



COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 21.06.1995  
COM(95) 288 final/2

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

This report has been produced by the group of independent experts on legislative and administrative simplification set up by the Commission in September 1994 to assess the impact of Community and national legislation on employment and competitiveness with a view to finding ways of reducing and simplifying such legislation. The views expressed in the report are those of its authors and not necessarily those of the Commission.

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

## PREFACE<sup>1</sup>

1. The Commission established in September 1994 a group of independent experts to examine the impact of Community and national legislation on employment and competitiveness. While taking into account economic and social considerations, the group was asked to make proposals to alleviate and simplify this legislation. The European Council of Corfu welcomed the creation of the group. An interim report was transmitted to the Commission which presented it to the European Council of Essen in December 1994. The European Council underlined the importance attached to the work of the group. The Council has been regularly informed about the progress in the work of the group. Several Committees of the European Parliament have received oral reports from the chairman of the group. He has also briefed the Economic and Social Committee.
2. As recognized in the White Paper on Growth, Competitiveness and Employment, streamlining and rationalizing rules and regulations are an important part of Community policy to enhance global competitiveness and ensure that its positive effects on employment can be realized as rapidly as possible.
3. The internal market has contributed, in an important way, to simplification through the abolition of remaining barriers for transactions in goods and services. Since then, further steps towards reforming the EU regulatory framework and process have been taken by EU institutions, for example, in implementing the subsidiarity principle, in consolidating Community legislation, or in making EU policies more transparent. Useful proposals on legislation were also made in the Sutherland report in order to make the internal market operate effectively.

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1. Mr Carniti and Mr Johnsson have expressed a dissenting opinion with respect to this preface, which is reproduced at the end of Chapter 1.

4. It is essential that the European regulatory framework meets the challenge of employment growth and competitiveness whilst taking into account the political commitments to achieving high standards in working conditions and environmental and consumer protection. To achieve these goals, the benefits of the internal market for business, workers and consumers must be maximised. It is therefore essential to assess the effectiveness of EU and national legislation and to rectify any shortcomings which are detrimental to employment and competitiveness because of unnecessary costs, rigidities or obstacles to innovation. Individuals and firms need to be certain that laws are introduced only when they are required and that they minimize compliance costs. Transparency, proportionality and coherence in legislation are keys to enhancing wealth creation and employment opportunities. Legislative simplification can also help to bring the EU closer to its citizens.
5. In order to understand the constraints on business competitiveness resulting from the quantity and intensity of legislation, the group conducted surveys among those most concerned. We polled the main European organizations of business, trade unions and consumers. Written responses were complemented by a series of hearings. We have also drawn on the extensive survey of European businesses carried out by UNICE (and funded by the Commission). Mr. Pieter Winsemius established a cases study on environmental legislation. The group is grateful to all the organizations and experts who thus contributed to its work.
6. In the time allowed, the group could not undertake an exhaustive review of European legislation. It therefore decided to study, in detail, four sectors. Others of equal importance to employment and competitiveness could have been chosen. The selected sectors are:
  - machine standards;
  - food hygiene;
  - the environment;
  - social legislation.
7. Chapters 2-5 describe our findings and proposals. In addition, members of the group and respondents to the questionnaire identified other sectors of particular concern. These are considered further in chapter 6. The group also carried out a horizontal study of the problems facing SMEs. The results of the study are described in chapter 7. The evidence from each of these sectors has formed the basis for the conclusions and proposals put forward in chapter 1.
8. The group was assisted by rapporteurs for each of the sectoral chapter: Prof. Emilio Fontela, Prof. Antoine Lyon-Caen, Dr. Peter Nedergaard, Mr. Hugo Sattler, Mrs Susie Symes and Dr. Patrick Ussher. The group wishes to thank them for the quality of their research and analysis. The group also expresses its thanks to the Commission for its contribution of evidence and for providing the secretariat for the group, and, in particular, to Mr. David Williamson, Secretary-General, who attended most of the meetings, Mr. Giuseppe Ciavarini

Azzi and Mr. Charles-Michel Geurts, as well as their collaborators.

9. However, all the analyses and proposals are the sole responsibility of the Members of the group.
10. This report reflects a large consensus among the 17 members of the group. One member, Mr Søren Christensen, did not endorse the report. Mr Göran Johnsson made a minority statement concerning certain orientations of the report. Both statements are reproduced at the end of the report. In addition, minority votes were expressed with respect to the content of certain chapters. They are attached to these chapters.
11. **The group intends that the present report should be a contribution to creating a culture of simplification leading to the elimination of unnecessary legal and administrative burdens on business - deeply embedded at EU and national level - stimulating competitiveness and employment.**

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## SUMMARY

- I. **Regulatory frameworks must be reviewed if competitiveness and employment goals are to be achieved**
  1. Production, trade and services need adequate regulation in many fields to establish a framework which facilitates business activity and confidence. However, at the same time legislation at all levels (Community and national) can inhibit firm's and citizens' capabilities to create employment and improve business dynamism. This adverse impact can result from the cost and uncertainties created by legislative complexity and rigidity, disproportionate administrative burdens and impediments to innovation.
  2. Over-regulation stifles growth, reduces competitiveness and costs Europe jobs. The cumulative impact of regulation frustrates a culture of enterprise, hampers innovation and deters both domestic and inward investment.
  3. Single Market measures can bring about simplification, at one level, by harmonizing separate and conflictory Member State regulation. The needs of the single market may, however, unless great care is taken, aggravate the burden of administrative and regulatory constraints on European businesses. Despite application of the subsidiarity principle, the superimposition of European, national and even regional and local legislation can lead to a cumulative burden which inhibits, rather than enhances the achievement of employment and competitiveness goals.
  4. If Europe fails to take account of likely trends in the business environment, including its regulatory frameworks, it will suffer reduced competitiveness, slower economic growth and higher levels of unemployment. Europe cannot ignore the fact that other industrial countries with which it competes are making strenuous efforts to reduce their own regulatory burdens.
  5. Regulatory and administrative simplification was recognized as an integral part of the comprehensive strategy for growth, competitiveness and employment in the Commission 1993 White Paper. Rejection of simplification at this stage would mean less progress in achieving the goals of this strategy.
  6. Simplification means that it is essential to ensure that regulation imposes the least constraint on competitiveness and employment whilst maximising the benefits of direct government intervention. Deregulation means that, in some instances, an unavoidable extension of simplification will be the reduction or removal of government regulations, where such regulations are no longer necessary or where their objectives can be achieved more effectively through

alternative mechanisms. Simplification and deregulation should be understood in this way when used in the present report.

## **II. Member States and the European Union must act together**

7. Regulation is both the responsibility of the EC and of national authorities at all levels. The cumulative impact on competitiveness and employment results first from the scope and character of the EC legislation, then from the rigour and evenness with which this legislation is transposed and applied in Member States. Finally additional burdens result from those regulations which are imposed by national governments acting in their areas of national competence.
8. The group has focused primarily on the first of these levels, ie: Community legislation but, where appropriate has noted cases in which the major constraint on competitiveness and employment arises from transposition to national law. The group has not attempted, in the time available, to tackle the third level, ie: the impact of purely national legislation.
9. There will be little purpose in the Union simplifying its legislation if, under the cover of subsidiarity or transposition, Member States take the opposite course.

