COMMISSION OF THE EUROPEAN COMMUNITIES

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

Table of contents

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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