



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.11.1996
CSE (96) 7 final

"BETTER LAWMAKING" 1996

**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

The Edinburgh European Council in December 1992 and the Interinstitutional Agreement between the European Parliament, the Council and the Commission on procedures for implementing the subsidiarity principle¹ require the Commission to report annually on the application of the principle. The Commission made annual reports in 1993² and 1994.³

From 1995 it felt the need to extend the report's coverage to all measures designed to ensure that legislation is enacted at the appropriate level and is simple and accessible to the citizen. The 1995 "Better Lawmaking" Report⁴ accordingly covers measures that effectively contribute to clarifying Community law and making it more accessible, notably through simplification and consolidation.

The Commission has taken the same line in 1996, as was made clear in the interim report to the Florence European Council in June.⁵ That report described measures taken and the main developments in the first half of the year and was well received by the European Council.

As in 1995, then, the Commission's initiatives have been guided by two main lines of action:

- **new legislative proposals meeting the tests of rigour, clarity and transparency.** This provides confirmation of the trend towards limiting the number of new proposals, giving preference to framework directives, rationalizing the legislative framework while taking steps to prevent fraud, making greater use of alternatives to legislation, encouraging prior consultation and improving the interplay between national legislation and Community legislation;
- **review of existing legislation and more accessible instruments.** The review process already under way is continuing. A new simplification technique has been put in place in the internal market context : SLIM. Many practical simplification and consolidation exercises have been launched. And new results have been achieved with the programmes of both formal and informal consolidation of Community legislation.⁶

All these measures reflect the new legislative culture described in "Better Lawmaking" 1995. To facilitate implementation, the Commission adopted new "**general guidelines for legislative policy**" in January this year,⁷ in the form of internal operating instructions designed to improve efficiency in the legislative function through coordination,

¹ Concluded on 29 October 1993: Bull. 10-1993, point 2.2.2.

² COM(93)545 final, transmitted to the Brussels European Council, 29 November 1993.

³ COM(94)533 final, transmitted to the Essen European Council, 25 November 1994.

⁴ CSE(95)580 final, transmitted to the Madrid European Council, 24 November 1995.

⁵ CSE(96)2 final, transmitted to the Florence European Council, 14 June 1996.

⁶ Annex I contains definitions of recasting and consolidation.

⁷ Bull. 1/2-1996, point 1.10.11.

programming and evaluation. They confirm the move towards more intensive prior consultation and set out a list of requirements in the form of a checklist.

Since then, the Commission has embarked on a review of existing review systems and has issued instructions to all departments to be mindful of fraud prevention when drafting legislative instruments.⁸

The Commission, of course, remains open to all exchanges of views with the Member States on improvements to the application of the subsidiarity and proportionality principles and on all matters relating to better lawmaking.⁹

I. PROPOSALS FOR LEGISLATION

A. Proposals complying with the subsidiarity principle

As the Commission stated in its Opinion of 27 February 1996 on the convening of the Intergovernmental Conference, *"Europe must do less, so as to do it better. It has already made a start by giving effect to the subsidiarity principle enshrined in the Treaty. The Member States and the institutions must continue to advance along this road. This is the only way Europe will find the most effective level - Community, national or regional - at which to act."*¹⁰

This principle has underpinned all the Commission's legislative business: where the Community does not have exclusive powers, the Commission assesses the relevance of its action on the basis of criteria of **necessity** (could the same objectives be attained equally well by the Member States themselves?) and **efficiency** (can these objectives be better attained by action at Community level?).

1. Legislation at the appropriate level

Only a limited number of new proposals for legislation will have been sent to the Council and Parliament this year. Of the nineteen proposals for legislation scheduled in the work programme, six have been presented so far and a further five might be presented before the year is out.

⁸ In the context of the SEM 2000 programme (Phase II) to combat fraud, the Commission asked all departments, when drafting proposals with financial implications and right up to the final adoption stage, to ensure that they are capable of being monitored and protected against attempted fraud. Cf. 1995 General Report on the Activities of the EU, Brussels, 1996, points 1007-1011.