## **III. A comprehensive action programme is now required**

10. In developing our proposals for an action programme we have taken into consideration actions that the Commission, in particular, has also set in hand. We believe that our proposals will build on these initiatives and ensure that forward momentum is accelerated and action is effective.
11. We have built our proposals for action on the following principles:
  - Wealth creation and sustained employment growth must be recognised as essential conditions to enable further improvement in the quality of life and can only now be achieved if the European economy is world class.
  - Standards to be achieved must be "affordable", given the competitiveness challenge, and must be based on objective need (based where appropriate on scientific evidence).
  - Business, workers and consumers should be consulted and actively involved both in helping to establish appropriate standards and in evaluating the most effective means to achieve them. We need to make best use of market instruments and commitments voluntarily undertaken as an alternative to direct regulation, when appropriate.
  - The impact of direct regulation (both individually and collectively) on competitiveness and employment must be explicitly considered in the

design and review of legislation.

- Simplification and even deregulation must be actively pursued as an integral part of policies to enhance competitiveness.

Piecemeal reviews and incremental changes will not suffice. We need a wholesale change in the policy culture.

12. The Council of Ministers and the Commission have begun to address these questions. Our proposals for an action programme if implemented will reinforce and extend these efforts.
13. **The group intends that the present report should be a contribution to creating a culture of simplification leading, where necessary, to deregulation - deeply embedded at European Union and national level - stimulating competitiveness and employment.**

## Proposals for action

### 1. 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.*

#### *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.*

#### *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.*

#### *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 SME's)*
- *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?*

*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.*

*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?*

*Proposal 7*

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

*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.*

*Proposal 9*

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

*Proposal 10*

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

*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.*

*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.*

*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 unit should be considered by the Commission in this context.*

*Proposal 14*

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

*Proposal 15*

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

*Proposal 16*

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

*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.*

*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.*

## **2. Machine standards**

### **Interpreting the Machinery Directive - A need for clarity**

#### **Clarifying the definition of machinery**

*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.*

*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.*

*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 CE mark**

*Proposal 4*

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

#### **Safeguarding the "second-hand" machinery market**

*Proposal 5*

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

### **Differentiating between directives - the need to avoid overlap**

#### **Defining electrical risks**

*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.*

#### **Avoiding confusion on safety**

*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).

### **Simplifying assessments**

#### *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.*

### **Reducing compliance costs**

#### **Technical documentation**

#### *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 language of instruction and declarations**

#### *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.*

#### **Scope of the instructions**

#### *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 strict necessary possible. It is urgent to present guides in order to facilitate the establishment of instructions by the manufacturers, especially the SMEs.*

### **Creating market-oriented standards**

#### *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.*

### **3. Food hygiene**

#### **Harmonization and simplification of the rules**

*Proposal 1*

*A single set of hygiene rules should be created, which should incorporate product specific hygiene arrangements (where these are truly required) in its annexes. This implies a revision and upgrading of horizontal Directive 93/43/EEC.*

*Proposal 2*

*When the single set of harmonized hygiene rules is created (proposal 1), there should be a general review of all product-specific regulation with a view to ensuring that it is understandable and that ambiguities in definitions, terminology, requirements and procedures are removed.*

#### **Proportionality in legislative design**

*Proposal 3*

*Vertical product directives should be revised in order to eliminate disproportionate burdens on business, and in particular SME's.*

*Proposal 4*

*The use of dried meat should be exempt from special legislation.*

*Proposal 5*

*Directive 91/497/EEC should be changed in order to allow the chilling of fresh meat during transportation to the benefit of both companies and consumers.*

*Proposal 6*

*Directive 91/497/EEC should be reviewed in order to reduce, wherever possible, the burdens on small abattoirs without compromising fresh meat safety standards.*

*Proposal 7*

*Microbiological standards in Directive 94/65/EC should be simplified taking into consideration the proportion of the specific health risks involved.*

*Proposal 8*

*The requirement to use health marks and to provide detailed transport documents should be less strict and more proportionate. A radical revision of this set of rules is needed.*

*Proposal 9*

*Directive 92/45/EEC on wild game should be reviewed in order for the*

*provisions to be built on a rigorous risk analysis.*

### **Using risk analysis**

*Proposal 10*

*In all food hygiene directives reference should be made to risk assessment as a basis for future measures.*

*Proposal 11*

*Data for, and understanding of, risk assessment should be improved and widely disseminated.*

*Proposal 12*

*Common principles of Hazard Analysis and Critical Control Points approach (HACCP) should be used as the foundation of all food hygiene legislation, taking into consideration the risks involved.*

### **Harmonizing, application and enforcement of regulation**

*Proposal 13*

*A review of product-specific directives based on a general application of HACCP principles should lead to less detailed and prescriptive provisions, which could limit the recourse to derogations.*

*Proposal 14*

*Enforcement of food hygiene legislation should be equally effective across Member States, both inside the Union and at its external borders. Standards of enforcement and control in the Member States should be harmonised and supervised by the Community inspectorate.*

### **Choice of legal instruments**

*Proposal 15*

*On important matters, the Community should consider the use of Community regulations in order to ensure a high and equal level of protection. In other areas, the Union should, wherever practicable, make use of alternative instruments such as mutual recognition, subsidiarity and codes of conduct drawn up by the trade bodies concerned.*

### **Closer harmonisation with internationally recognised practice**

*Proposal 16*

*European food hygiene legislation should be referenced to the Codex Alimentarius' standards where these are satisfactory. The Union should play a stronger role in developing a common Community position which can be adopted at the world level.*

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

### **Labour law**

#### **A new approach**

##### *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.*

##### *Proposal 2*

*Community legislation should primarily focus on recognized trans-national problems. The relevant legislation should be as simple as possible.*

#### **General proposals**

##### *Proposal 3*

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

##### *Proposal 4*

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

##### *Proposal 5*

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

#### **Specific proposals**

##### **Choice of instruments**

##### *Proposal 6*

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

##### *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.*

## Content of certain directives

### *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.*

### *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.*

### *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.*

## Health and safety at work

### **Integrating directives**

#### *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*

#### *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.*

#### *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 within the subsequent year.*

*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.*

*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 (89/686/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.*

**Small and medium-sized enterprises**

*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.*

**Scientific evidence**

*Proposal 20*

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

*Proposal 21*

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

*Proposal 22*

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

**Simplifying excessively detailed rules**

*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 healthy workplace;*
- proper training;*
- safe work equipment;*
- provision of protective equipment.*
- etc.*

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

*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.*

**Risks in special activities**

*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.*

**Modification of existing work equipment**

*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.*

## **5. Environment**

### **Policy development**

#### *Proposal 1*

*The new approach to environmental regulation, which stresses the setting of general environmental 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.*

#### *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.*

#### *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.*

#### *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.*

#### *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.*

### **Implementation and enforcement**

#### *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.*

## **Environmental impact assesment- the unlevel building site**

### *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).*

### *Proposal 8*

*Construction and infrastructure 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.*

## **Cost benefit analysis**

### *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.*

### *Proposal 10*

*Any new proposal should be accompanied by a careful analysis or 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.*

## **Definitions**

### *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.*

## **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.*

### *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.*

### *Proposal 14*

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

*Proposal 15*

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

*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.*

*Proposal 17*

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

*Proposal 18*

*The implementation of the Packaging and Packaging Waste Directive (94/62/EC) should be reviewed by the Commission, two years from the date by which the Directive must be implemented in national law, in order to assess the extent of effective mutual recognition and to report any specific problems.*

**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).*

*Proposal 20*

*Given the importance of the proposed Integrated Pollution Prevention and Control (IPPC) Directive for the future water policy of 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.*

*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).*

*Proposal 22*

*The time scale for adaptation in the Urban Waste Water Treatment Directive (91/271/EEC) should be reviewed.*

**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.*

**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 without a waiting period.*

*Proposal 4*

*The procedures for the 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 principle of "one door-one key" should be implemented by way of adoption of vertical legislation.*

*Proposal 5*

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

**Public procurements**

*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 procurement ought not to be altered by national rules directly or indirectly limiting their effect.*

*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.*

*Proposal 9*

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

*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.*

**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.*

**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.*

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

**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.*

*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 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.*

**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.*

**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.*

*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.

