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**COMMENTS OF THE COMMISSION ON THE REPORT OF THE  
INDEPENDENT EXPERTS GROUP ON LEGISLATIVE AND  
ADMINISTRATIVE SIMPLIFICATION**

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## **COMMENTS OF THE COMMISSION ON THE REPORT OF THE INDEPENDENT EXPERTS GROUP ON LEGISLATIVE AND ADMINISTRATIVE SIMPLIFICATION**

### **Improving the EC regulatory framework.....an ongoing process**

The Commission is committed to the elimination of excessive regulatory burdens, as part of the policy aimed at stimulating employment, competitiveness and innovation. There is no justification for unnecessarily complex, heavy or burdensome legislation, whether at EU level or at the level of the Member States. The Commission's 1993 White Paper on *Growth, Competitiveness and Employment* recognised that "good regulation" was an important prerequisite to European industry improving its competitive position and the global level of employment.

In completing the internal market, the Community has been the great liberalising force of recent years, freeing markets and opening up trade for the benefit of consumers and of business. Commission proposals were aimed essentially at replacing existing, divergent national regulations by harmonised measures, not at establishing new ones; in many cases business now faces one set of rules instead of fifteen, while piles of accumulated red tape and bureaucratic forms entrenched in national practices have been swept away.

As evidenced by the decrease in the number of new legislative initiatives, the Commission has, for some years now, exercised greater selectivity by restricting the number and scope of its initiatives through a careful application of the subsidiarity and proportionality principles; large consultation of the interested parties and greater recourse to impact assessments have accompanied this process. The Commission has also embarked on a comprehensive programme of evaluation and revision of the existing legislation.

In this process, the Commission, supported by the European Council, felt necessary to collect independent views. This is why the Commission set up in September 1994 a Group of high level independent experts from different backgrounds (industry, trade unions, academics, law and civil service), with Dr Bernhard MOLITOR in the Chair, to assess the impact of Community and national regulation on competitiveness and employment, and to provide recommendations to the Commission. The Commission ensured a wide distribution of the final report that the Group has issued in June 1995 (COM(95)288/2 final). At the same time, still on Commission initiative, a vast study was launched by UNICE with the same objective to assess the impact of regulation on competitiveness and employment, based on the views of business.

### **The Molitor Group's contribution**

The Commission considers that, bearing in mind the time available, the report established by Molitor Group represents a valuable contribution and a stimulus to the thinking and work on legislative and administrative simplification in the Community. As evidenced by its detailed comments on the Group's proposals, the Commission finds some common ground with the Molitor report and many of the proposals now being examined by the Commission go in a similar direction. In intensifying the review process of the EC regulatory framework along the lines which are set out in its 1995 report "better law-making" (COM(95)580 final), the Commission will draw on the ideas it takes from the Group's report.

Before commenting on the Group's proposals, the Commission wishes to stress the following general points:

**"Better regulation".** The Molitor Group's report seeks to draw the distinction between "simplification" and "deregulation" in the regulatory process. Although sharing some sympathy for the general aim of deregulation, the Molitor Group stopped well short of recommending the bare cancellation of existing legislations. Such a policy would indeed not be the most effective or constructive way to achieve a better regulatory and administrative environment, which has to address all aspects of the public interest. What the EU needs is a legislation that is understandable, user friendly, consistent, and which provides least costs solutions for business, citizens and administrations while ensuring high standards in protecting health and safety, consumers and environment. To be less controversial, this process could be better described as "better regulation". The Molitor group is right in saying that this is a matter of "culture" to be deeply embedded at all regulatory levels.

**The impact of legislation on competitiveness and employment.** The Commission would have welcomed the Group's views on a methodology to assess the impact of legislation on competitiveness and employment. As a general principle, the report links simplification with competitiveness and employment without presenting an analytical discussion of the relationship between these factors. Consequently, some of the assertions contained in the report appear to lead to rather radical and debatable proposals. These would have been more helpful if backed by convincing analysis and evidence.

**The impact of national legislation.** The Commission would have also welcomed more commitment from the Group in analysing and assessing the impact of national legislation. The recent UNICE regulatory report confirms that most problems of overregulation identified by business derive from national legislation. To be effective, any action at EC level to improve the regulatory framework needs to be backed by similar efforts at Member States level. While respecting the subsidiarity principle, the Commission is willing to contribute to this process. For example, the "Committee on Improving and Simplifying the Business Environment", set up by the Commission in December 1994, plays an important role in organising concerted actions with Member States and business to exchange best practices and new ideas relating to business' regulatory and administrative environment; this Committee will be able to consider some of the Molitor Group's proposals, within the context of the concerted actions, in order to put them into operational practice and effect. The existing notification requirements of draft national measures affecting products give also the opportunity to the Commission to advise the Member States. In 1994, the Member States notified the Commission of 442 of such measures. In an effort to minimise the regulatory burden in the Internal Market, the Commission sought simplification or improvement in 325 of these.

## **1. Comments on the general proposals**

### ***Proposal 1***

*The present work undertaken by the EU institutions to consolidate legislation ("codification") in the different areas of actions of the Community should be accelerated. Member States should take a similar effort with respect to the transposition of Community legislation into national law.*

**The Commission supports this proposal. Consolidation contributes directly to the clarity, the readability and thus the accessibility of Community law. It is commonly the essential precursor to simplification. The Commission is intending to further boost the consolidation and recasting exercises it has been engaged in for some years now; these have been on each work programme since 1993. This implies:**

- **close cooperation of the Council and Parliament so that adoption of formal consolidation proposals is not held up by reopening of the debate on substantive issues, as provided by the institutional agreement of 20 December 1994 with its accelerated working method for scrutiny of consolidation proposals. The Commission also intends to increase the frequency of publication of informal consolidations, not involving the enactment of new instruments but still constituting a valuable documentation facility for the general public and helping to improve the transparency and application of Community law;**
- **greater use, routine use even, of the recasting technique whereby a new instrument repealing the basic instrument is adopted when the basic instrument is to be amended. This helps to avoid the proliferation of amending instruments and the coexistence of successive historical stages that make consolidation instruments rapidly obsolete. Routine recasting is nevertheless dependent on the conclusion of an agreement with Parliament and the Council to ensure that the reopening of debate on substantive issues went no further than the proposed amendments to the basic instrument;**
- **remedying current logistical difficulties flowing from the arrival of two new official languages. The Commission is actively working on this.**

**The Commission encourages the Member States to proceed likewise in instruments transposing directives into national law, for that also helps to make Community law easier to understand and apply.**

### ***Proposal 2***

*In respecting the acquis communautaire, a programme of simplification, leading where necessary to deregulation, should cover all existing EC legislation and its transposition into national law with the objective of lowering the burdens on business and consumers and creating more opportunities for employment and competitiveness.*

**The Commission is planning to pursue and amplify the process of evaluating and reviewing Community legislation which is already under way in the subsidiarity and proportionality context. The 1995 report (Better law-making) (COM(95)580 final) outlines the Commission's approach to evaluation and action, on which it will continue to report**

annually. The Commission has already clearly stated its view that this process can in no circumstances affect the *acquis communautaire*, notably as regards completion of the internal market and maintenance of a high level of protection for health, safety, the environment and consumers, as required by the Treaty.

### **Proposal 3**

*Existing legislation should be tested against the same criteria as new legislation (proposals 4 and 6). The outcome and recommendations should be published as to whether, in the view of the Commission:*

- *the legislation is usable as it stands;*
- *it should be amended;*
- *it should be withdrawn.*

The Commission applies the same criteria and procedures in its proposals for review of existing legislation as in proposals for new instruments (see comments on proposals 2, 4 and 6). The Commission's communications and explanatory memoranda in support of its proposals contain information clarifying the outcome of its consideration; an example is the recent report on the review of the energy legislation.

### **Proposal 4**

*Before putting forward legislation, the following questions should be addressed:*

- *is public action either necessary or desirable?*
- *on which level is the action required (Community level, national level)?*
- *is there an acceptable cost/benefit relationship for public action (taking all quantitative and qualitative factors into account, including impact on competitiveness and employment, in particular on SMEs)?*
- *what are the alternatives for public action?*
- *if public authorities are to act, what is the most appropriate mechanism of action?*
- *can the length of the period for which action is necessary be limited?*

The Commission shares this approach, which broadly corresponds to its own policy implemented through the subsidiarity checklist. In order to enhance implementation, the Commission began work this year on general guidelines on regulatory policy which are designed to consolidate, modernize and rationalize the different practices and instructions in vigor in its departments, taking due account of all the points covered by this proposal.

### **Proposal 5**

*When drafting a new piece of legislation, the Commission must ensure that a study is carried out on its incorporation into Member States' national legislation and publish the findings of the study.*

The explanatory memorandum (see comments on proposals 7 and 9) to most proposals for directives outlines existing national legislation. More detailed studies are sometimes carried out, but full publication would be excessively expensive when it is borne in mind that the Commission allows the public the broadest possible access to its documents in general and studies in particular, on the basis of the code of conduct on access to documents of 6 December 1993.

### **Proposal 6**

*Each legislative proposal should respond to the following criterias:*

- *are the provisions understandable and user-friendly?*

- are the provisions unambiguous in intent?
- are the provisions consistent with existing legislation?
- does the scope of the provisions need to be as wide as envisaged?
- are the time scales for compliance realistic and do they allow business to adapt?
- what review procedures have been put in place to ensure even enforcement and to review effectiveness and costs?