⁹ There have been contacts with the German and UK authorities this year. The German Government in particular sent a report on the application of the subsidiarity principle in the Community in 1995, which offers a broadly favourable assessment of the Commission's work that year.

¹⁰ COM(96)90 final, Commission Opinion: *"Reinforcing Political Union and Preparing for Enlargement"*, paragraph 19, fourth subparagraph, p.7.

An example will illustrate the Commission's attitude to applying the subsidiarity principle.

In the matter of *the limitation of the emission of organic compounds*,¹¹ it was realized that action taken by the Member States alone would not achieve the objective pursued, namely the reduction of emissions of substances that contribute to ozone formation, as the problem transcended national frontiers. Community action - in the form of a directive - was therefore called for. But to preserve maximum flexibility the proposed directive would empower the Member States to pursue the objective either by setting limit values for emissions or by adopting national plans to attain the same result by other means (e.g. agreements negotiated with industry). Its grounds in terms of subsidiarity are set out both in the preamble and in the explanatory memorandum.

2. Alternatives to legislation

In environmental matters, the Commission explores the possibilities of **agreements negotiated with industry** to give effect to *environment policy* objectives. It has adopted a communication¹² and a recommendation¹³ to clarify the potential of such agreements so as to promote and facilitate the use of such instruments.

It has adopted a **code of conduct** to give employers and the partners to collective agreements concluded at enterprise, industry or wider levels practical advice to help secure the application of the principle of *equal pay for work of equal value by men and women*, extending to all components of remuneration.¹⁴

Lastly, the *Social Protocol* offers abundant opportunities for **self-regulation** through agreements between the social partners. One such agreement was concluded this year on *parental leave*; it was subsequently confirmed by a Commission proposal,¹⁵ and the Council enacted a Directive transposing it into Community law.¹⁶ Since September negotiations have been in motion for another such agreement, relating to *flexibility in working time*.

3. Withdrawal of obsolete proposals

The Commission is continuing to **withdraw** proposals from time to time, when they are found to be no longer relevant (which may also be for reasons related to subsidiarity). It has recently withdrawn 48 pending proposals.¹⁷ One of them is the proposal for a directive on a *common definition of Community shipowner*,¹⁸ which the Commission

¹¹ COM(96)538 final, transmitted on 6 November 1996.

¹² COM(96)561 final, adopted on 27 November 1996.

¹³ C(96)3235 final, adopted on 27 November 1996.

¹⁴ COM(96)336 final, transmitted on 18 July 1996.

¹⁵ COM(96)26 final, transmitted on 29 February 1996.

¹⁶ Directive 96/34/EC: OJ L 145, 19.6.1996.

¹⁷ Commission document sent to the Council and Parliament on 21 November 1996.

¹⁸ COM(89)226 final, transmitted to the Council on 18 May 1989 and to Parliament on 29 May 1989.

undertook to withdraw at the Edinburgh European Council; this will complete the withdrawals foreseen on that occasion on subsidiarity grounds.

B. Proposals more closely targeted on the objectives pursued

The proportionality principle is another vital inspiration for legislative activity. It is applied in the following forms, for instance:

- greater use of **framework directives**, the technique followed in relation to *charging heavy goods vehicles for use of infrastructure*¹⁹ and for the revision of the proposal on *public takeover bids*,²⁰ both of which were on the Edinburgh list;
- the establishment of **common minimum standards** has been the preferred technique for *guarantees and after-sales service in relation to consumer goods*,²¹ where it was realized that soft-law solutions and codes of conduct would not achieve the objective pursued, namely a minimum level of protection of consumers throughout the Union wherever they buy goods. The Commission accordingly opted for the approximation of the main points of national bodies of legislation.