*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.*

*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.*

**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.*

*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.*

*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.*

**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.*

*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.*

*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.*

# 1. Promoting employment through competitiveness... the role of simplification<sup>1</sup>

## Employment and competitiveness are the critical challenges facing the EU

1. The simplification of European and national regulatory frameworks must take account of the new challenges for the European economy and new trends in the business environment.
2. By far the greatest challenge for economic and social policies in Europe is the unacceptably high level of unemployment in all Member States. Although some increase in employment can be expected in the present economic recovery, structural unemployment persists and at levels which are far too high.
3. To meet the challenge of unemployment, European companies must enhance their competitiveness. European business competes in a global market place. The rapid transfer of know-how together with developments in technology, communication, transportation and world trade mean that both for manufacturing and a growing range of services, firms will look globally for suppliers and customers. This internationalisation of business is growing more intense and even small local firms are affected by it as part of complex supply and demand chains which have little respect for national borders.
4. This global competitive challenge has created a major challenge for European firms. Productivity, growth, innovation and competitive responsiveness have been found wanting in many sectors. Tackling this challenge is primarily the responsibility of business itself.
5. In becoming more competitive firms need to radically improve their performance along three dimensions:
  - Constantly seeking innovation in meeting customer needs.
  - Continuously improving operating efficiency and quality to meet world-class standards.
  - Building the capability to successfully restructure in response to rapid shifts in markets, technology and competition.
6. Governments, both nationally and through the European Union also have an important role to play. Public policy needs to be designed and implemented to create the environment in which business dynamism is encouraged to

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1. Mr Carniti and Mr Johnsson have expressed a dissenting opinion with respect to this chapter, which is reproduced at the end of the chapter.

flourish, leading to higher employment levels which can be sustained over the long term. Enterprises (often publicly owned) have frequently been unresponsive to shifts in demand and global competition. Governments can help by removing key constraints and rigidities:

- Encouraging competition through completion of the single market and strict application of the Community competition rules;
  - Reversing the steep increase in the overall tax burden;
  - Tackling instability in the international monetary system which affects trade relations and has, in conjunction with high public deficits, pushing real interest rates to historic peaks;
  - Improving, with the help of the social partners, the flexibility and productivity of labour and of liberal professions (eg: labour costs, working time).
7. Public policy also needs to ensure that real incomes of consumers in general are not unnecessarily affected by administrative burdens. Higher real incomes are both a source of wealth and a key driver of employment growth.

### **Regulatory frameworks must be reviewed if competitiveness is to be improved and employment goals are to be achieved**

8. Many well known factors influence the degree of competitiveness of European companies and therefore their capacity to create and to increase employment. It concerns, amongst other things, factors linked to the economic and social environment, to the technological and organisational development, to the breadth and efficiency of training structures and to the ability of the public administration to carry out its functions. Legislative simplification is therefore only one aspect amongst those which can increase competitiveness and employment.
9. An effective Single Market is of primary importance in achieving employment and competitiveness goals in Europe. The Community has used legislation and regulation to realize Single Market objectives. This led not only to the abolition of trade barriers but also, frequently, to the replacement of many diverging national regulations by Community legislation. The success of the Single Market and liberalisation of previously protected sectors such as banking, insurance, road and air transportation would have been unthinkable without Community legislation. And, to take full advantage of the Single Market further legislation may be required in new areas.
10. With much of the Single Market in place, the Community has begun to refocus on improving the effectiveness and efficiency of its legislation. A number of important initiatives have been taken by the Commission, for example:

- a review of legislation from the point of view of subsidiarity;
- a reduction in the number of proposals being put forward;
- codification of existing legislation;
- inclusion of business impact and environmental assessments in Commission proposals;
- greater transparency in legislative process.

These initiatives have established effective foundations on which we can build. Much has still to be done

11. Production, trade and services need adequate regulation, in many fields, to establish a framework which facilitates business activity and confidence. However, at the same time legislation at all levels (Community and national) can inhibit firms' and citizens' capabilities to create employment and improve business dynamism. This adverse impact can result from the costs and uncertainties created by legislative complexity and rigidity, disproportionate administrative burdens and impediments to innovation. In the following chapters we will describe examples of legislation which have such an adverse effect. We have also recognized that the impact of the regulatory environment, as a whole, is greater than the sum of the burdens imposed by each individual regulation. To succeed in a globally competitive world, firms, both local and international, small and large, must be flexible and responsive. When the business environment is highly regulated and government interferes unnecessarily across a wide range of business decision-making, firms tend to be conservative and risk-averse and are particularly cautious in their approach to job creation. Too much of Europe has suffered from this disease.
12. In the Community, the risks of regulatory burdens and constraints are magnified. In order to establish basic ground rules to enable the Single Market to function competitively, the Union has adopted a large number of legislative and regulatory instruments over the past 10 years. Single Market measures can bring about simplification, at one level, by harmonizing separate and conflictory member state regulation. The needs of the single market may however, unless great care is taken, aggravate the burden of administrative and regulatory constraints on European businesses. Despite application of the subsidiarity principle, the superimposition of European, national and even regional and local legislation can lead to a cumulative burden which inhibits, rather than enhances the achievement of employment and competitiveness goals. The merits of the Single Market must not be allowed to be involuntarily damaged by over-regulation, which needs to be combated vigorously both at European and at national levels.
13. These difficulties are particularly acute for small and medium-sized enterprises which play an important role in employment creation. Administrative burdens due to inappropriate and complex legislation can impose relatively high fixed costs. These burdens distract hard-pressed SME managers from more important tasks: exploring new markets, developing new and better products and finding new methods of production which meet consumer needs.

14. We strongly believe that the ability of firms to compete and create employment in the future will depend not only on their own competitiveness but also on the strengths and weaknesses of the national socio-economic systems within which they operate. If Europe fails to take account of likely trends in the business environment, particularly if it is out of step with other major industrial nations for any period of time, it will suffer reduced competitiveness, slower economic growth and higher levels of unemployment. Europe cannot ignore the fact that other industrial countries with which it competes are making strenuous efforts to reduce their own regulatory burdens (for example: the US and Japan).
15. The elimination of unnecessary legal and administrative burdens and simplification of regulatory frameworks is an important contribution in creating the conditions in which employment goals can be realised and the global competitiveness of European business enhanced.

**Exhibit 1: Quotations from the Commission White Paper on Growth, competitiveness, employment**

Guidelines for a policy of global competitiveness

- .....
- ☞ bolstering policies to streamline and rationalize rules and regulations;
- ☞ reviewing the criteria governing the use of public instruments in support of industry so as to enhance their impact on the growth of value-added and employment;

.....

The Community must devise a back up strategy designed to make it easier for business, particularly SMEs, to adapt to the new requirements of competitiveness

- .....
- ☞ identifying and alleviating the constraints of a tax, social security, administrative, financial or other nature that hamper the establishment or continued operation of SMEs
- .....

16. This is accepted by the Commission which adopted a comprehensive strategy for growth, competitiveness and employment in its 1993 White Paper. Regulatory and administrative simplification was recognized as an integral part of that strategy. Rejection of simplification at this stage would mean less progress in achieving the goals of this strategy. Alternatively, stronger efforts would need to be made to reduce other costs, including labour costs incurred by businesses, if job creation goals are still to be achieved.

## Competitiveness and "good" regulation go together

17. In establishing our Expert group, the Commission, supported by the European Council, recognised that the 1993 White Papers' identification of regulatory and administrative simplification as a part of its strategy needed to be translated into specific proposals for action.