The Commission shares this approach, which broadly corresponds to its own policy. In order to enhance implementation, the Commission began work this year on general guidelines on regulatory policy which are designed to consolidate, modernize and rationalize the different practices and instructions in vigor in its departments.

#### **Proposal 7**

*Expert studies made for preparation of legislation should be published in order to create greater transparency in the legislative process.*

The explanatory memoranda that accompany all proposals for legislation outline such studies. Routine full publication would be costly and burdensome; in the interests of openness, they are already widely available and easily accessible to the public by virtue of the code of conduct on access to documents of 6 December 1993.

#### **Proposal 8**

*Consultation with those who are concerned by new regulations, in particular consumers, business and workers should be effective, systematic and carried out in due time.*

The Commission entirely agrees. Consultation with interested circles is at the centre of the process of producing proposals. There are specific rules governing consultation in a number of areas, thanks in part to the advisory committees. The Commission also endeavours to ensure in the transparency context that open public consultation procedures operate at the earliest possible stage of the drafting process. The announcement of the Commission's annual work programme and the growing use of Green and White Papers are practical steps in this direction, as can be seen from the 1996 work programme: 35 initiatives to stimulate public debate, 9 of them by Green or White Papers, for 19 new legislative proposals.

#### **Proposal 9**

*The explanatory memorandum of all new proposals should indicate the expected impact on employment and competitiveness, costs and innovation.*

The Commission agrees on the importance of the role played by explanatory memoranda in explaining the background to its proposals, particularly as regards the expected impact of the proposed action. The general guidelines on regulatory policy will reinforce the instructions given to Commission staff in this respect.

#### **Proposal 10**

*The grounds on which a Member State has supported or opposed a new piece of Community legislation should be made public.*

The Commission can sympathize with this proposal, which relates to transparency in Council business and is therefore a matter for the Council. This type of information might, for example, be covered in the grounds given by the Council when its common positions

are sent to Parliament.

**Proposal 11**

*Any new important Community legislation should provide for a procedure for assessing its results, in particular the attainment of its objectives. These assessments should be made public.*

The review clause conventionally incorporated in directives meets this very concern. It provides the practical justification for the periodical surveys undertaken by the Commission in the Member States. It would be worthwhile, however, reconsidering the intervals set by the review clause, which in the past have often been determined in a rather too optimistic fashion to allow genuinely tangible results: as a general rule, no assessment made after less than five years' experience is likely to be truly reliable.

**Proposal 12**

*Member States should, in parallel with the Commission, simplify their legislation at all levels (national to local), including that which result from the transposition of Community legislation.*

The Commission is bound to support this proposal wholeheartedly. There is no comparison between the volume of Community legislation and of national legislation; statistics on the operation of Directive 83/189 (procedure for notification of technical standards and rules) offer an eloquent illustration of this. The results of the recent UNICE survey of more than 2500 firms confirm that the rules felt to be most burdensome were of predominantly national origin. The main point for the Member States is to combat the tendency to over-transpose directives by adding in complications that are neither justified nor required by the Community provisions.

**Proposal 13**

*The Commission should take a vigorous and active approach to auditing transposition and enforcement of EC legislation at national level in order to avoid, in particular, that national legislation or practices hamper the unity of the Community market. The strengthening of the enforcement of it should be considered by the Commission in this context.*

Monitoring the application of Community law is one of the Commission's core functions. The Commission is constantly concerned to improve the efficiency of its monitoring activity, as can be seen from:

- the improvements to the hardware and the software used for the computerized processing of infringement proceedings;
- the measures taken to improve the management of infringement proceedings, most recently in 1993;
- forthcoming new improvements to the system to cope with the rising number of infringement cases and above all to reduce the time taken to process them.

**Proposal 14**

*The possibility of imposing financial penalties on Member States which fail to comply with judgments of the European Court of Justice concerning failure to implement or enforce Community legislation should be actively explored.*

In July 1994 the Commission informed all the Member States of its intention of making full use of Article 171 EC, as amended by the Treaty on European Union, which confers



on the Court of Justice jurisdiction to impose financial penalties on Member States which fail to comply with judgments. Since then, every Article 169 letter and reasoned opinion addressed to a Member State which has not taken the action required to comply with a judgment has referred to this possibility of financial penalties, the amounts to be determined at the time of further reference to the Court. It will shortly be sending the Member States a communication setting out the guidelines it intends to follow in applying this article.

**Proposal 15**

*The Community should consider whether there are areas in which a Community regulation (as an alternative to directives) would provide best reconciliation of simplification and single market objectives.*

The Commission is ready to pursue its thinking on these matters, in the spirit of the conclusions of the Edinburgh European Council and the discussions with the other institutions. At all events this examination requires a case-by-case approach in the light of the subsidiarity principle.

**Proposal 16**

*The Community should energetically pursue the principle of mutual recognition wherever possible within a comprehensive simplification framework.*

The Commission shares this concern. Mutual recognition has a major role to play. It is clear that the 1992 legislative programme was selective and that many barriers to the internal market are still in existence in the form of bureaucratic national rules in fields not yet covered by common rules. In all too many cases, mutual recognition of national rules does not work. The Member States should attack the problem resolutely, for the alternative would be more harmonization, and that is not necessarily the Commission's objective.

**Proposal 17**

*The Community should, as far as possible, announce its legislative programme in the different areas at an early stage. The use of White and Green Papers by the Commission should be extended.*

This proposal is perfectly acceptable and reflects the Commission's current practice; witness the recent annual work programmes, which announce a growing number of Green and White Papers.

**Proposal 18**

*Progress in simplification leading, where necessary, to deregulation at EU and national levels, should be monitored by the Commission and reported to the European Parliament and the Council. The Commission should allocate overall responsibility for this to one of its Members supported by a small central coordination unit.*

The Commission is determined to exercise to the full its duties as holder of the power of initiative and guardian of the Treaties in the process of simplifying Community legislation. For the process to be effective, it is important for each of its Members and all the departments reporting to them to be attentive to the simplification objective in their respective areas of responsibility. The President has overall responsibility for stimulating, coordinating and monitoring the process. The possibility of reinforcing the coordination

unit in the Secretariat-General is under review.

The Commission, in strict compliance with the subsidiarity principle, has the general intention of taking every opportunity of stimulating this process at Member State level. The Committee for the simplification and improvement of the legislative and administrative environment for business activity set up by the Commission in December 1994 plays a vital role by organizing concerted action with the Member States and firms for the exchange of ideas and best practice. Other instruments, such as the notification of draft national measures concerning technical standards and rules under Directive 83/189, enable the Commission to react and advise Member States.

## **2. MACHINE STANDARDS**

### **GENERAL COMMENTS**

The Commission considers that the Molitor Group has constructively highlighted a number of difficulties with application of Directive 89/392/EEC on machinery.

Some were already known to the Commission and have been discussed and solved (or at least a start has been made to solving them) at the meetings of the Working Party on Machinery of the Standing Committee set up by the Directive. As requested by the Molitor Group, the Commission submitted its report at the Working Party's meeting in July 1995. The report will be studied in further depth over the next few months. In addition, a subgroup has been set up to examine in detail the two inextricably linked problems of the scope of the Directive and of the different declarations to be established (Annexes II A, II B or II C to the Directive).

True as it is that manufacturers are having difficulties with applying the Directive, they are even more concerned about the repeated changes. The original Directive 89/392/EEC was first amended by Directive 91/368/EEC (both these texts entered fully into force on 1 January 1995) and then again by Directives 93/44/EEC and 93/68/EEC (both of which apply with effect from 1 January 1995 and enter fully into force on 1 January 1997). Added to this, other dates have been set for specific types of machinery (ROPS, FOPS, self-propelled trucks, etc.).

The need for undertakings to have stability in the regulations was further confirmed by the Unice's study on regulations.

It is therefore essential to amend the Directives once only and to give manufacturers enough time to take in the existing texts and apply them correctly before forcing them to change their practices.

In this context, the Commission's work programme for 1996 proposes codification of the Machinery Directive, in preparation for revision of the Directive. At the same time, the Commission is working on revising the Directive with a view to proposing the appropriate amendments at the end of 1997, preferably in the form of a completely rewritten text. Allowing for the time taken for formal adoption of the proposal by the Council and Parliament, this should allow the current version of the Directive to apply in practice for three years for most machinery (just one year in the case of passenger lifts) before the new text enters into force.

Initial contacts with the Member States suggest that they agree with this timetable.

### **COMMENTS ON THE GROUP'S PROPOSALS**

#### ***Proposal 1***

*The definition of machinery should be clarified, in consultation with interested parties. The definition of machines to be included and excluded should be improved.*

The Commission is open to any attempt at clarification, provided it does not affect the objective of allowing free movement of a wide range of products. A subgroup of the

Committee set up by the Directive has been asked to propose solutions to clarify the definition of machinery.

**Proposal 2**

*With regard to "placing on the market" it should be made clear that a machine should comply with the legal provisions in force on the date when it was actually "placed on the market" for the first time.*

The current wording of the Directive already allows such an interpretation limiting "placing on the market" to the moment when the machinery is first made available and not subsequent transfers. The problems with diverging interpretations in the Member States have arisen, in particular, with machinery in distributors' stocks at the end of the transition period. In the case of the Machinery Directive, this problem will no longer exist after 1 January 1997 when all the texts come fully into force.