C. Initiatives to prompt debate

Prior consultation is another reflection of the Commission's concern to rethink the way it exercises its right of initiative. It enables the Commission to enter into discussions with interested parties on the different options before launching action. It also gives it the opportunity of basing such action as it takes on the most open dialogue possible so that the subsidiarity and proportionality aspects can be properly assessed.

To take but one example, following its 1995 White Paper on *Teaching and Learning: Towards the Learning Society*,²² the Commission launched a wide-ranging debate on the issues at stake and the policy lines to be followed; one of its options culminated in this year's action plan entitled *Learning in the Information Society*,²³ which sets out among other things to promote the generalized use of multimedia teaching techniques in an environment that is conducive to innovation.

This year the Commission has devoted much of its activity to stimulating debate.

Since the year began it has so far published **thirteen Green Papers**,²⁴ on *legal protection*

¹⁹ COM(96)331 final, transmitted on 13 November 1996.

²⁰ COM(95)655 final, transmitted on 8 February 1996.

²¹ COM(95)520 final, transmitted on 23 August 1996.

²² COM(95)590 final, transmitted to the Council on 4 December 1995.

²³ COM(96)471, transmitted to the Council on 4 October 1996. Among the legislative initiatives and plans of action based on earlier debates, there are the proposals on *consumer access to justice* (COM(95) 712 final, transmitted on 16 February 1996), the *Auto/Oil Programme* (see p.6) and *Merger control*: COM(96)313 final, transmitted on 13 September 1996.

²⁴ Green Papers set out initial avenues to be explored in some particular area where Community

for encrypted services in the internal market,²⁵ review of the Merger-control Regulation,²⁶ commercial communications,²⁷ financial services,²⁸ living and working in the information society,²⁹ the position and liability of the statutory auditor,³⁰ obstacles to transnational mobility in education, training and research,³¹ future noise policy,³² numbering in telecommunications services,³³ energy for the future - renewable sources,³⁴ commerce and distribution,³⁵ the protection of minors and human dignity in audiovisual and information services³⁶ and relations between the Union and the ACP countries.³⁷

Two more Green Papers are in preparation and should be out by the end of the year, on *public procurement and pension funds*.

Three White Papers³⁸ have been issued, on *energy policy,³⁹ air-traffic management,⁴⁰ and revitalizing the railways.⁴¹*

Apart from its Green and White Papers, a significant number of initiatives have been taken to launch debate, some of them on matters of great importance. They take the form of **reports, communications or action plans**. They include:

- a report on *taxation in the Union,⁴²*
- communications on *implementing Community environment law,⁴³ general review of the Community's waste management strategy,⁴⁴ standardization and the global information society,⁴⁵ equal opportunities for persons with disabilities,⁴⁶ the prevention of sexual harassment at work,⁴⁷ the development of the social dialogue*

action might be envisaged.

²⁵ COM(96)76 final, transmitted to the Council on 8 March 1996.

²⁶ COM(96)19 final, transmitted to the Council on 2 February 1996.

²⁷ COM(96)192 final, transmitted to the Council on 13 May 1996.

²⁸ COM(96)209 final, adopted on 29 May 1996.

²⁹ COM(96)389, final, transmitted on 2 August 1996.

³⁰ COM(96)338 final, transmitted on 29 July 1996.

³¹ COM(96)462 final, transmitted on 4 October 1996.

³² COM(96)540 final, transmitted on 5 November 1996.

³³ COM(96)590 final, transmitted on 22 November 1996.

³⁴ COM(96)576 final, transmitted on 22 November 1996.

³⁵ COM(96)530 final, transmitted on 25 November 1996.

³⁶ COM(96)483 final, transmitted on 12 November 1996.

³⁷ COM(96)570 final, transmitted on 20 November 1996.

³⁸ White Papers present more precise options for Community action.

³⁹ COM(95)682 final, transmitted on 18 December 1995.

⁴⁰ COM(96)57 final, transmitted on 8 March 1996.