### **Exhibit 2: Our mandate**

From the Commission

'... to assess the impact of Community and national legislation on employment and competitiveness with a view to alleviating and simplifying such legislation' (Terms of Reference)

Supported by the European Council:

- '....The European Council expressed its conviction that the elimination of unnecessary legal and administrative burdens on business and making Community and national legislation simpler are important aspects of improving the competitiveness of the European economy... (and) welcome, the establishment by the Commission of a group ... and attaches high importance to its work.' (Presidency conclusions - Corfu summit).
- '....The European Council also notes that the high-level Legislative and Administrative Simplification Group ("Deregulation" Group) has begun its work. It stresses the need to monitor Community and national law for over-regulation.' (Presidency conclusions - Essen summit)

18. Our mandate does not deny the need for "good" regulation. Nor do we wish to undermine the Single Market by encouraging a return to a more fragmented Europe. Our sole purpose is to ensure that legislation is limited to what is strictly necessary and that it is designed and implemented in ways which affect business competitiveness and job creation as little as possible.
19. Efficient regulation is compatible with competitiveness. There are many who are concerned that simplification and deregulation will lead to anarchy and to the complete loss of hard-won gains in such important areas as fundamental social rights, environmental protection, working conditions and consumer protection. These fears are groundless. Responsible businesses want high standards in these areas too. They recognise that direct regulation properly designed and properly enforced, clear and stable, can have a part to play, particularly in preventing irresponsible behaviour by firms who have no interest in these wider goals, and try to compete unfairly, producing general harm and bringing business into disrepute.

## Simplification and deregulation

20. We noted that, in certain cases, simplification should lead, in its ultimate form, to deregulation.

### Exhibit 3. Simplification and deregulation

**Simplification** - where direct government intervention is deemed necessary, it is essential to ensure that regulation imposes the least constraint on competitiveness and employment whilst maximising the benefits which are its primary aim. In most cases, simplification requires the need of new legal texts incorporating, for example, new and simpler approaches to the issues concerned, or changing existing legal or administrative provisions in order to reduce unnecessary burdens (reregulation as means of simplification);

**Deregulation** - in some instances, an unavoidable extension of simplification will be the reduction or removal of government regulations, where such regulations are no longer necessary or where their objectives can be achieved more effectively through alternative mechanisms (for example: voluntary agreements, market mechanisms, or self regulation).

Simplification and deregulation should be understood in this way when used in the present report.

21. Simplification and deregulation require a change in the culture of policy-making. This challenge cannot be avoided by either national governments or the institutions of the EU, if the competitiveness of European business is to be improved and higher employment levels sustained.

## Member States and the EU must act together

22. Regulation is both the responsibility of the EC and of national authorities at all level. The cumulative impact on competitiveness and employment results first from the scope and character of the EC legislation, then from the rigour and evenness with which this legislation is transposed and applied in Member States (we note that this second level is often neglected but is of great importance). Finally additional burdens result from those regulations which are imposed by national governments acting in their areas of national competence.
23. We have focused primarily on the first of these levels, ie: Community legislation but, where appropriate have noted cases in which the major constraint on competitiveness and employment arises from transposition to

national law. We have not attempted in the time available to us to tackle the third level, ie: the impact of purely national legislation.

24. The enquiries and observations we have received from professional organizations clearly demonstrate that it hardly matters to economic operators whether a regulation is a Community one or a national one, since it is only the constraints imposed by the rules in general which really count. Accordingly the way Community regulations tie in with national law in the Member States is extremely important on at least two different counts:
  - Community regulations must be understood by the parties they concern. The complexity of the texts and the differences of interpretation due to different national traditions often raise many issues and compromise the uniformity of the law which applies throughout the Community. Where questions of interpretation are to be decided by the courts, the Commission should provide the means to respond to any requests for clarification, so as to obviate the need for legal proceedings which are often unnecessary. In particular, an excellent way of ensuring uniform interpretation could be the use of advisory committees bringing together representatives of the Member States and presided over by a member of the Commission staff, as already provided for in various regulations and directives.
  - it would be quite in order for committees of this type to be systematically consulted in transposing directives, even though this is the responsibility of the Member States. Such committees should encourage and help Member States in overcoming their misunderstandings so as to make national laws as uniformly concise as possible and prevent discrepancies from affecting transactions as well as avoiding the practice of unnecessarily keeping outdated laws on the statute books.
25. If the competitiveness challenge is to be met and the cumulative burden of regulation reduced, each of these levels must be tackled vigorously. There will be little purpose in the Union simplifying its legislation, if under the cover of subsidiarity or transposition Member States take the opposite course. Such contra-action would make their own economies less competitive and undermine the effectiveness of Union policy as a whole. Our recommendations for action at the Community level need to be mirrored by each Member State. Some national initiatives have been taken. These experiments have yielded useful results and lessons, but in each case it is clear that the task has only just begun.

### **Our proposals support the basic aims of the Community**

26. In line with its mandate, the group has highlighted the unnecessary burdens and excessive complexity of certain directives and regulations and has drawn general conclusions on the ways in which the Community institutions should carry out legislative work in the future.
27. In considering, critically, the impact of legislation, we have accepted the

underlying aims of the Community treaties, i.e.:

- full use of the single market opportunities;
- strengthening of the social cohesion;
- need to ensure the safety of workers;
- protection of the health of consumers;
- preservation of the environment.

28. Our proposals for a more efficient and less burdensome approach to regulation enhance these fundamental aims. Simpler, more transparent regulation evenly applied across the Community will command greater support from the business community particularly if it is seen to be part of an overall strategy for employment and competitiveness. Our approach to regulation would support and reinforce competition and free movement of goods, services, capital and labour.

### **Common regulatory problems require common solutions**

29. In each selected sector, there are specific defects in the current regulatory regimes which need to be tackled. Our proposals to remedy such defects are set out in chapters 2-7.

30. In our evaluation of the specific evidence, we have also found much commonality in the problems identified. These common problems arise at each interrelated stage of the legislative process.

- at the selection stage, when topics for action are chosen;
- at the drafting stage and throughout the decision-making procedures;
- during transposition of the directives;
- when the rules are applied.

31. **Selecting topics should be more carefully considered**

Problems identified in this area were:

- legislative aims which are sometimes ill-defined or insufficiently justified;
- weakness in the impact assessments which are carried out, measuring the effects on competitiveness and employment versus the objective to be pursued;
- consultation procedures which are perceived, by many in business, to be ineffective;
- inadequate consideration of scientific evidence in determining the need for legislation.

**32. Drafting of texts needs to be improved**

Problems were identified in a number of areas, including:

- failure to carefully consider the relative merits of different legal instruments (e.g. directive vs regulation) and alternative non-regulatory instruments (e.g. voluntary agreements, market mechanisms, etc...).
- overlaps between legal texts which create confusion and uncertainty.
- lack of a systematical review process on existing legislation to examine effectiveness and continuing relevance.

**33. Transposition of directives is a significant source of complexity and unnecessary burden.**

We received many complaints concerning uneven transposition of directives. National transposition is frequently:

- adopted at different times and, in some Member States, after undue delays, resulting in distortions of competition;
- unequal in its consequences, since some Member States confine themselves to minimal transposition while others impose additional obligations on businesses, or the enforcement of the rules in Member States is uneven.

**34. Application can create additional burdens.**

Common sources of burden are:

- instruments which are too complex, making their application costly and uneven as between different Member States and/or different businesses;
- deadlines for implementing new measures which are too tight. This can cause firms, in particular SMEs, to incur unnecessarily heavy investment costs over a short space of time;
- uneven enforcement which distorts competition and provides a "double burden" on firms and Member States that correctly apply the regulations;
- administrative costs which are proportionally higher for SMEs than for large firms.
- insufficient use of texts that lay down the objectives to be attained and enable businesses to choose the best means of achieving them.