**Proposal 3**

*The possibility to apply the Machinery Directive only to complete ready-for-use machines ("putting into service") and to safety components sold directly to the final users should be considered.*

The Commission shares the Group's concern for greater clarification and simplification of the procedures. However, this simplification must be achieved without restricting free movement. In this respect, however attractive the concept "ready for use" appears, it cannot provide all the clarity and legal certainty required for the purposes of identification of the products subject to the obligations imposed by the Directive. Certain points, such as explicit exclusion of professional transactions between machine and component makers, could be considered.

**Proposal 4**

*The Commission should remove the uncertainties surrounding the application of the CE mark.*

The CE marking featured prominently in the Group's deliberations (cf. points 14, 15 and 16 of the report). The Commission supports the Group's conclusions concerning the inconsistency as regards the marking of components (point 14). However, some of the Group's other comments - e.g. on the position where the marking is affixed - fail to take account of the specific nature of the products. The problem raised by the Group in points 15 and 16 (usefulness of the CE marking) goes far beyond the framework of the Machinery Directive, since the marking is found in all the "new approach" directives. The Commission considers the CE marking useful in several ways, even though it is not an indispensable component of the "new approach" directives.

- it provides a means of identifying products in line with the new approach, during the period in which all the directives calling for affixing of the CE marking are being brought into force;
- it signifies the maker's responsibility;
- it provides a means of tightening up the measures to combat fraud and unfair competition;
- although only recent, experience has shown that users and the market attach a certain value to the marking, which could thus be given added value as a quality mark and help to promote a European quality policy.

By way of conclusion, the Commission considers that the uncertainties created by the CE

marking cannot be resolved by reference to the Machinery Directive alone. A broader review is needed, particularly of the problem of marking components, sub-assemblies, etc., which is one of the main difficulties encountered by industry.

**Proposal 5**

*The Machinery Directive should be reviewed to ensure that it does not inhibit an effective second-hand market for safe machines.*

The Commission repeats that the Machinery Directive does not apply to secondhand machines, unless they have been renovated and placed on the market again after renovation. When examining this proposal, account must also be taken of Directive 89/655/EEC concerning the protection of workers at work, which entails changes to work equipment already in service.

**Proposal 6**

*The agreement between the standards bodies to clarify the overlap between the Low-Voltage and Machinery Directives should be published as soon as possible.*

The Commission shares this concern and requests the standards bodies responsible for the agreement to ensure that it is disseminated widely.

**Proposal 7**

*It should be clearly stated that the Machinery Directive, and any other relevant new approach directives, are excluded from the scope of the Directive on General Product Safety (92/59/EEC).*

The Directive on general product safety explicitly states that it does not cover products posing risks covered by specific texts, although it does not explicitly state which these are. Moreover, neither the Member States nor industry have yet reported problems with any overlap.

**Proposal 8**

*A general review of the list and the criteria of high risk machines and safety components (Annex IV) is required, with a view to significantly limiting the categories of machines subject to special conformity assessment. In addition, unnecessary notification procedures should be eliminated.*

The Commission has no objection to reviewing the list of machinery in Annex IV, in consultation with the Committee, on the basis of the risks posed. However, any such review could lead to a longer list rather than a shorter one, considering how sensitive the Member States are to the worker protection aspects. Consideration could also be given to aligning the conformity assessment procedures on the Modules Decision (93/465/EEC).

The Commission departments concerned are also encouraging coordination between the notified bodies (point 22 of the Group's report). This coordination is working properly and an initial set of forms to be used by all the notified bodies for their inspections has been produced. Criteria for inspections on the machines listed in Annex IV could also be established once the notified bodies have had time to conduct a sufficient number of inspections. On the basis of the results obtained, the Commission could consider establishing a list of the essential requirements to be checked by the notified bodies for each of the machines listed in Annex IV.

#### **Proposal 9**

*The Machinery Directive requirements for a technical construction file should be simplified when a machine is produced in accordance with harmonized standards. In such cases a single document based on the EC declaration of conformity should be sufficient.*

The Commission does not support this approach. In the case of compliance with the harmonized standards, the procedure has already been simplified in that the maker will not have to demonstrate how the means used meet the essential requirements. However, this does not imply that the declaration of conformity suffices. In particular, the declaration and the file serve different objectives - one signifies the responsibility of the manufacturer who places the product on the market, while the other provides the results of the tests conducted, applying the standards. Consequently, the declaration of conformity cannot be considered a substitute for the technical file. Finally, the approach proposed would conflict with the global approach to certification followed since 1990 and applied to all the "new approach" directives since then.

#### **Proposal 10**

*Annex V should be modified to make it clear that the copy of the instructions contained in the technical file should be in the original language. Under this condition, the machine should be allowed to circulate with only a translation in the official language of the country of use.*

The Commission considers that this proposal would indeed reduce the amount of documentation to accompany machinery placed on the market and in circulation in the Union. It is along the same lines as other substantive law applicable to the same problem. Changes to safeguard the legal certainty of manufacturers should therefore be considered, in consultation with the Committee.

#### **Proposal 11**

*Manufacturers should be obliged to provide instructions which, if observed, would ensure safe use, adjustment and maintenance of the machine in question. However, specific requirements for the content of those instructions should be kept to the strict necessary possible. It is urgent to present guides in order to facilitate the establishment of instructions by the manufacturers, especially the SMEs.*

The Commission considers that the Directive already complies with the principle of proportionality. In particular, the content of the instructions is decided by the manufacturer, in the light of the risk analysis which manufacturers are under an obligation to carry out. Manufacturers are under no obligation to give instructions unless there is a corresponding risk. Moreover, point 1.7.5 (a) in Annex I is exhaustive and precludes any further demands from the Member States.

The Commission intends to urge the trade associations concerned and the European standardization bodies to draft guides to help manufacturers fulfil their obligations correctly and without difficulty.

#### **Proposal 12**

*In order to ensure that the new approach and the associated harmonized standards support the development of the machinery sector as a source of competitiveness and employment, the Commission needs to ensure that each set of standards remains relevant in market and commercial terms.*

**The Commission supports this objective. However, it reminds all concerned that standardization is a private-sector process, over which it has only limited influence. Industry is extremely closely involved in selecting, ranking and drafting the standards.**

### **3. Food Hygiene**

The Commission welcomes the efforts of the Molitor Group to analyse the difficult area of food hygiene legislation, which seeks to achieve a number of objectives defined by various legal bases in the Treaty, primarily that of maintaining and reinforcing a high level of protection of health and safety in particular with regard to consumer interests. Although the Group has undertaken an analysis of the food hygiene sector, a number of the recommendations and comments of the Group also have implications for other areas of Community legislation relating to foodstuffs.

The services of the Commission have begun work on a more comprehensive reappraisal of the whole area of food law, with a view to the presentation of a Green Paper on the general principles of food law in the European Union. Amongst other issues, the Green Paper will address questions relating to the coherence of Community legislation, the scope for simplification and rationalisation of the legislation, the practical application of the principle of proportionality in this field, the operation of the internal market, and the international dimension of Community legislation. It is intended to issue the Green Paper for widespread public consultation before the end of 1995 or early in 1996.

In the specific area of food hygiene, Article 1(2) of Directive 93/43/EEC requires the Commission to examine the relationship between the specific Community food hygiene rules and those of the general hygiene directive, and if necessary to make proposals before 14 June 1996. The Commission services have recognised the need to improve and simplify EC food hygiene legislation and have already started work in this area; an example is the preparation of a consolidated and simplified version of the veterinary public health directives. This exercise will also be the subject of widespread public consultation.

In view of the foregoing, the Commission does not wish to prejudge consideration of the different comments it may receive by responding in detail at this stage to all of the specific recommendations of the Molitor report. Nevertheless, the Commission accepts that all of the general lines of action recommended by the Molitor Group need to be addressed, and it has begun to do so.

#### **1. Harmonisation and simplification of the rules**

The Commission agrees that the body of Community food hygiene legislation drawn up over the past thirty years needs to be reviewed and simplified to make it both more effective in protecting public health and consumers and more readily understood by consumers, producers and public authorities.

#### **2. Proportionality in legislative design**

In this process of review and simplification, the Commission will at all times bear in mind the need to ensure that legislative provisions do not go beyond what is necessary to achieve the desired objectives. In order to achieve this, the Commission is strongly in favour of basing Community legislation on a proper scientific risk analysis, using internationally recognised principles of risk assessment, where available. In this context, the Commission agrees that the use of a HACCP based approach should be followed in food hygiene legislation.



3. Harmonised application and enforcement

The Commission is fully aware of the need for harmonised and effective application and enforcement of Community rules to ensure an equally high level of protection throughout the Community and to facilitate the smooth operation of the internal market. To this end, Community directives set out provisions in respect of control by the national competent authorities backed up by a Commission inspectorate. The Commission will consider possibilities for improving, strengthening and making more effective control systems.

This inspectorate supervises national control mechanisms. The monitoring by the Community inspectorate of the effectiveness of the national systems in the application of hygiene legislation should be reinforced if consumer confidence is going to be secured.

4. Choice of legal instruments

The Commission agrees that the use of regulations is preferable, because they do not need to be transposed into national law before coming into effect, and provide greater legal certainty for those affected by them. However, despite the Commission proposing regulations, the Council generally adopts acts in the area of food hygiene in the form of directives.

The Commission also agrees that the use of alternative approaches such as the application of the principle of mutual recognition or the use of voluntary instruments should be considered in appropriate cases. Nevertheless, experience has shown that there are difficulties in applying mutual recognition in areas where public health interests are concerned, such as food hygiene, while the use of codes of practice may be facilitated when a clear legislative framework has already been laid down.