⁴¹ COM(96)421 final, transmitted on 31 July 1996.

⁴² SEC(96)487 final, dated 20 March 1996, and COM(96)546 final, transmitted on 23 October 1996.

⁴³ COM(96)500 final, transmitted on 5 November 1996.

⁴⁴ COM(96)399 final, transmitted on 1 August 1996.

⁴⁵ COM(96)359 final, transmitted on 2 August 1996.

⁴⁶ COM(96)406 final, transmitted on 2 August 1996.

⁴⁷ COM(96)373 final, transmitted on 26 July 1996.

- at *Community level*⁴⁸ and the *de minimis rule* in relation to aid schemes;⁴⁹ the communications now in preparation include one on *environmental taxes*,
- an action programme for *integrated groundwater protection and management*,⁵⁰
- a work programme for the introduction of a *common system of VAT*.⁵¹

The Commission is also pursuing **consultations with interested circles** where specific expertise is helpful with the preparation of new proposals. In the *research* field, for instance, task forces have been set up with industry to improve the impact and coordination of research activity in several areas of major technological interest. Likewise, the *Auto/Oil Programme* is the fruit of scientific research conducted in technical cooperation with the oil and automotive industries.⁵² In the field of competition policy applying to enterprises, the Commission routinely consults interested circles before drafting directives, regulations and interpretative notices. This year, for instance, it published a draft proposal on *cooperation between the Commission and the Member States' competition authorities for the application of Articles 85 and 86 of the EC Treaty*⁵³ prior to transmission to the Economic and Social Committee and the European Parliament.

D. Interplay between national and Community legislation

For more than ten years now there has been a *special information procedure* under Council Directive 83/189/EEC of 26 March 1983,⁵⁴ whereby the Commission is informed of all new technical standards and regulations planned by the Member States. The Commission and the Member States can then identify any barriers to trade in the internal market which may arise and pinpoint the need for Community action. The result is to confine new Community measures to what is strictly necessary.

The Commission's concern to extend the procedure to new areas prompted a proposal extending the directive's coverage to *information society services*, that is a proposal for a directive *amending for the third time Directive 83/189/EEC* to apply a similar notification procedure in this field.⁵⁵

The Commission's report of this year on the operation in 1992, 1993 and 1994 of Directive 83/189/EEC (information procedure for technical standards and regulations)

⁴⁸ COM(96)448 final, transmitted on 23 September 1996.

⁴⁹ OJ C 68, 6.3.1996.

⁵⁰ COM(96)315 final, transmitted on 9 September 1996.

⁵¹ COM(96)328 final, transmitted on 23 July 1996.

⁵² The *Auto/Oil* package (COM(96)248 final, transmitted on 29 August 1996), consists of:

1. a communication on future strategy for the control of atmospheric emissions from road transport;
2. a proposal for a directive on the quality of petrol and diesel fuels;
3. a proposal for a directive on measures to be taken against pollution by emissions from motor vehicles.

⁵³ OJ C 262, 10.9.1996.

⁵⁴ OJ L 109, 26.4.1983.

⁵⁵ COM(96)392 final, transmitted on 30 August 1996.

shows that national rules and regulations applicable to products in the single market are vastly greater in number, volume and complexity than Community measures.⁵⁶

II. REVIEW OF EXISTING LEGISLATION AND MORE ACCESSIBLE INSTRUMENTS

A. Review of existing legislation

As already stated, the Commission has undertaken an extensive review of existing legislation with a view to lightening the burden.

The proportionality principle, more strictly applied, commonly underpins these exercises. Business operators expect the Community - and the national - legislator to provide clear rules that are easy to apply and do not impose excessive burdens. Improving legislation meets an aspiration of the general public and the business world.

