences, as requested by the Member States, Parliament and industry.¹⁵

Where more binding provisions and standards are indispensable, there is no need to legislate down to the last detail. For example, the proposal on *practising the profession of lawyer*¹⁶ avoids any regulation of purely internal matters or any amendments to national rules, for example those governing access to the profession. Nor is there any need to impose heavy constraints on businesses. In the environmental field, for instance, the proposal relating to *emissions from engines to be installed in non-road mobile machinery*¹⁷ illustrates the Commission's concern to avoid placing excessive administrative or financial burdens on industry.

⁹ SEC(95)1801 final.

¹⁰ COM(91)215 final.

¹¹ COM(91)177 final.

¹² To be presented by the end of 1995.

¹³ To be presented by the end of 1995.

¹⁴ COM(95)379 final, presented on 31 August 1995.

¹⁵ COM(95)545 final (to be presented).

¹⁶ COM(94)572, presented on 30 March 1995.

¹⁷ COM(95)350 final, presented on 7 September 1995.

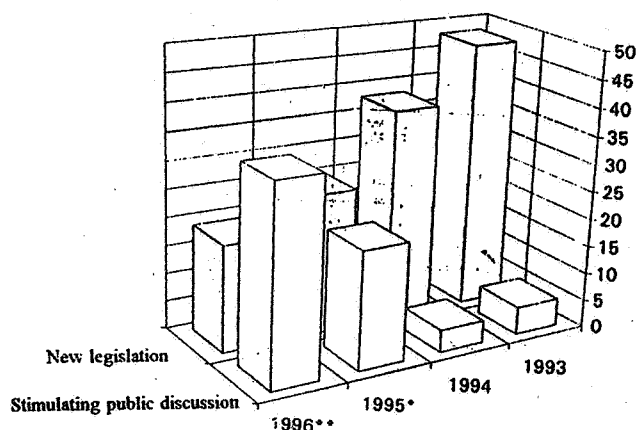
The Commission weighs up the consequences of its policy choices and does not hesitate to *reconsider its original intentions* where necessary. This year it decided to delay by one year its draft proposal on *commodities risks* so as to incorporate it into a more general proposal.

2. Permanent dialogue

(a) Prior consultation

As the number of new legislative proposals has dropped, there has been a steady increase in the number of initiatives aimed at stimulating debate.

Proposals for new legislation and initiatives for stimulating debate referred to in the annual work programmes and adopted by the Commission since 1993



*situation as at 10.11.1995

**forecast (COM(95)512)

This is a result of the Commission's new approach to legislation, which is to establish the broadest possible dialogue on which to base its action. Prior consultations are held right at the outset, i.e. even before the possibility of legislation is first mooted, and continue throughout the drafting process. This helps the Commission assess the proposal in the light of subsidiarity and proportionality.

The Commission attaches great importance to *open consultations*, which extend the scope of the discussion to include a greater number of participants, including those not directly represented in the traditional consultation bodies.

The Commission therefore makes increasing use of Green Papers - a preliminary outline of avenues worth exploring in a specific field where Community intervention might be envisaged - and White Papers, setting out more detailed guidelines for Community action. This year the Commission has published four Green Papers and two White Papers on a range of subjects - *intellectual property*,¹⁸ *tourism*,¹⁹ *telecommunications*,²⁰ *the*

¹⁸ COM(95)370 final and COM(95)382, presented on 27 July 1995.

*introduction of a single currency*²¹ and *the countries of Central and Eastern Europe and the internal market*.²²

A whole series of other documents have been published which, like Green Papers and White Papers, are aimed at stimulating public debate. They cover fields such as *industrial policy*,²³ *employment*,²⁴ *the development of the common transport policy*,²⁵ *short sea shipping*,²⁶ *air traffic control*,²⁷ *natural gas*,²⁸ and *social protection*.²⁹

At the same time the Commission has been pursuing its *targeted consultation* of Member States and interested parties, in particular through permanent consultation bodies such as the Advisory Committee for *Safety, Hygiene and Health Protection at Work*, which helped it draw up the new *action programme for 1996-2000*.³⁰

This form of organized dialogue runs alongside one-off consultations designed to involve the main interested parties in the drafting of legislation wherever special expertise is required. For example, close contacts have been made with the oil and car industries for the "European Auto-Oil Programme". The fruits of this cooperation will provide the technical and scientific basis for drawing up future legislation.

(b) Dialogue with the Member States on the application of the principles of subsidiarity and proportionality

The Commission keeps up bilateral contacts with the national authorities, at their request, to study how the principles of subsidiarity and proportionality are put into practice, to answer detailed questions or simply to exchange information and experience. This year bilateral meetings of this kind were held with the Danish, German and British authorities.

This dialogue has produced tangible effects. For example, following the German memorandum on subsidiarity in 1993, the Commission's reply and subsequent bilateral meetings in 1994, there have been further new developments in two cases:

- *financial instrument for the environment*. the approach adopted in the Life 2 proposal is designed to resolve the problems encountered in implementing the first Regulation,³¹

¹⁹ COM(95)97 final, presented on 24 April 1995.

²⁰ COM(95)158 final, presented on 5 May 1995.