5. The international dimension

As the major participant in world trade in food, the Community has a vital interest both in ensuring that its food imports do not pose a risk to the health of its consumers or livestock populations, and that its food exports meet the legitimate concerns of our major trading partners and are not hampered by unjustified barriers to trade. For this reason, the Commission considers it important to ensure that the WTO agreements on Sanitary and Phytosanitary measures, and on Technical Barriers to Trade are correctly applied world-wide.

To this end the Commission participates actively on behalf of the Community in international harmonisation activities relating to the foodstuffs sector, in particular the Codex Alimentarius, where the Commission is currently taking the steps necessary to obtain full membership for the Community.

## **4. Employment and social policy**

### **GENERAL COMMENTS**

The Commission welcomes this chapter as a good stimulus to the ongoing reflections and actions to improve the efficiency of the Community social policy. The Group has put forward several positive ideas in that respect, on which the Commission will draw.

The Commission shares, in particular, the Group's premises such as the inter-dependent economic and social progress or the need for regulations in order to protect the health and safety at work.

The Commission would, however, have welcomed deeper analysis from the Group in tackling the following issues:

- the impact of social legislation on competitiveness and employment. As a general principle, the report links simplification with competitiveness and employment without presenting an analytical discussion of the relationship between these factors. More specifically, the report contains several assertions, leading sometimes to radical proposals, which would have been more helpful if they were backed by convincing analysis and evidence. Examples of this are point 27 (complicated procedures for SMEs), proposal 22 (video display units), proposal 23 (wording of the directives) and point 39 (manual handling of loads);
- the interaction between product and service market regulation, and job creation, as identified by the Mc Kinsey report. The report found that product and service market restrictions could have a very marked effect on employment levels;
- the legislation at Member State level. Social legislation is mainly a matter for national authorities and most laws in the field of social affairs and the labour market are of national origin. The following schematic picture of the structure of "social rules" in Europe highlights the importance of an approach at national level, as also evidenced by the 1995 Unice regulatory report:
  - \* the limited amount of Community legislation, e.g. in the area of labour law, only sets minimum standards;
  - \* national legislation normally provides a higher level of protection for employees than Community legislation;
  - \* collective agreements in most Member States provide mostly better conditions than the national legislation ;
  - \* individual contracts give most workers much better conditions than the minimum standards set by collective agreements.

## **COMMENTS ON THE GROUP'S PROPOSALS**

### **Proposals on Labour law**

#### ***Proposal 1***

*In order to achieve a real simplification in relation to labour law, the Community should explore the possibility to agree upon fundamental rights and principles directly applicable in the Member States.*

The Commission agrees with the proposal. The Commission believes that the incorporation of social fundamental rights into the Treaty could be an important contribution to simplification but would not necessarily impede or render ineffective any further legislation in the field of employment and social policy. Building on the outcome of the joint hearing with the European Parliament which took place on 23 May 1995, the Commission has requested a "Comité des sages" to submit a report to the European Forum on Social Policy which will be consulted in March 1996 on the revision of the Community Charter of Fundamental Social Rights of Workers. The subject will be dealt with by the Intergovernmental Conference 1996.

#### ***Proposal 2***

*Community legislation should primarily focus on recognised transnational problems. The relevant legislation should be as simple as possible.*

The Commission can accept this proposal in principle. However, it should not be seen as an obstacle to legislation on issues which are non-transnational if that legislation meets the subsidiarity and proportionality requirements.

#### ***Proposal 3***

*The Community should coordinate the terminology used in legislation pertaining to labour law.*

This proposal is fully acceptable as it contributes to better comprehension and avoids misinterpretation.

#### ***Proposal 4***

*The Commission must make use as often as possible of explanatory notes to indicate the broad lines of Community law.*

This proposal is also fully acceptable. It promotes a common understanding and application of Community law.

The Commission's Social Policy Action Programme (1995-1997) envisages inter alia, the adoption of a Memorandum on the transfer of undertakings directive. A memorandum on Equal Pay has already been adopted by the Commission.

#### ***Proposal 5***

*The Commission should ensure in close cooperation with the national public authorities, the social partners and other relevant organisations, that Community labour law is properly applied in the various Member States. The relevant analyses should be made public.*

This proposal is fully acceptable. The Commission's Medium Term Social Action

Programme states that it will step up its efforts to ensure that Community law is properly and fairly transposed. It will also take action to review Union legislation in the social field regularly, in order to improve its efficiency and ensure its transparency. In this context, the Commission has already stated that it will take into account the conclusions of the Molitor Group. Regarding the implementation of Directives by collective agreements, the Commission stated in its Medium Term Social Action Programme that it will present a Communication addressing the entire area of implementation of Community directives by collective agreements in the light of European Court of Justice case law and the Agreement on Social Policy, and taking account of diverse national practices. The Communication will also reflect on ways of involving the social partners in the process of controlling the transposition and enforcement of Community law (1996).

**Proposal 6**

*Wherever the situation is transnational by definition, recourse to a regulation should be possible and should be considered as a priority.*

This proposal is fully acceptable, but the subsidiarity requirements are to be carefully checked on a case by case basis. The Molitor report notes that the current text of the Agreement on Social Policy makes no provision for the use of regulations and seeks an amendment. The Commission may therefore raise this issue in the course of the 1996 Intergovernmental Conference.

**Proposal 7**

*It is important that, in liaison with the Commission, the social partners agree as soon as possible on arrangements which would render legislative initiative on the part of the Community superfluous.*

This proposal is acceptable. The social partners are organisations which, according to their very nature, are the optimal bodies to conclude balanced agreements which are the most suitable for both employees and employers. The Commission's Communication on the implementation of the Agreement on Social Policy is entirely in line with proposal N°7.

**Proposal 8**

*There should be a simple rule at Community level on the right of all paid employees to be informed, as quickly as possible, of their essential conditions of employment and the employer's corresponding obligation to provide the appropriate information.*

This proposal is not acceptable. The Commission's opinion is that Directive 91/533 concerning the employer's obligation to inform employees of the conditions applicable to the contract or employment relationship is already a flexible and easily manageable instrument. Member States themselves favoured the detailed wording of the Directive which adds to legal certainty within the Community.

Workers throughout the Community can rely on the same precise minimum standards as set out in the Directive. Workers from all Member States making use of their right to free movement within the European Community receive precise information on the terms of the contract.

A general rule, leaving fundamental decisions to Member States and social partners would create much legal uncertainty and would not be proportional to the goal to create

greater transparency on the labour market.

The current Directive is also very flexible in allowing Member States to exclude certain employees (Art.1) and to avoid unnecessary bureaucratic burdens by enabling employers to refer the employees to laws, statutes and collective agreements

#### **Proposal 9**

*On subjects which are as complex and important for the creation of jobs and for developing new forms of work and lifestyles as the organisation of working time, it is important to base Directives on thorough analysis. It is particularly important to ensure the necessary flexibility taking into account both the interests of the employers and the workers. Directive 93/104 should be reviewed with a view to define general orientations. There should be a simple and realistic rule for calculating the reference period for determining weekly working time; a maximum period of 12 months (rather than 4 months) should be laid down for the compensation of overtime. This period being a maximum one, it is possible to Member States and social partners to provide for a shorter period.*

The first two sentences of the proposal can be accepted in principle. The Commission supports the idea that Directives have to be based on thorough analysis and that there needs to be provision for flexibility to take into account the interests of both employees and employers. However, this is already the case as far as Directive 93/104 is concerned. Flexibility is provided by means of exclusions, reference periods and derogation.

As stated in its Medium Term Social Action Programme, the Commission will carry forward its work on flexibility and work organisation, and launching further studies on work organisation and productivity, including payment systems, working time, reduction and reorganisation of working time, occupational and geographical mobility and stability of employment. The social partners and national experts will be closely involved in this work. As appropriate, the Commission will present specific communications, including good practice guidelines on different aspects of flexibility and work organisation. It will consider the scope for a Green Paper on reducing and reorganising of working time (1996-1997).

#### **Proposal 10**

*In encouraging the development of flexible forms of employment, the Community should ensure the upholding of the principle of equal treatment of workers, whatever forms of employment are concerned.*

This proposal is fully acceptable. The Commission has expressed similar views since its first draft on this matter in the late 1980s.

Given the blockage in the Council of two of its proposals for Directives since 1990, the Commission is now seeking the views of the social partners on these issues. The Commission made clear in its consultation paper to the social partners that the objective is equal treatment.

#### **Proposals on health and safety at work**

#### **Proposal 11**

*The Community should accelerate the review and the codification of all directives. Coherence*

of the terminology used in the various health and safety directives should be ensured. Overlapping between directives should be prevented.

The Commission agrees with the general idea of the proposal, which it included in its recent Communication on a Community programme concerning safety, hygiene and health at work (1996-2000). However the report would be more convincing if it were supported with evidence. Much work on consolidation has already been carried out in the past. Moreover if additional action is needed, the Group of experts according to Commission Decision 88/383/EEC and the action which is foreseen in this respect by the Communication on the Health and Safety Programme can also contribute usefully towards a comparable analysis of Community legislation.

#### **Proposal 12**

*Until the proposed review is done, there should be a strong presumption against new regulatory initiatives at the European level. There would need to be convincing arguments for any breach. Greater focus is necessary on effective implementation of directives which have already been adopted.*

This policy has been applied by the Commission services. The need for new measures has always been carefully reviewed and suggested on the basis of proven evidence. The focusing on effective implementation is included in the Communication on a Community programme concerning safety, hygiene and health at work.