An **innovative simplification method** has been applied *in the area of the internal market: SLIM (Simpler Legislation for the Internal Market)* initiative, launched by the Commission in May 1996⁵⁷ and written into the Confidence Pact for Employment in Europe.⁵⁸ The novel aspect of this initiative is that a few representatives of the Member States' authorities and an equal number of representatives of the legislation's business users are associated in small teams led by the Commission. At the pilot stage, four sectors have been selected: *Intrastat* (statistics on Community internal trade), *construction products*, *recognition of qualifications* and *ornamental plants*. The Florence European Council (21 and 22 June 1996) called on the Commission "to submit to the Council before the end of the year the initial results of its initiative on practical simplification measures (SLIM)". The Commission accordingly sent the Council a report⁵⁹ setting out the recommendations for simplification made by the four SLIM groups examining legislation at the pilot stage and its planned response.

As regards *Intrastat*, the Commission is already taking measures to give effect to some of the SLIM Group's recommendations. It will be proposing a simplification of the combined nomenclature to take effect on 1 January 1998. From 1997 it will be making proposals relating to Directive 91/682/EEC on the *marketing of ornamental plants* as well as rationalization and simplification of certain aspects of the sectoral directives on *recognition of qualifications*. It will look into the possibility of simplifying the provisions applicable to the occupations covered by these directives by transferring them to the general mutual recognition system, which is due for review in 1999. And there will be Commission proposals for simplification of the legislation relating to *construction products*.

In its report to the Council, the Commission gives a positive assessment of the SLIM working method. It is planning to continue the exercise and extend it to new sectors at a second stage. But if that is to be possible, the Member States will have to support the

⁵⁶ COM(96)286 final, transmitted on 27 June 1996.

⁵⁷ COM(96)204 final, transmitted on 13 May 1996.

⁵⁸ CSE(96)1 final, adopted on 5 June 1996.

⁵⁹ COM(96)559 final, transmitted on 8 November 1996.

measures to simplify Community legislation proposed by the Commission and devote comparable attention to their national legislation where appropriate.

The **simplification process already in motion** in five other areas has been pursued:

- a) The vast simplification process in *energy* is proceeding apace. The Commission's initial simplification report was laid before the Council in 1995. It proposed the repeal of fifteen instruments (relating to oil and rational energy use) and the recasting of one regulation.⁶⁰ The Council subsequently resolved to repeal three regulations and five recommendations. This year a second, fuller report went to the Council.⁶¹ It calls for the review of general legislation, oil legislation and legislation governing natural gas, electricity and energy efficiency. It also calls for the repeal of five later instruments. There will be a follow-up exercise in the Commission's two-yearly report on energy policy.
- b) In the context of simplification of *environmental legislation*, the Commission has announced a new water policy strategy,⁶² to be followed by a framework directive that will replace at least five existing instruments.
- c) Likewise, the reform of the *common agricultural policy* is continuing its course:
 - the Commission has presented a proposal for the reform of the common organization of the market in *fruit and vegetables and processed fruit and vegetable products*.⁶³ The proposal would recast all the existing legislation on the subject. The Commission has also embarked on a substantial reorientation of the basic rules governing the organization of the market so that a raft of decisions taken hitherto at Community level will now be taken by producers' organizations under Commission supervision;
 - here the Commission has also undertaken a thorough review of the *arable crops* regulations. Regulation (EC) No 658/96⁶⁴ replaces 27 implementing regulations enacted over the years and thus reduces substantially the volume of legislation to be consulted.
- d) To lighten the burden of *formalities and administrative obligations on small businesses*, the Commission:
 - in the context of its proposal for a Council Decision on a *third multiannual programme for small and medium-sized enterprises in the European Union (1997-2000)*⁶⁵ proposed more specific and more practical procedures to evaluate the impact of Community legislation on such businesses;

⁶⁰ Council Regulation No 1056/72 of 18 May 1972 on investment projects of interest to the Community in the petroleum, natural gas and electricity sectors: OJ L 120, 26.5.1972.

⁶¹ COM(96)320, transmitted on 11 July 1996.