**35. The responsibility for this situation is widely spread between the various Community institutions and the Member States. The identification of common**

problems and shared responsibilities provides strong evidence that we need an overall shift in culture amongst all those who design, approve and implement regulation. There is a need for a "new paradigm" in which the challenge of competitiveness and employment growth is clearly articulated in policy - makers' minds. Approached from this starting point, we would both achieve more efficient legislation and regulation and find better ways of achieving Community objectives (greater use of market mechanisms, through agreements reached voluntarily between the social partners, diffusion of best practices, self-regulation).

### **A comprehensive action programme is now required**

36. Over-regulation stifles growth, reduces competitiveness and costs Europe jobs. The cumulative impact of regulation frustrates a culture of enterprise, hampers innovation and deters both domestic and inward investment. If Europe is to compete in a global economy and wants to increase substantially sustainable levels of employment, the burden of regulation must be reduced.
37. In developing our proposals for the action programme we have taken into consideration actions that the Commission, in particular, has also set in hand. We believe that our proposals will build on these initiatives and ensure that forward momentum is accelerated and action is effective.
38. We have built our proposals for action on the following principles:
  - Wealth creation and sustained employment growth must be recognised as essential conditions to enable further improvement in the quality of life and can only now be achieved if European economy is world class.
  - Taking into account political objectives, standards to be achieved must be realistic, given the competitiveness and employment challenge, and must be based on objective need (based where appropriate on scientific evidence).
  - Business, workers and consumers should be consulted and actively involved both in helping to establish appropriate standards and in evaluating the most effective means to achieve them. We need to make best use of market instruments and commitments voluntary undertaken as an alternative to direct regulation, when appropriate.
  - The impact of direct regulation (both individually and collectively) on competitiveness and employment must be explicitly considered in the design and review of legislation.
  - Simplification and even deregulation must be actively pursued as an integral part of policies to enhance competitiveness and employment.

Piecemeal reviews and incremental changes will not suffice. We need a wholesale change in the policy culture.

39. The Council of Ministers and the Commission have begun to address these questions. Our proposals for an action programme if implemented will reinforce and extend these efforts. In addition, each Member State needs to follow a similar programme of evaluation and reform. They need to share their experiences and adopt a common approach of simplification and deregulation toward Community legislation as a whole, and to national legislation, whether driven by the Community or by national policies.
40. The regulatory regime which would result from these actions would enhance competitiveness and employment whilst maintaining appropriate standards of protection and behaviour. The "ideal" regime would have the following characteristics.
- Fewer, better quality and less burdensome regulations.
  - Regulations which support the overriding requirement for growth, international competitiveness and employment.
  - Regulations, both at the European and national levels, based on objective need.
  - Single market regulations limited to those areas in which single market benefits are significant; harmonisation would not be pursued for its own sake.
  - Principles of proportionality and subsidiarity rigorously adhered to.
  - Even-handed implementation and enforcement of EU directives vigorously pursued across all member states.

## **Proposals for action...**

41. The work of the group shows that there are frequent overlaps between directives or regulations within a particular area. This makes it difficult for those concerned to find out the present status of rules to be applied.

### ***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.***

42. There is a strong need for a comprehensive programme of simplification leading where appropriate to deregulation with respect to existing Community legislation.

**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.*

**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.*

43. The institutions of the European Union should develop a common strategy for improving the quality of Community legislation. Proposals for new legislation should be thoroughly tested for need and scope. If the Council and Parliament are to make informed decisions, each proposal for legislation needs to be accompanied by an objective analysis of the relevant facts, providing a proper basis on which political judgement can be made. These facts include the scientific evidence (where appropriate), international comparisons, the results of consultation with firms and other interested groups (Proposal 8), the evaluation of appropriate instruments, and an objective "cost-benefit" appraisal, taking into account all quantitative and qualitative factors.

**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 SME's)*
- *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?*

44. The complexity of Community legislation is often the result of difficulties - whether or not genuine - in incorporating it into national legal systems. These difficulties should be taken seriously, even if only to demonstrate that they are groundless.

**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.***

45. If legislative proposals pass the tests set out in proposal 4, it is important to ensure that the legislation put forward is as simple and effective as possible.

**Proposal 6**

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

- ***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?***

46. A greater degree of transparency and consultation of those most concerned is necessary during the preparation of Community legislation.

47. On the grounds of economic structure and logic, the business community must be at the forefront of a drive for simplification and deregulation to increase competitiveness and employment.

- it creates the jobs.
- it bears the burden of intra- and extra- Community competition.
- In the vast majority of cases, it ultimately applies the rules laid down by directives and regulations.
- It is the first to bear the costs even if, after being passed on, those costs are always reflected in prices, in lower profits, in less investment and innovation or in lower wages for employees.

48. It is therefore essential to consult employers and employees about their concerns. But the Commission, in its proposals, and the Member States and Parliament, in their decisions, must also pay due regard to other considerations:

- The need to maintain fair competition and to enhance the reality of the internal market;
- The requirements of other parties and elements of economic and social life: consumers, the environment, etc.

**Proposal 7**

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

**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.***

**Proposal 9**

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

49. It is normal for a new piece of legislation to be supported by certain Member States and opposed by others. There are no grounds for keeping certain States' opposition confidential.

**Proposal 10**

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

50. Many Community acts allow for a review procedure. This procedure should be extended to cover all Community acts (legislation, recommendations etc.)

**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.***

51. The group has concluded that transposition and enforcement at national level must be improved, in order to ensure a level playing field throughout the Community. Simplification of national legislation must also be pursued in parallel. The Commission has a key role to play in ensuring that the drive for simplification and the application of subsidiarity does not undermine the objectives of the Single Market.

**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.***

**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 unit should be considered by the Commission in this context.***

52. President Santer, in his address of 17 January 1995 to the European Parliament, stated that "The Commission will assume its responsibilities and if necessary ask the Court of Justice under Art. 171 of the Treaty to impose financial penalties on Member States who do not comply with a

judgement... I wonder if the idea of inserting penalty clauses in directives is not worth promoting".

**Proposal 14**

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

53. Wherever possible, alternative solutions should be considered in order to avoid the difficulties linked to transposition of directives.

**Proposal 15**

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

**Proposal 16**

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

54. It is important that consumers, businesses and workers have a high degree of certainty as to future legislation in the Community.

**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.**

55. Consumers, businesses and workers need to have confidence that a comprehensive programme as proposed by our group, will be pursued vigorously by the Community and the Member States.

**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.**

**Dissenting opinion from Mr Carniti and Mr Johnsson  
on the preface and the general chapter**

Following on from what we have each said regarding the specific chapters in the report and the report as a whole, we are of the opinion that the contents of the report's preface and general chapter display an unacceptable lack of balance. They contain a one-sided view which cannot possibly be justified on the basis of requirements directly relating to the simplification procedure.

We are convinced that the elimination of unnecessary legislative and administrative burdens and the simplification of Community and national legislation should be pursued only where it is clear that the burdens are excessive.

This is why deregulation should not be presented as an end in itself on the grounds that it is inherently positive.

Furthermore, the report is not based on an objective analysis of the impact of Community and national legislation on competitiveness and employment.

We believe that the simplification and reduction of legislation is only one of the issues involved in regenerating competitiveness and employment and most certainly not the most important one.

Consequently the report is based on a negative approach (i.e. a constant drive to eliminate legislation) rather than on an approach flowing from positive and innovative proposals to deal with current and future problems.