Health and safety legislation deals with protecting lives and the acceptance of this proposal does not mean that in areas where a need for Community measures has been identified new Community measures will not be put forward.

#### **Proposal 13**

*The implementation and enforcement by Member States of Community health and safety at work legislation should be strengthened. A specific short, comparative annual report should be published by the Commission with the subsequent year.*

The Commission puts in its White Paper on European social Policy, its Medium Terms social Action Programme as well as in its Communication on a Community Programme concerning safety, hygiene and health at work great emphasis on the correct transposition and enforcement of Community legislation.

Information is already available in the annual report on monitoring the application of Community Law.

Many directives already foresee that Member States establish regular reports on the application of Community measures. Those documents could serve as a basis for Commission reports on these subjects.

#### **Proposal 14**

*In the context of the desired review, proposals for directives currently submitted before the Council should be reexamined; this concerns in particular the proposal for a directive on the minimum safety requirements for workers exposed to risks due to physical agents and the proposal for a directive on the minimum safety requirements for workers exposed to risks due to chemical agents.*

The Commission attaches great importance to the adoption of the proposals actually pending at Council. Nevertheless it is not opposed to a reexamination of these texts within the context of modernisation and the affirmation of terminological coherence if it seems necessary. Possibly the group underestimates the efforts that have been made in negotiation with social partners before the proposal was presented, and thus the reexamination might be better undertaken in the Council group.

**Proposal 15**

*It should be clarified that an employer is meeting his obligations for the installation of a new machine if he is following instructions accompanying a new machine which conforms to the health and safety characteristics imposed by the Machinery Directive unless he had grounds for believing the instructions to be erroneous.*

**Proposal 16**

*It should be clarified that an employer who installs a new machine which conforms to the health and safety characteristics imposed by the Machinery Directive should not be obliged to evaluate this machine again on installation.*

**Proposal 17**

*The same clarification is necessary for an employer who uses equipment which conforms to the Personal Protective Equipment Directive (89/656/EEC).*

With regard to proposals 15,16 and 17, it is up to the Member States, according to the subsidiarity principle, to lay down the extent and the details of the employers' responsibility in compliance with the principles contained in Article 5 of Directive 89/391/EEC.

**Proposal 18**

*In general, Article 118A should not be used to impose requirements in respect of matters already covered by Article 100A harmonizing measures. In particular, provisions linked to the design and construction of goods, machines and equipment should be based on Article 100A.*

The Commission can not agree with this proposal. As far as goods are concerned, Article 100A is an appropriate legal basis for pieces of legislation which address their marketing. Article 118A addresses their use by workers in the context of health and safety at work. Provisions foreseen by directives based on Art. 100A can thus be usefully complemented by ones of directives based on Art. 118A by bearing in mind that overlap should be avoided. There are situations where directives of those two series overlap: for example labelling of chemicals, prohibition of chemicals. This is recognised by the Commission and action is being taken to assess the problems which might arise.

**Proposal 19**

*Health and safety legislation should effectively take into consideration the needs of small and medium-sized enterprises whilst ensuring the same high level of protection. Special attention should be paid to involving those with practical SME experience in the design of health and safety legislation.*

The Commission agrees. This proposal is already reflected by the involvement of representatives of SMEs in the Advisory Committee.

**Proposal 20**

*All health and safety legislation should as far as possible be based on well-established scientific data which justify its existence.*

The Commission agrees, yet this is of course already common practice within the Commission. In order to amplify the role of scientific advice the Commission has accorded a formal status to the group of scientific experts on chemical substances.

**Proposal 21**

*Legislation must be regularly reviewed to take into account of new scientific data and technological innovation in equipment.*

The Commission agrees. This proposal is already endorsed by the Communication of the Commission on a Community programme concerning safety, hygiene and health at work. In addition the Technical Progress Committees as foreseen by the framework Directives 89/391/EEC and 801/1107/EEC are intended to contribute to this aim and delivered already their opinions on the adaption to technical progress of the biological agents Directive 90/679/EEC and the Directive on limit values (88/642/EEC).

**Proposal 22**

*Prescriptive details such as in the Display Screen Equipment Directive should be reviewed taking into account technological development.*

Under Article 17 of Framework Directive 89/391/EEC, the Commission will gradually adapt the Health and Safety Directives to relevant technological developments.

**Proposal 23**

*Obligations imposed by the directives, and in particular their annexes, should not be unduly detailed. An obligation should be defined by reference to a general description of the specific topic which an employer is bound to consider, such as:*

- a safe system of work;
- a safe and health workplace;
- proper training;
- safe work equipment;
- provision of protective equipment.
- etc.

*Detailed requirements specifying the extent of their obligations should be presented, of possible, in the form of guides for employers or recommendations to Member States.*

The Commission agrees partly. In general each Annex of a Directive contains an introduction statement which applies wherever required. In the Communication of the Commission on a Community programme concerning safety, hygiene and health at work the proposition to elaborate guides is included.

While guidelines are useful as a complement to legislation, they should not be used as a substitute resulting in a de facto and de jure lower level of protection of health and safety at work.



**Proposal 24**

*Legislation that affects working practices such as manual or repetitive work should only be considered where it addresses recognized health and safety risks.*

**The idea is already adopted because manual handling is considered in relation to risks with back injury, under the relevant Directive.**

**Proposal 25**

*When a specific well-defined and not unlawful activity, such as private emergency services or employed sportsmen, involves a known, unavoidable risk to a worker, and where safety and health of the worker cannot be ensured on the basis of a general provision of the current legislation even though the employer has taken all appropriate precautions against the risk consistent with the continuance of the activity, consideration should be given to introducing specific complementary Community legislation to clarify the rights and obligation of the concerned parties.*

**The Commission agrees. The Commission has endorsed this proposal in its recent Communication on a Community programme concerning safety, hygiene and health at work. This activity is foreseen in the 1996 work programme of the Commission.**

**Proposal 26**

*Taking into account the unequal level of transposition of the Work Equipment Directive (89/655/EEC) by the Member States and the efforts developed by many of them to attenuate the difficulties caused by the 1 January 1997 deadline for the compliance of old work equipment, the Commission should urgently convene the interested parties in order to adopt common solutions. The costs for implementing this directive should be balanced against the investments which would be involved in the renewal of work equipment in normal investment cycle.*

**The impressive figures of alleged costs reproduced by the Group (point 41) should be regarded with caution, as it is not clear if the Group has tried to verify how they were calculated.**

**The Commission is ready to examine the economic impact and then decide what to do if anything considering also that most of the Member States have already communicated their national legislation concerning this Directive. This situation also applies to other Directives.**

**Within this analysis, it has also to be reflected what would be the consequences for Member States which have implemented the Directive and will be disadvantaged. These facts are relevant for other Directives as well.**

## **5. Environment**

### **GENERAL COMMENTS**

The need to review, revise, consolidate and streamline environmental legislation and seek least cost solutions has been recognised in the Commission for some time. The Fifth Action Programme on the environment and sustainable development also gave clear indications of the need to develop the range of instruments for achieving environmental goals.

A basic review of Community regulation in the waste sector had already commenced before the Molitor Group was set up. Consideration was also being given to simplification and consolidation in other areas, e.g. air quality and water sectors and industrial emissions.

A precondition to this process should be that it should not lead to any lowering of standards. In this context, the Molitor Group Report is, in the limits of its terms of reference, attentive to the problems of environment, interested in re-regulation rather than deregulation and is a helpful contribution to the ongoing process of the simplification of environmental legislation.

Consequently, the Commission comments on the specific proposals in the environment sector on the premise that there can be no question of moving away from the existing legislative approach until it can be substituted and/or complemented by a series of other instruments which will be at least as effective from the point of view of environment protection. In the Commission's view, regulatory effectiveness must be defined as both cost-effectiveness and effectiveness in terms of environmental protection. In this respect, it should be noted that the Group looked at only a limited part of environmental regulation and had not sufficient time to go deeply into the important area of national transposition of environment directives.

### **COMMENTS ON THE GROUP'S PROPOSALS**

#### **General proposals**

##### ***Proposal 1***

*The new approach to environmental regulation, which stresses the setting of general environment targets whilst leaving the Member States and, in particular industry the flexibility to choose the means of implementation, should be pursued vigorously, and should be the basis for a full scale phased review of existing environmental legislation.*

The Commission shares this proposal which is broadly in coherence with the approach set out in Fifth Action Programme. The suggestion that the new approach should be based on "a full scale phased review of existing environmental legislation" is one which is already being applied in a number of sectors, i.e water, waste and air. The Commission will continue this ongoing process bearing in mind that the monitoring of the respect of the general targets must be assured.

While Article 130r paragraph 3 imposes the obligation to take into account in the Commission proposals "environmental conditions in the various regions of the Community" thus producing flexible rules which could vary from region to region, industry is pushing for strict harmonisation so as to achieve the "level playing field". The conflict here is not capable of being resolved in a general manner but must be dealt with

on a case-by-case basis.

**Proposal 2**

*Policy should, wherever possible, be designed to achieve a required level of environmental quality, bearing in mind available technology; balancing known emissions with the carrying capacity of the environment, and minimizing leaks such as uncontrolled waste or fugitive emissions.*

The Commission agrees on this objective, in line with the main emphasis of the existing approach to environment policy which is based on seeking the correct balance between quality standards and "best available technology" with lowest possible levels of polluting emissions as a fundamental objective.

**Proposal 3**

*Where a significant degree of harmonisation of basic environmental standards is necessary to avoid distortion of competition, that too should be based on targets rather than prescription.*

The Commission, as a matter of principle, recognises the merits of a target approach bearing in mind that the monitoring of the respect of such targets has in the past proved particularly difficult.