⁶² COM(96)59 final, transmitted on 26 February 1996.

⁶³ COM(95)434 final, transmitted on 4 October 1996, adopted by the Council on 28 October 1996.

⁶⁴ OJ L 91, 12.4.1996.

⁶⁵ COM(96)98 final, transmitted to the Council on 22 March 1996.

- adopted a Recommendation laying down a *common definition of small and medium-sized businesses*⁶⁶ to boost the coherence and efficacy of the whole range of policies affecting small businesses and reduce the risk of distortions of competition;
 - will present a recommendation by the end of this year to simplify administrative procedures imposed on *newly-formed small and medium-sized businesses* in their relations with public authorities, especially at the initial formation stage;
 - presented a more general *integrated programme for small and medium-sized enterprises*⁶⁷ aiming to set up a comprehensive project for the streamlined, transparent management of all the measures taken at whatever level - Community, national or regional.
- e) Still with a view to *lightening the burden of administrative formalities*, the Commission has pressed ahead with the work of simplifying the *rules of origin* applicable in preferential trade relations between the Community and the *associated countries of central and eastern Europe and EFTA*. In December 1995 it presented a proposal for amendments to the Protocols to the Agreements between the EC and the countries of central and eastern Europe and EFTA.⁶⁸ A second amended proposal will be approved by the end of the year.

Lastly, there have been a number of specific Commission **initiatives for simplification or recasting**, listed in ANNEX II.

The Commission would recall, as it did in the introduction to its 1995 "Better Lawmaking" Report and in the June 1996 interim report, that greater recourse to the recasting procedure depends on the conclusion of an interinstitutional agreement. If the European Council shares this approach, it should call on the institutions to create the conditions for such an agreement as was done at Edinburgh as regards formal consolidation. The Commission, acting on its ongoing commitment, has entered this item in its 1997 work programme.⁶⁹

B. More easily accessible instruments

The first point to be made here concerns the **formal and express repeal of instruments or provisions that have lapsed or become obsolete**. Having repeatedly ascertained that Community instruments had often lapsed or become obsolete in whole or in part (where the objective pursued has been attained or where there is a change in the circumstances of fact or law on which it depended) but had not been actually repealed, the Commission decided for the sake of certainty in the law to take repeal measures as a matter of course.

⁶⁶ C(96)280 EC: OJ L 107, 30.4.1996.

⁶⁷ COM(96)329 final, transmitted on 16 July 1996.

⁶⁸ SEC(95)2122, transmitted on 4 December 1995.

⁶⁹ COM(96)507 final, transmitted on 23 October 1996.

Consolidation work has continued. An amended proposal for **formal consolidation** has been presented to the Council and Parliament concerning *technical conservation measures for fishery resources*.⁷⁰ Three other such proposals should be presented by the end of the year: they concern *technical regulations and standards, machinery and collective redundancies*. In the areas of *beet seed* and the *common catalogue of varieties* the Commission has completed, for Finnish and Swedish, the consolidation exercises started last year.⁷¹ The overall effect is the repeal of 58 instruments.

Informal consolidation is also proceeding. Between the beginning of 1994 and October 1996, more than 160 basic instruments were consolidated, which involved about 2 000 instruments in all in nine or eleven languages. These have been made available through the Publications Office's sales network since the beginning of 1996; a catalogue is published each month.

The Commission has published a **guide** containing fourteen *veterinary* directives governing the production, marketing and import of animal products for human consumption, to make it easier to read and understand the relevant legislation and thus embark on simplification in this area. It has likewise adopted a recommendation on the use of a *common procurement vocabulary*⁷² so as to standardize the concepts used in invitations to tender.

⁷⁰ COM(96)317 final, transmitted on 9 July 1996.

⁷¹ COM(95)622-02, transmitted on 19 September 1996; COM(95)628-03, transmitted on 26 September 1996.

⁷² C(96)1974: OJ L 222, 3.9.1996.