²¹ COM(95)333 final, presented on 31 May 1995.

²² COM(95)163 final, presented on 5 May 1995.

²³ COM(95)87, presented on 3 March 1995.

²⁴ COM(95)74 final, presented on 13 March 1995.

²⁵ COM(95)302 final, presented on 1 August 1995.

²⁶ COM(95)317 final, presented on 7 July 1995.

²⁷ COM(95)318 final, presented on 7 July 1995.

²⁸ COM(95)478 final, presented on 24 October 1995.

²⁹ COM(95)466 final, presented on 8 November.

³⁰ COM(95)282 final, presented on 25 July 1995.

³¹ COM(95)135 final, presented on 11 May 1995.

- *fresh meat*. Directive 95/23/EC,³² adopted by the Council in June, settles the problems raised by Germany in its 1993 memorandum.

B. EXISTING LEGISLATION

The objective of simplifying existing legislation entails, where appropriate, the slimming down of instruments by a rigorous application of the proportionality principle. Improving accessibility and making instruments easier to read and apply likewise entails a variety of operations - recasting, formal consolidation and informal consolidation are the principal ones (see Annex I).

1. The Brussels programme

Ahead of the European Council in 1993, the Commission presented a programme of simplification and recasting, known as the Brussels programme. The speed of implementation has depended very much on the nature of the texts and fields covered, which vary in complexity and size. The programme has now been largely completed: the Commission has already adopted some of the final texts and is in the process of adopting the remainder, except for the proposal on a definitive VAT system. Whole areas of legislation have been revised, for example on air quality or fisheries, with others to follow in the near future. In virtually all cases revision is well under way and important progress has been made. The state of play in the revision programme is summarized in a table in Annex II.

(a) Simplification

The action plan for the *protection of groundwater*³³ will put the finishing touches to the general revision of legislation on water. Turning to foodstuffs, *seven vertical directives have been simplified*,³⁴ and by the end of the year the Commission will adopt a Green Paper on the *general principles of law on foodstuffs*.³⁵

The Brussels programme has also yielded results in the mutual recognition of vocational qualifications. Before the end of the year the Commission will put forward a proposal to repeal the "*transitional directives*" currently in force.³⁶

The main aims of simplification are to produce tangible effects and satisfy the requests and needs of both industry and citizens. These ends are certainly achieved by the proposal to simplify existing arrangements for *indications of the prices of consumer products*.³⁷ By adopting an approach more in line with the principle of proportionality, the proposal will improve the effectiveness of existing law and guarantee uniform standards of consumer information.

³² OJ L 243, 11.10.1995.

³³ To be presented by the end of 1995.

³⁴ To be presented by the end of 1995.

³⁵ To be presented by the end of 1995.

³⁶ To be presented by the end of 1995.

³⁷ COM(95) 276, presented on 17 July 1995.

Finally, the simplification exercise on *measuring instruments*, which came up against a number of technical problems, is virtually complete.

But there then remains the problem of adoption by the law-making institutions. The Commission observes that difficulties sometimes arise here. Work in the Council on the proposal on special-purpose foods³⁸ presented in 1994 in the context of the Brussels programme appears to be leading to anything but simplification.

(b) Recasting

The Commission adopted two recasting proposals concerning Regulation (EEC) No 1056/72 on *investment projects of interest to the Community in the petroleum, natural gas and electricity sectors*,³⁹ and Directive 77/143/EEC on *roadworthiness tests for motor vehicles*.⁴⁰

In the field of *right of residence*, work is now in hand on combining the full set of instruments referred to in the Brussels programme into a single instrument. The *updating of secondary legislation* in connection with the abolition of border controls was the subject of a separate proposal.⁴¹

The Commission is still preparing important initiatives in the *pharmaceutical* sector, where a consolidated version of the existing texts has already been published, in the field of *agricultural refunds*, where a recasting proposal is now being considered by the "Trade Mechanism" Committee and in *regional aid*, where work began in September as soon as Member States had sent the last items of information required to draw up the aid map. Finally, the proposal to merge Regulations (EEC) Nos 2349/84 and 556/89 on *block exemptions for certain categories of patent and know-how licensing agreements*, published in 1994, provoked a number of reactions and highlighted the present requirements of European industry in this field. The Commission is reconsidering its draft in the light of comments received with a view to adopting a new merged regulation by mid-1996.

2. Beyond the Brussels programme - a constant process of fine-tuning

The momentum generated in 1993 must be kept up. The Commission remains *on the look-out for rules that are cumbersome, excessive and archaic*, rendering Community law obscure and impairing its implementation. The first report on the application of subsidiarity and proportionality in 1994 records the one-off initiatives taken by the Commission to simplify legislation, over and above the measures specifically laid down in the Brussels programme.⁴²

In this context the Commission is paying increasing attention to the problems which legislation causes for the general public and for industry.

³⁸ COM(94)97 final, presented on 28 March 1994.

³⁹ COM(95)118 final, presented on 1 August 1995.

⁴⁰ COM(95)415 final, presented on 8 September 1995.

⁴¹ COM(95)348 final, presented on 12 July 1995.

⁴² COM(94)533 final.