**Proposal 4**

*The implementation of policies aimed at broad environmental goals should, where appropriate, approach the environment through the integrated chain management of substances, focusing on inputs, process, waste, emissions, and the consumption and disposal of the final output.*

The Commission agrees that an approach based on integrated chain management of substances concept may be an useful approach to some environmental questions. There are three main aspects to such an approach:

Processes:	the start of the chain, where goods are produced
Products:	the end of the chain where goods are distributed to society and ultimately disposed of
Procedure:	the overall management of the integrated chain

An integrated chain management must include the aim to reduce the flow of materials and the consumption of energy to a sustainable rate as a target. Otherwise there would be no reason to justify the efforts to introduce and maintain such a management. The Integrated Pollution Prevention and Control Directive (IPC), which covers big installations, is a first important step in this direction. Smaller plants would continue to be regulated by the dangerous substances Directive to be revised in the next two years. The proposals included in the report prepared for the Molitor Group by McKinsey & Co provide the basis for further consideration of this approach.

**Proposal 5**

*As environmental policy increasingly shifts responsibility for implementation to the private sector, governments need to develop new ways to check that firms are meeting their obligations.*

The Commission acknowledges indeed that there will be a need to develop appropriate monitoring mechanisms between government and the private sector if environment

policy moves towards an approach based on negotiated agreements with industry. Experience in those Member States, where negotiated agreements between public authorities and economic operations in the environmental sector were made, demonstrates that close monitoring, public participation, effective sanctions in case of non-compliance and full transparency as to progress achieved are vital for such a system.

#### **Proposal 6**

*The implementation and enforcement by Member States of Community environmental legislation should be strengthened. A specific, short, comparative annual report should be published by the Commission within the subsequent year.*

Better and more efficient enforcement is a priority for the new Commission and ways and means to ensure that Member States take this more seriously are being examined. The Fifth Programme Review will also look for new approaches in this respect. The Commission already publishes an annual report on monitoring the application of Community law. The "environment" section of this report has been subject, last year, to special publication. The Commission is ready to do the same with this year's report. The Member States could also be asked to produce annually an account of their enforcement efforts. President Santer has already suggested this as a possibility to be examined.

#### **Proposal 7**

*The Commission should consider how to ensure that Member States use the same definition, or the closest possible definition, of projects likely to have significant effects on the environment and hence subject to an assessment under the Environmental Impact Assessment Directive (85/337/EEC).*

The Commission has already made proposals (COM(93)575) for a revision of the directive 85/337 which now provide for a Commission "scoping" and "screening" mechanism in order to avoid "variation in both the quantity and quality of environmental assessment in the Member States" in the future in relation to projects covered by Annex II of the Directive, and to overcome any definitional problems.

#### **Proposal 8**

*Major projects in receipt of Community funds should demonstrate that a satisfactory environmental impact assessment was prepared, in advance of work commencing, before Community funds are paid.*

The recent reform of the structural funds has, as one of its objectives, the approach set out in Proposal 8 and the Commission will be pursuing this vigorously.

#### **Proposal 9**

*Proposals should not be brought forward unless the cost benefit analysis has demonstrated that the action could be justified, and that specific objectives or targets are based on sound cost-benefit and scientific analyses.*

The Commission supports the thrust of this proposal. But the practicability of cost benefit analysis has to be examined on a case by case basis. In the particular field of environment, there is the question of what constitutes a "reasonable" balance between costs and benefits. The benefits for environment and society are mostly qualitative and

often impossible to express in monetary values unlike, for example, the costs to business. The Treaty (130r (3)) also requires that the costs and benefits of non-action also be examined. It is also to be noted that a move to a less prescriptive approach makes it more difficult to assess costs because it will not be clear how Member States will implement a piece of legislation. So far as scientific analyses are concerned, it is clear that the Commission proposals should be based on sound scientific analysis as required by Article 130(R) of the treaty.

**Proposal 10**

*Any new proposal should be accompanied by a careful analysis of whether or not market-based methods could be employed to achieve the same goals; where a market based approach is feasible, any departures from it should be justified.*

This is helpful and in line with what has begun to happen. It will provide an additional platform on which new approaches can be built. It must be noted, however, that at industry level there is considerably resistance to fiscal instruments.

**Proposal 11**

*Definitions should be as clear as possible and consistent across Directives. To facilitate this process, review dates of related directives should be brought into line.*

Both objectives are to be aimed at but often clarity is lost through the process of negotiation in Council and Parliament. The Commission will pursue work on improving the coherence of the Environment legislative framework.

**Waste**

**Proposal 12**

*In the Waste Framework directive, waste should be redefined as those substances which have fallen out of any production or manufacturing cycle.*

The above suggested definition, which is not in use or accepted anywhere in the world, is neither acceptable nor workable in the context of ensuring a high level of environmental protection. One likely consequence would be that large quantities of substances could be moved to those countries where the production/manufacturing cycle is subject to little or no regulatory control; the net effect being a simple transfer of polluting substances by shipment instead of the polluter paying.

**Proposal 13**

*A timetable should be agreed and announced for the simultaneous review of all regulations affecting waste with the aim of consolidating, simplifying and clarifying.*

The Commission will review overall waste strategy in 1996. There have already been review of Directives 75/442 and 78/319 (toxic and dangerous waste) in 1991. The new regulation 259/93 on cross frontier waste movements abrogated existing legislation from 1984. Directive 94/62 on packaging and packaging waste abrogated an existing 1985 Directive on containers of liquids for human consumption. The Directives on incineration of municipal waste are being revised.

**Proposal 14**

*The Community should rapidly adopt minimum standards for landfill in order to reduce barriers to trade.*

Final adoption of the Landfill Directive is scheduled for January 1996.

**Proposal 15**

*Given the problems of matching waste processing capacity to demand and achieving economies of scale in recycling and incineration, the Community should work to remove artificial national barriers to shipment of waste or recovery.*

In 1993/94 the Council agreed unanimously to take measures which reduce the shipment of waste between Member States, not to facilitate it. The principle that waste should be disposed of where it was generated has been accepted by the Court of Justice. The Commission, however, acknowledges the need to reconsider these principles of waste legislation in the context of the internal market. Work has just started on this issue.

**Proposal 16**

*Product waste policy should place greater emphasis on voluntary agreements. To avoid competitive distortion, a high degree of harmonisation of product waste policy or - at minimum - mutual acceptance of national measures is necessary.*

A voluntary agreement approach is being investigated by the Commission, as a complementary approach in the context of the simplification of the existing legislation.

**Proposal 17**

*The Commission should indicate the conditions under which voluntary agreements in the field of waste disposal are consistent with EC competition legislation.*

This is a matter which the Commission will bear in mind in its review of the overall waste strategy.

**Proposal 18**

*The Packaging and Packaging Waste Directive (94/62/EC) should be implemented to ensure that all Member States give effective mutual recognition to the packaging standards in all other Member States.*

The Commission shares this concern. The European Standardisation Committee (CEN) has been asked to produce standards which will automatically replace national standards. The remaining standards not covered by CEN rules will be covered by mutual recognition in line with Articles 9 and 11 and Annex II of the packaging directive.

**Water**

**Proposal 19**

*All water quality legislation and legislation relating to the discharge of substances to them, should be consolidated, taking full account of the trade-offs between them (and other pieces of legislation such as the proposed integrated pollution prevention and control directive).*

The Commission is currently reviewing the overall water policy at Community level and will issue a Communication on the matter in the near future.

**Proposal 20**

*Given the importance of the proposed Integrated Pollution Prevention and Control (IPC)*

*directive for the future water policy for the Community, it is essential to clarify urgently the impact of this proposed directive on existing legislation. It is particularly important to avoid placing unjustified burdens on less polluting plants, and to learn from the experience of national integrated programmes in other fields. Appropriate means of monitoring and enforcement should be assured.*

The relationship between the IPC Directive and existing legislation is, in the view of the Commission, clear and coherent. It has been made clear that some existing legislation e.g. the Directive 76/464 on discharge of dangerous substances to water will need to be modified. The proposal was drafted based on the experience of Member States which already had developed IPC systems. Their generally positive experiences have been taken on board in Council discussions and throughout the preparation of the proposal the advice of industry was sought. Monitoring and enforcement provisions will remain an integral part for any proposal.

#### **Proposal 21**

*The Drinking Water Directive (80/778/EEC) should be amended along the lines envisaged in the Commission proposal to drop all (40) guide levels, set values at EU level only for those parameters essential to protect public health whilst leaving Member States the flexibility to set additional parameters for regional or local supply, and leave Member States to set their own standards for aesthetic parameters (colour, taste, smell).*

This recommendation is compatible with the Commission proposal to modify the existing Directive which is currently with the Council. Guide levels have been removed in the proposal for a revision of the drinking water Directive, adopted by the Commission on 4 January 1995 (COM(94)612), and the number of parameters has been reduced from 66 to 48, which includes some 13 new parameters reflecting advances in scientific knowledge and understanding. The standards in the proposal are only those which are considered essential for the protection of human health, and Member States are able to set values for further parameters as they see fit, providing they do not constitute a barrier to trade. The values for colour, odour and taste are considered 'indicator' parameters because excess of these are indicative of a failure in the quality of water. Community-wide values are considered important to ensure the consistency of the quality of supply.