Given the limited time and information available, the Group has not been able to assess the negative effects on competitiveness and employment of the failure to transpose certain parts of Community legislation into national law.

This approach has not taken account of the fact that Community-level deregulation would simply return the problems to national legislation, which could well prove more inconsistent and complex than European legislation.

We regret that some of the proposals put forward with the intention of making European legislation more effective, understandable and transparent have in certain areas led the Group to call for unacceptable amendments which could undermine Community policies.

We nonetheless hope that the Commission, the Council, Parliament and the Member States will want to continue the work that has already begun on simplifying legislation and administrative regulation so as to improve the way our societies are run and boost European integration.

## 2. MACHINE STANDARDS<sup>1</sup>

### The importance of the machines sector

1. The machines sector is of great importance to the EU economy. It employs close to 2 million people and total production, in 1994, is estimated at more than 210.000 million ECU. The EU exported more than 35% of this production in 1994, giving a strong balance of trade advantage in machines (amounting to 44.000 million ECU in 1993). Many firms of this sector are small and medium-sized enterprises.

### Community policy

2. The Community has used the "new approach" to harmonization in order to facilitate the creation of an Internal Market in machines. This approach combines the harmonization of national regulations and technical standards with mutual recognition of inspection and certification procedures. Harmonization is only applied where necessary to achieve mutual recognition. Three main elements have been used:
  - One harmonization Directive (89/392/EEC and amendments in 1991 and 1993 - hereafter the "Machinery Directive") which covers a broad spectrum of machines. It lays down the essential requirements for machines to be sold within the Internal Market (see diagram 1).
  - Harmonised standards for manufacturing and placing machines on the market which are laid down by European standards organization.
  - The CE mark for machines which conform to the essential requirements of the Directive. This shows, *inter alia*, that the machine has undergone the necessary assessment procedures.
3. Manufacturers of machines have to conform with the essential requirements of the Directive. With certain defined exceptions, producers do not have to use third party assessment before bringing the machine to market. The CE mark, is therefore, a matter for self-declaration. Use of the harmonized standards is voluntary. However, adherence to the harmonized standards by manufacturers is then binding upon the authorities of Member States, since a machine is then presumed to conform to the essential requirements established in the Machinery Directive.
4. Machines are also subject to health and safety legislation introduced under Article 118a of the EC treaty. This article provides for optional harmonization, in contrast to the new approach ("total harmonization")

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1. Abstention from Mr Carniti.

described above. Minimum requirements are set down but it is left to the discretion of Member States whether to retain or enact stricter national requirements. However, these national standards must be compatible with the EC Treaty and must not constitute a barrier to trade. So far as machines are concerned, the Work Equipment Directive (89/655/EEC) concerns the minimum health and safety requirements for the use of work equipment. This Directive also contains requirements concerning the manufacture of machines as well as their use. A proposal is currently under consideration to amend this Directive. The Work Equipment Directive is discussed further in Chapter 4, paragraph 41.

## **The effectiveness of Community policy**

5. Machinery producers and customers have welcomed the "new approach". By recognizing the importance of mutual recognition, and concentrating on essential requirements, legislative effort and the burdens on industry have been reduced. Furthermore, this approach provides machinery producers with greater flexibility in devising means to meet the essential requirements.
6. However, as a result of our analysis and the evidence presented to us, we have identified a number of areas in which simplification would improve the effectiveness of the new approach without in any way compromising the maintenance of high safety standards. The major areas of concern are:
  - **Definitions**  
In a number of detailed areas, definitions need to be clarified to provide greater certainty for manufacturers in the framework of the new approach.
  - **Overlap**  
The effectiveness of the new approach for machinery is compromised by overlaps with other directives (for example, the Low-Voltage Directive).
  - **Compliance Costs**  
Despite the focus of the new approach on essential requirements and self-declaration, the Machinery Directive generates considerable paperwork. Cost burdens also arise from the adaptation of machines presently in use to the requirements of the Work Equipment Directive (89/655), and where those machines were made before the Machinery Directive came into force. Compliance burdens would be further increased by the recent proposal for amending this Directive.
  - **Harmonized Standards**  
The benefits of "general reference to standards" has been widely acknowledged. However, there are concerns that in the development of harmonized standards the advantage of the new approach may be

undermined if such standards are not market-oriented.

7. In addition to these concerns we would also note that concerns were expressed about the even enforcement of the new approach across all Member States. Further development of enforcement guides and codification could also be helpful.

## PROPOSALS

8. The Machines Standing Committee is an effective tool to answer practical questions relating to the application and the implementation of the Directive. Indeed, it has already published a list of 74 questions and answers on implementation and application of the Directive. The group invites the Commission to submit the following proposals to the Machines Committee for examination and development.

### I. Interpreting the Machinery Directive - A need for clarity

#### Clarifying the definition of machinery

9. *"For the purposes of this Directive, 'machinery' means an assembly of linked parts or components, at least one of which moves, with the appropriate actuators, control and power circuits, etc., joined together for a specific application, in particular for the processing, treatment, moving or packaging of a material."*This wording demonstrates the difficulty of defining a machine. The advantage of this wide definition is that free movement is ensured for a broad spectrum of products. On the other hand, it causes numerous operational problems in particular for small and medium-sized enterprises. There are ambiguities in both the definition of machines to be included [Article 1(2)] and those to be excluded [Article 1(3)]. For example: it is unclear, under Article 1(2), whether a collection of machines such as an oil refinery constitutes a machine in its own right; whilst the status of mobile cranes and switchgear remains ambiguous under Article 1(3). Without reducing the broad scope of the Machinery Directive, an attempt should be made to define the term "machinery" more clearly.

#### ***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.***

10. With a view to obtaining a clearer, more precise version of the Machinery Directive, additional clarification is also required with regard to the concept of "placing on the market". In particular there is currently inconsistency between Member States as to whether the relevant legal provisions are solely those which were in force when the machine was first placed on the market or those in force at a later date if the machine continued to be marketed, *(these difficulties are common to all but one of the directives developed under the new approach and our proposal may therefore have*

wider application)

**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.**

11. The Machinery Directive currently requires declarations of conformity, not only for machines which are ready-for-use but also for machines which are to be incorporated into other machines (Annex II. B). Declarations are also required for safety components placed on the market separately (Annex II. C)
12. In practice, this state-of-affairs has given rise to confusion as to which category of declaration some machines or components belong to. In addition, the inclusion of components in the Directive leads to a significant increase in paperwork with regard to the final manufacturer's declaration. The difficulties are further amplified by the fact that CE mark may not be used for machinery which is not ready for use.
13. In 1989, the Council and the Commission agreed that "*putting into service*" means the operations required to ensure that the machinery can subsequently work and be used safely (Council Minutes: 25 May 1989). If the Machinery Directive were applied solely to complete machinery and to safety components sold directly to the final users, it would no longer be necessary to draw up special rules for other components (under Annex II B) with all the associated paperwork that this entails. This would not undermine safety standards since manufacturers would continue to ensure that their ready-to-use machinery functions properly in accordance with Annex I, i.e. they would have to take account of the safety components with regard to the safety, development and construction of their final product. The specific paperwork for machines incorporated into other machines, which serves no purpose in the interests of safety, should therefore be dispensed with.

**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.**

Annex II B would no longer be required.

**The CE mark**

14. The regulations relating to the use of the CE mark are a not consistent.
  - The Machinery Directive classes the machinery which falls within its scope into 7 different categories (see Diagram 2). Machinery in only three of those seven categories must bear the CE mark. In view of the legal implications of improper use of the CE mark, correct classification

becomes of fundamental importance.