#### **Proposal 22**

*The time scale for adaptation in the urban waste water treatment directive (91/271/EEC) should be revised.*

The present time limits for the implementation of this Directive were adopted by the Member States on the basis of what they assumed would be reasonable. The Commission is, however, conscious that the implementation of this Directive might have different impacts between Member States.

### **Other measures**

#### **Proposal 23**

*The pressures for a European Polluting Emissions Register should be resisted; it is for the European Environment Agency to consider how best to collect data and to inform the various audiences.*

The Commission would point out that in the USA and other industrialised countries outside the EU, such requirements are in place.

Article 14(3) of the common position on IPC makes provision for a Pollution Emission Register to be set up in the context of IPC. This will be both an important instrument in itself and a step in the creation of a global and fully integrated register. Such a register has the following advantages:

- it provides information on principal sources of pollution, enabling identification of significant outstanding problems and providing evidence on whether measures taken are effective;
- it provides the public with information on significant sources of pollution, thus increasing transparency and enabling people to exercise their rights fully;
- many industries favour it as a basis for voluntary agreements for emission reductions.

It will be developed in such a way as to avoid duplication of effort and ensure transparency and comparability. The Commission will be assisted by the Environment Agency in setting it up.



## **6. Further areas of concern**

### **Biotechnology**

#### ***Proposal 1***

*Operations for research purposes should not be limited to a specific limit of culture volume. The non-risk based differential treatment of operations for administrative purposes should be abolished (deletion of paragraphs (d) and (e) from Article 2 of Directive 90/219/EEC).*

#### ***Proposal 2***

*Operations involving organisms which pose no risk to man or the environment should be exempted from the administrative procedures of Directive 90/219/EEC.*

#### ***Proposal 3***

*The present procedure for the low-risk group, Group I, should be replaced by the introduction of a notification procedure with no waiting period.*

**The Commission is currently preparing amendments to Directive 90/219/EEC in line with proposals 1 to 3.**

#### ***Proposal 4***

*The procedures for approval of the deliberate release of genetically modified organisms (Part B of Directive 90/220/EEC) should be simplified in such a way that one single approval suffices for multi-state releases. For the placing on the market of products containing genetically modified organisms (Part C of Directive 90/220/EEC), the "one door-one key" principle should be implemented by way of adoption of vertical legislation.*

**The Commission is currently reviewing the application of Directive 90/220/EEC, and will consider the proposal in that context.**

#### ***Proposal 5***

*The Commission should put forward as soon as possible a new proposal for the legal protection of biotechnological inventions to avoid further increasing the gap between the legislative framework for investment in the EU and in its main competitive countries.*

**This recommendation is in harmony with the objective declared in the White Paper on Growth, Competitiveness and Employment of establishing a legislative environment propitious to the competitiveness of European industry and investment in biotechnology in the European Union. The Commission remains attached to that objective. It is working on a new proposal on the legal protection of biotechnological inventions, which will be presented shortly.**

### **Public procurement**

#### ***Proposal 6***

*As far as the instrument of the directive is chosen, they must be transposed within the time-limits laid down.*

#### ***Proposal 7***

*The scope of directives which are meant to facilitate access to public contracts ought not to*

*be altered by national rules that directly or indirectly limit their effect.*

The Commission fully supports these two recommendations. It will continue to give priority to monitoring progress in transposing directives and to monitoring the conformity of national legislation with Community rules. For the moment, however, the conclusion that transposal obligations have not been met in full is inescapable; only three Member States are entirely in order. And even where Directives have been transposed, there are all too many gaps and misinterpretations.

The Commission is using all the resources at its disposal to see that transposal problems are settled in the near future. The numerous infringement proceedings for failure to transpose or to notify national implementing measures show that the situation still calls for a considerable effort.

#### ***Proposal 8***

*The Community should consider replacing directives by a set of clearly defined principles underpinned, if necessary, by a regulation in order to avoid differences between Member States and to promote transparency.*

This proposal does not appear acceptable for the following reasons:

- Replacing directives by "... a set of clearly defined principles" would amount in practice to removing the legal rules that induce firms to observe proper discipline in public procurement. Community law in this area currently consists not only of directives but also of Treaty articles and general principles declared very clearly by the Court of Justice. The principles thus exist already, and the effect of the disappearance of the directives would be to remove the procedural constraints that ensure they are applied.
- Adoption of a regulation in the current context, even if it were acceptable to the Member States, would radically change the legal situation in relation to public procurement and might jeopardize the effective introduction of genuine competition.

Although Regulations have the advantage of being directly and immediately applicable in the Member States, they cannot reflect the specific features of each national legal system, unless, of course, they are seen as not being like directives setting a legal framework for action but as regulating the substance of the matter in full detail, which would raise problems of subsidiarity and of the powers of regional and local authorities in many Member States. A further consequence of changing over from a directive to a regulation would be that the Commission would then have to adopt implementing rules that have hitherto been the preserve of the national authorities.

The Commission's view is that the problem encountered in public procurement does not flow from the Community provisions but from delays in transposal and incorrect application of the rules, though they are of a type generally accepted internationally. Action to improve the transparency and effectiveness of the system is being considered. A real change can, however, be achieved only through a sustained effort to make political authorities and firms aware of what is needed.

**Proposal 9**

*Member States should ensure that sanctions applying in the event of Community rules on public procurement are equally effective across the Community.*

The Commission agrees with this proposal, which is of the utmost importance since the effectiveness of penalties genuinely determines the implementation of procedural rules enacted at Community level.

On 3 May 1995, the Commission presented a communication to the Council and Parliament on the role of penalties in the implementation of Community legislation relating to the internal market, stressing the need for greater transparency in the matter. The Council adopted a Resolution on 6 June 1995 containing the basic principles of this communication.

Studies of the reality and effectiveness of enforcement procedures in public procurement matters, and particularly of the penalties available, are shortly to be commissioned; they could prompt proposals to attain the objective of the proposal.

**Proposal 10**

*While the principle of publication of contracts in their entirety should be maintained, there should be wider recourse to national or international subcontracting, so as to enable SMEs to take part.*

No single solution exists which would enable small businesses to make the most of the opening up of public procurement. The Commission has undertaken detailed analysis and extensive consultations on the subject, and intends to publish a Communication soon setting out a range of actions which, among other objectives, could help small businesses in this respect. These are likely to include methods of improving the prospects of small subcontractors.

**Construction products****Proposal 11**

*The establishment of harmonized European standards for construction products should be speeded up. In the meantime, the Commission should prepare proposals to achieve these goals by completing and implementing as soon as possible the Article 23 review of the construction products Directive (89/106/EEC) and by allowing manufacturers to sell their products in other Member States.*

The Commission plans to act on this proposal. A work programme has been established to speed up the adoption of measures to precede the establishment of standards.

At the same time, moreover, the Commission has begun working on the report provided for by the Directive, which looks in particular at the question of adapting it to the constraints of the internal market.

## **Rules of origin**

### ***Proposal 12***

*Taking into account the difficulties in the Community caused by the variety of rules of origin, the Commission should, as rapidly as possible, make concrete proposals to simplify these rules along the lines of the conclusions of the European Council of Essen, keeping in mind the trade interests of the Community.*

The Commission agrees with this recommendation, which sits squarely with its communication to the Council of November 1994. It has held several department-level meetings with the associated countries in Central and Eastern Europe, the EFTA countries and the Member States to implement a strategy on rules of origin complying with the Essen conclusions. It will be making formal proposals shortly for changes to the rules of origin in the relevant preferential agreements (Central and Eastern Europe and EFTA) on the basis of the outcome of the above meetings. Its staff have launched a comparable exercise for the simplification and unification of the rules of origin in preferential trade between the Community and its Mediterranean partners.

## **7. Small and medium-sized enterprises**

### **GENERAL COMMENTS**

The Commission welcomes the SME chapter of the Molitor report, which has been particularly well constructed. This chapter very much mirrors the Commission's own thinking in respect of what is required to improve and simplify the business regulatory environment stemming both from Community and national legislation. This is precisely why the Commission set up the Committee on simplifying and improving the business environment to consider such actions within the Integrated Programme in favour of SMEs and the Craft sector. These concerted actions, with Member States and the business organisations, will continue and the Committee will be able to consider some of the detailed proposals from the Molitor Group, within the context of the concerted actions, in order to put them into operational practice and effect.

Before moving on to the individual proposals on SMEs, it is worth highlighting a number of points which are important to remember when considering administrative and legislative burdens on SMEs:

- the need of very small firms may be significantly different from larger, medium sized enterprises. This is because they are operating in highly localised national markets;
- any decreasing cost for business in general is beneficial for SMEs in particular because of their lack of resources and the disproportionate effect that regulation and administrative procedures have on SMEs;
- the burdens of reporting for SMEs should be as reduced as possible bearing in mind that public economic information on SMEs is vital to ensure market transparency and the effectiveness of EU-policies (multilateral surveillance, convergence....), given the weight of SME's in the EU economy (99,8 % of the 16 millions enterprises in the EU are SMEs, accounting for 60% of total employment and sales).

### **COMMENTS ON THE GROUP'S PROPOSALS**

#### **Identifying the SME interest**

##### ***Proposal 1***

*In order to limit the costs and constraints on SMEs imposed by new legislation, the Community should improve the scope and application of the ex-ante impact assessment procedures. Increased consultation with representatives of SMEs is required and cost-benefit analyses focussed on the impact on growth, employment and competitiveness with a special reference to SMEs, should be published as a matter of routine for all new proposals.*

The Commission agrees to this proposal which is much in line with its policy; it is continually trying to improve the business impact assessment system, including its publication and availability, and consultation procedures with the SME business organisations. The Commission's general guidelines on regulatory policy will increase the effectiveness of this policy.

### **Proposal 2**

*The Community should adopt procedures to identify the impact of the cumulative burden of legislation on SMEs and should ensure that this analysis is taken fully into account when considering specific new proposals.*

The Commission has no difficulty to agree with this proposal in principle although in practice it will be very difficult to put into effect. This will be difficult enough at the Community level let alone taking into account national and local administrative burdens. Cooperation of Member States would be crucial.

### **The role of Member States**

### **Proposal 3**

*Using its powers of Recommendation, and based on systematic research, the Community should intensify the spread of best practice policies for SME development focusing on both the transposition of Community Directives and national legislative and administrative practices. This spread of best practices could, in particular, deal with the creation of one-stop shops capable of providing SMEs with necessary informations and with the grouping of the various forms of decisions, authorizations or controls from public authorities which affect the creation and the development of SMEs.*

This proposal is very much in line with the Commission's Integrated Programme in favour of SMEs and the concerted actions with Member States and business organisations which we have just started. Having identified best practice the difficulty is going to be in getting the Member States to adopt the necessary changes. The creation of a "one-stop shop" concept for SMEs is likely to feature in the Commission Recommendation to the Member States following on from the first Forum in Paris.

### **Company law**

#### **Access to capital and credit**

### **Proposal 4**

*The Fourth Directive on Company Law (78/660/EEC) should be amended in order to substantially increase (by 50-100%) the thresholds for abridged accounts, limited disclosure or outside auditing. General disclosure requirements should also be kept under close review to ensure that they provide an appropriate balance between costs to SMEs and the need for transparency in corporate performance. The case of GmbH & Co Kg should be reconsidered.*

The thresholds referred to expressed in ecus for the definition of SMEs have twice been increased since 1990:

- |   |        |
|---|--------|
| - by Directive 90/604/EEC of the Council of 8 November 1990 | by 25% |
| - by Directive 94/8 of the Council of 21 March 1994         | by 25% |

The cumulative increase over this period therefore exceeds 50%. It is unlikely that another increase in these thresholds would be politically acceptable before the expiry, in 1999, of the 5-year period provided for in the Fourth Directive for their re-examination. However, the consideration of further increases in these thresholds would be welcome in order to meet the SME's continuing concerns, and would be in line with the

Commission's ongoing work on a Community definition of SMEs.

## **Access to the Single Market**

### **Proposal 5**

*The Community should make recommendations to ensure that national legislation does not inhibit cross-border investments and acquisition by SMEs, as well as the free provision of services.*

The Commission would agree with the objective described in this proposal indeed even to strengthen it in terms of including a need for harmonising regulation from the Community if necessary in order to liberalise the market, but further clarification would be welcomed as to what specific obstacles the Group has identified. Does national legislation discriminate against foreign investors (a free movement of capital question) and/or do national authorities impose requirements which make it difficult for a non-national to offer his services or have his qualifications recognised (right of establishment, recognition of diplomas issues)?

### **Proposal 6**

*Council Regulation (EEC) No 2137/85 on the European Economic Interest Grouping should be amended in order to transform this associative form into a modern legal instrument for SMEs which helps to develop the economic activities of the group members and to enhance the result of these activities. These amendments should reduce or eliminate existing operational restrictions for members or the grouping itself, without undermining the Community's commitment to competition.*

Although it shares the objective of this proposal, the Commission considers that the proposed solution could denature the EEIG which already provides SMEs with an effective means of cooperation and development of their economic activities at a transnational level. The aim of the EEIG is restricted to facilitating or developing the economic activity of its members. Because its activity is ancillary to that of its members, it has no right to play the role of a leading enterprise or holding vis-à-vis the group members. From the conceptual standpoint, it is simply a legally defined instrument for cooperation between SMEs at a Community level and is not to be construed as a legal instrument for integration. The adoption of the European Company Statute and the European Co-operative Statute will allow SME's to use several legal instruments in order to develop their activities at a transnational level.

### **Proposal 7**

*The Community should introduce proposals for new directives on corporate organisation of specific relevance for the development of SMEs. These could include the statutes of a European SME Company.*

The Commission shares the objective of creating a framework of company law which will favour the development of SMEs and promote SME activity at the European level. Please see also the reply to proposal no. 8.

As to a specific European SME Statute, this idea could be examined once progress has been made towards securing the adoption of the European Company Statute (ECS). However, the need for a specific SME statute is not clear, given that the ECS itself is open to such companies. Making a specific proposal for SMEs would also raise the

difficult question of definitions and thresholds.

The original proposal for an ECS Regulation has, in fact, been adapted in ways which make it more accessible to SMEs : in particular the minimum capital has been reduced to 120,000 ECU; and in many areas the Statute is silent, so that the European Company will be subject to the normal rules for companies, including any relevant SME exemptions etc.

#### **Proposal 8**

*The Community should make consistent recommendations on Company Law to Member States in order to promote the development of simplified legal statutes for closely held limited liability companies.*

The Commission welcomes this proposal. It will initiate a study concerning the simplification, reduction or removal of certain burdens imposed on public companies limited by shares, including the possibility of small plcs having simplified corporate governance rules. The results of this study should be available in the last quarter of 1996. The Commission will also work to find solutions to unblock the proposals in the Council on the European Co-operative Statute.

#### **Statistics**

#### **Proposal 9**

*A short moratorium on further EC statistical requirements should be declared whilst thresholds, the use of sampling and the frequency of surveys are reviewed and revised as appropriate.*

There would seem to be no need for such a moratorium. The Commission limits its proposals with regard to statistics to the data which are indispensable for implementing the policies of the European Union, reacting on a selective basis to the new requests put forward by industry, the NSIs and its own departments. Ample information on this subject is to be found in EUROSTAT's Multiannual Statistical Programme for 1993-97 which was adopted by a recommendation on the part of the Council.

Hence the provisions of the new regulation proposed by EUROSTAT are limited to requiring the Member States to supply a certain number of results, with a stipulated degree of precision, to cover the "enterprise" population. In line with the principle of subsidiarity, this leaves the individual NSIs free to optimise the efficiency of their collection processes, in particular in so far as the choice of thresholds and sampling methods is concerned.

#### **Proposal 10**

Procedures should be developed to ensure that providers and final users are consulted on all proposals for new EC statistical regulations and that impact assessments are prepared.

The Commission can but support this proposal, which corresponds to its existing practice. Eurostat, for example, holds several meetings a year with the European professional federations, and the results of these consultations are reflected in the explanatory memoranda of proposals for regulations, as can be seen, yet again, for example, in the proposal for a regulation on structural business statistics. Impact analyses are obligatory and are to be found in annex to the proposals for statistical regulations discussed by the Council.



### **Proposal 11**

*The Community should reduce the burdens of statistical reporting for SMEs, for example by:*

- *achieving close coordination of INTRASTAT and VAT reporting*
- *abolishing the obligation of Member States to establish business registers*
- *reducing the coverage of structural business statistics;*
- *making more extensive use of sampling techniques.*

The Commission shares the underlying spirit of this proposal. It is essential to reduce the administrative burden of statistical reporting for SMEs. Eurostat has consequently been engaged, for several years now, in a programme designed to improve the efficiency of the collection process while at the same time reducing the burden on enterprises. The examples quoted by the group nevertheless call for the following comments:

- coordination between INTRASTAT and VAT declarations has already been tried out; but the exercise cannot be taken any further because the differences in the nature of the data required for some statistical purposes (movement of goods) and those required for other statistical purposes (economic translations) preclude the systematic linkage of all the operations involved. From a more general standpoint, the Commission intends, in the framework of the definitive system for VAT, to carry out a fundamental simplification of the system and, in particular, to lighten the declaratory burdens on businesses with the aim of making sure they can easily be borne by SMEs. Furthermore, a general review of the future of INTRASTAT is presently under way;
- the Commission cannot accept the proposal that the obligation of Member States to establish business registers for statistical purposes should be abolished. A well-managed register cannot be regarded as a burden, because it is based on existing administrative resources (e.g. registration with the "tribunal de commerce" or the social security administration). Much more importantly, the regulation on business registers is the linchpin of the action taken by Eurostat and the Member States to reduce the burden of reporting structural business statistics (3rd indent of the proposal) and making more extensive use of sampling techniques (4th indent of the proposal). From a more general standpoint, this regulation has enabled Eurostat and the Member States to launch a complete overhaul of the systems of collection of business statistics with the aim of reducing the attendant administrative burden and improving the quality of the data.

### Social and environmental protection

#### **Proposal 12**

*Implementation periods for new legislation should be realistic and based on an objective understanding of affordability in the SME sector.*

The Commission agrees. The right implementation period is a particularly important consideration when a legislative requirement means that a business has to buy capital equipment before it would normally do so according to its business plan.

#### **Proposal 13**

*Member States should be encouraged to use inspection and enforcement resources to work*

*with SMEs in developing efficient processes to achieve appropriate standards of protection.*

**The Commission agrees to this proposal which might be achieved by a Recommendation from the Commission. This would revolve around the concept of government administrations working with SMEs in cooperation to develop procedures whereby SMEs can comply with regulations rather than rely on enforcement and penalties.**

***Proposal 14***

*The Community should facilitate the sharing of best-practice applications in regard to SMEs, both between inspection and enforcement agencies and between SMEs themselves.*

**This proposal might be subsumed into proposal 13 above and considered in a concerted action with Member States and business organisations looking at best practice.**