- The question as to whether the CE mark is mandatory for a machinery product becomes more complex when the Low-Voltage Directive is taken into account. Under the terms of this Directive, electronic products must bear the CE mark no later than 1997. However, these products might, for example, be intended as safety components for incorporation into machinery and, under the terms of the Machinery Directive, should only be accompanied by a declaration of conformity. According to the Machinery Directive, the CE mark may not be used. This reveals another ambiguity with regard to the CE mark: that essential safety components do not have to bear the CE mark while other machinery which might be "less dangerous" may not be placed on the market without such a mark? The inverse makes far more sense, i.e. if machinery must bear the CE mark, then the associated safety components should be subject to the same obligations.
  - Furthermore, the manner in which the CE mark appears on the product also varies from one Directive to another. For example, under the Low-Voltage Directive, the CE mark may appear on the product itself, on the packaging or on the documentation. Under the Machinery Directive the CE mark must appear on the product itself.
15. The CE mark was initially conceived as a symbol for inspection purposes. In principle, it lets the authorities know that the product in question complies with the provisions of the relevant Directive. However, it is not the symbol, but rather the technical documentation in conjunction with the EC declaration of conformity which is crucial in the context of market supervision. The CE mark was not conceived as a mark of quality. It indicates nothing more than the fact that the manufacturer has complied with the legal requirements (which he had to fulfil anyway in order to be allowed to place his product on the market).
16. In summary, there is a strong case to question the current value of the CE mark:
- different provisions for the CE mark exist between or within individual directives causing confusion and uncertainty;
  - ambiguities exist in regard to the respective conformity assessment procedures for the various directives;
  - the CE mark symbolizes a fact which should already be evident.

The application of the CE mark to machines, is a source of uncertainty which need to be cleared up.

***Proposal 4***

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

## **Safeguarding the "second-hand" machinery market**

17. The second-hand market for machines is an important part of manufacturing infrastructure. It enables existing firms to more readily update and modernize their machinery and provides lower cost access to machines for SMEs entering new markets. It is therefore vital that machinery regulation does not inhibit an active second-hand market.

### ***Proposal 5***

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

## **II. Differentiating between directives - the need to avoid overlap**

### **Defining electrical risks**

18. The Machinery Directive states: "*Where, for machinery, the risks are mainly of electrical origin, such machinery shall be covered exclusively by Council Directive 73/23/EEC of 19 February 1973 on the harmonization of the laws of the Member States relating to electrical equipment designed for use within certain voltage limits.*"
19. It is extremely difficult to ascertain which machinery is excluded from the machinery Directive, in accordance with this article (Art. 1(5)), and falls within the scope of the Low-Voltage Directive. Since various interpretations exist in this context in respect of the Machinery Directive, trade restrictions can arise. However the Commission has recently reported that agreement between the standards bodies (CEN/CENELEC) provides a basis for resolution.

### ***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.***

### **Avoiding confusion on safety**

20. Council Directive 92/59/EEC of 29 June 1992 on general product safety was conceived as a comprehensive horizontal framework Directive. The recitals stipulate that:

*"Whereas, when there are specific rules of Community law, of the total harmonization type, and in particular rules adopted on the basis of the new approach, which lay down obligations regarding product safety, further obligations should not be imposed on economic operators as regards the placing on the market of products covered by such rules."*

21. However, too little use has been made of this recital in Article 1(2) of this Directive, which stipulates that:

*"(2) The provisions of this Directive shall apply in so far as there are no specific provisions of Community law governing the safety of the products concerned. In particular, where specific rules of Community law contain provisions imposing safety requirements on the products which they govern, the provisions of Articles 2 to 4 of this Directive shall not, in any event, apply to those products. Where specific rules of Community law contain provisions governing only certain types of product safety or categories of risks for the products concerned, those are the provisions which shall apply to the products concerned with regard to the relevant safety aspects or risks."*

These provisions do not make it clear to operators which directive is applicable in their particular case - the Machinery Directive or the Machinery Directive plus the Product Safety Directive. In our view, the Machinery Directive, in itself, provides appropriate safety standards. The ambiguity in the general product safety legislation creates uncertainty and additional burdens on the machine industry.

***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).***

**Simplifying assessments**

22. Some producers question the list of "high-risk" machinery and safety components in Annex IV (which can require third party assessment if there are no harmonized standards). They see this as an arbitrary list covering machinery which should not require special treatment. (We have noted that the scope of this list was significantly extended through the intervention of the Council and Parliament and without reference to the burdens it would impose). Furthermore, given the current lack of harmonized standards for machines in Annex IV, the notified bodies are continually required to carry out checks on the machines concerned.

In addition, the third party assessors interpret Annex IV in various ways, leading to complaints that they are allowed too much discretion. For example, there are differences of opinion in the Member States as to whether the EC type-examination should be confined to the risk which has led to the product's inclusion in Annex IV or whether this examination should be carried out on the product as a whole. Opinions also diverge with regard to the definition of types of machinery and the relevant conformity assessment procedures. In Italy, for example, a die is not considered as falling within the scope of Annex IV of the machinery Directive. However, an identical construction manufactured in Germany is defined as a "press." Since there are presently no harmonized standards for presses, the simplified conformity assessment procedures applicable to products listed in Annex IV in accordance with Art. 8(2) may not be applied. The EC type-examinations which must therefore be carried out on these presses entail considerable expense.

23. The question was also put to us as to the effort put into setting up the approved inspection authorities when their duties will all but disappear with the introduction of harmonized standards under which the simplified conformity assessment procedures will be applied. In addition, the Directive requires that a manufacturer who uses harmonized standards should assemble the documentation for "high-risk" machinery in accordance with Annex IV and forward it to the approved inspection body. This body should then acknowledge receipt of the file as soon as possible and keep it. In the Commission's comments on the Machinery Directive it is stipulated that the "--- body ... is obliged only to acknowledge receipt of the file and to keep it, but not to examine it". These procedures have been retained even though examinations are no longer carried out under the simplified procedures.

**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.***

**III. Reducing compliance costs**

**Technical documentation**

24. Before issuing the EC declaration of conformity, the manufacturer, or his authorized representative in the Community must ensure, and be able to guarantee, that the requisite "technical construction file" is and will remain available on his premises for any inspection purposes. *This creates a significant burden, particularly on small firms.* In contrast, the Directive on electromagnetic compatibility lays down that in the case of apparatus for which the manufacturer has applied the harmonized standards, the conformity of apparatus may be certified by an EC declaration of conformity alone. Only in the case of apparatus for which the manufacturer has not applied the harmonized standards must he hold a technical construction file at the disposal of the relevant competent authorities. *In our view a similar principle could be used for machines. Only one document, based on the declaration of conformity, would be required when manufacturers adhere to harmonised standards.*

**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 language of instruction and declarations

25. The Machinery Directive requires that the instructions must be supplied in the original language of the manufacturer **and** in the language of the country of use. To avoid unnecessary costs, only one set of instructions should be required.

### ***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.***

## Scope of the instructions

26. Every set of instructions for machinery must include minimum details as laid down in Section 1.7.4 of Annex I. This very detailed information must be supplied for all machinery regardless of the potential risks involved in using the product. Small and medium-sized businesses in particular are calling for a more differentiated approach taking into account product liability.

### ***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 strict necessary possible.***

***It is urgent to present guides in order to facilitate the establishment of instructions by the manufacturers, especially the SMEs.***

## IV. Creating market-oriented standards

27. The advantage of the "general reference to standards approach" is widely acknowledged. However, the central position taken by harmonized standards in the new approach is giving rise to some particular concerns:
- Unless great care is taken, the essential requirements could give rise to a whole gamut of standards. Rules and regulations are in danger of becoming too complicated. In the case of machinery which runs on compressed air or machinery with an internal combustion engine, a whole series of rules and regulations apply. However, in the case of electrical power tools, only one safety standard applies. It would be better to group together all the essential requirements in a limited number of standards applicable to specific product groups.
  - The standard-setting bodies need to ensure that their rules and regulations are practical and realistic in commercial terms.

- In setting realistic standards, the needs of SMEs are of particular concern. There is evidence that SMEs are not effectively represented in the various working groups which set standards. In addition as they also find it extremely difficult to pinpoint the standards applicable for their particular products amid the plethora of rules and regulations which have come into being. Our Group welcomes the fact that the Commission is now giving serious consideration to this matter.

***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.***

Diagram 1

**Main provisions of the Machinery Directive  
(89/392/EEC)**

**Field of Application**

Very extensive owing to the very broad definition of the term "machinery".

**Basic Condition**

Machinery should not endanger the health or safety of persons when properly installed and maintained and used for its intended purpose.

**Essential Health and Safety requirements**

Relating to the design and construction of machinery and detailed in Annex I.

**Certification Procedure**

Manufacturers are responsible for certifying the conformity of the machinery with the provisions of the Directive unless and EC type-examination is required.

**CE Mark**

Certifies the conformity of machinery with the provisions of the Directive.

**Provisions for transition**

Authorized use of national standards and specifications until 1994, subject to exceptions.

Diagram 2

	EC declaration of conformity in accordance with Annex II		Declaration in accordance with Art. 4(2) of Annex II	CE mark
	Section A	Section C	Section B	
Machinery within the meaning of the first sentence of Art 1(2)	X			X
Assembly of machines arranged and controlled in order to achieve the same end (second sentence of Art 1(2))	X			X
Interchangeable equipment within the meaning of the third sentence of Art 1(2)	X			X
Spare parts (third sentence of Art 1(2))				
Tools (third sentence of Art 1(2))				
Safety components placed on the market separately (fourth sentence of Art 1(2))		X		
Machinery which cannot function independently (first sentence of Art 4(2))			X	

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### 3. FOOD HYGIENE<sup>1</sup>

#### The importance of the food sector

1. The food industry is a sector of great economic importance. The processing of meat, dairy products and fish of the European Union covers an employment of nearly 1 million people. The yearly turnover of these three main areas is about 170.000 million ECU. Also in terms of exports, their economic importance is clear.

#### Community policy

2. Food hygiene legislation deals with food at different stages of processing between the farm and the kitchen. EU food hygiene legislation has two basic objectives. The first is the protection of public health and consumers. The second is the removal of barriers to trade. However, these two objectives can be in conflict. The protection of public health can lead to complex regulations based on established national traditions; these traditions and their associated regulations may then prove to be a barrier to intra-community trade (and may be used to protect national businesses).
3. Different national traditions when combined with Article 36 of the Treaty, have led to difficulties in drafting of European food hygiene legislation. As a result, the adoption of regulations and directives has been spread over more than thirty years. The first Directives on food hygiene covering particular agricultural products date from the beginning of the 1960s, whilst the Directive laying down general rules was only adopted in 1993 (Directive 93/43/EEC).

#### The effectiveness of Community Policy

4. The variety of the products covered by the directives, the extreme sensitivity of the Member States regarding problems of public health, different national traditions and, in certain cases, the desire to protect particular sectors against competition have led to complex Community legislation. This complexity is at the heart of many of the criticisms of the legislation made by the food industry. These criticisms include:
  - overlaps in the applicable texts.
  - disproportionate burdens relative to risk (particularly for small businesses)
  - lack of uniformity in transposing rules and in enforcement.
5. These difficulties are a constraint on the development of the agri-business sector. They inhibit innovation and the development of firms, in particular small businesses, and they put barriers in the way of intra-Community trade. Inconsistencies between the Union's rules and those accepted by the wider international community may also have slowed down the full participation of

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1. Abstention from Mr Carniti.

European food companies in world trade.

6. The evidence presented to the Group has demonstrated that the complexity of regulation is detrimental to competitiveness and employment in this major sector of economic activity. While fully respecting the spirit of Article 100a, which lays down that the Union must aim in these matters for "a high level of protection", the Group therefore proposes to act in the following six areas:
  - harmonization and simplification of the rules on food hygiene;
  - proportionality in legislative design;
  - the use of internationally recognized risk analysis methods which in turn will place more responsibility on businesses themselves ( as opposed to the application of detailed prescriptive rules );
  - harmonization between Member States in the application and enforcement of rules;
  - more appropriate choices of legal instruments;
  - closer harmonization with internationally recognized practices.

## **PROPOSALS**

### **I. Harmonization and simplification of the rules**

7. For producers, rigidities and lack of consistency between the vertical directives relating to individual products and between the vertical directives and the horizontal Directive 93/43/EEC are the greatest source of legislative and administrative burden. Examples are described in the following paragraphs.
8. The traditional vertical directives can constrain innovation. For example, they were not designed for combined ingredient products, and they are not adopted to the multi-product distribution chain in which various families are handled concurrently during distribution and retailing. The regulations are typical of single product processing industry, and do not fit the needs of advanced processing as well as the requirements of the evolving commercial and retail environment. Whilst the Council has attempted to address some of these issues by agreeing a new horizontal Directive (93/43/EEC) it is neither comprehensive, nor far reaching enough to overcome these difficulties.
9. The directives concerning the hygiene of animal products origin contain a number of requirements which are similar (approval procedures for establishment, internal checks, approval conditions and hygiene requirements in establishments, procedures for the imports of products from third countries etc.). These common requirements should be brought together in a single horizontal text, eliminating unnecessary differences and improving transparency.
10. Lack of consistency has led to real barriers in trade since national legislation has enshrined these differences in the local regulatory regimes. For example, the use of temperature requirements in the European Union should be harmonised. Differences in national legislation constitute a serious barrier to trade. Similarly the lack of a single definition of certain commodities (e.g. "meat") can result in unfair market competition and consumers being misled or deceived. These definitions should be harmonised and the general definitions of "meat" in the various vertical directives should then be used in national

legislation. Other examples of the lack of harmonized rules and definitions in national legislation on food hygiene include microbiological criteria, self-supervision measures, shelf life for food products, and the ability to trace origins of product.

11. With a large number of specific texts containing many overlaps and inconsistencies, many producers can find it difficult to have a clear understanding of food hygiene legislation across of the Union. This problem is especially relevant for producers using a variety of raw materials covered by different EU directives. For example, a producer of culinary products might have to deal with a whole range of fish, meat and egg directives as well as the general Directive 93/43/EEC.
12. It is essential that all food hygiene directives should be simplified and consolidated and brought into conformity with each other. The Commission has begun this process, but it needs to be accelerated. One document should be presented embodying all common provisions for all products in a general section with annexes for the specific rules for the individual product categories. This new consolidated basis of legislation should be built into a revised version of the horizontal Directive 93/43/EEC.

***Proposal 1***

***A single set of hygiene rules should be created, which should incorporate product specific hygiene arrangements (where these are truly required) in its annexes. This implies a revision and upgrading of horizontal Directive 93/43/EEC.***

13. In addition to eliminating overlaps and inconsistencies, the product specific legislation must be easy to understand and should avoid ambiguities.

***Proposal 2***

***When the single set of harmonized hygiene rules is created (proposal 1), there should be a general review of all product-specific regulation with a view to ensuring that it is understandable and that ambiguities in definitions, terminology, requirements and procedures are removed.***

## **II. Proportionality in legislative design**

14. The tradition of specific, often highly prescriptive, vertical legislation has created disproportionate burdens on some parts of the food industry. This lack of proportionality is of particular concern in respect of SMEs, where by the nature of their business (for example selling fresh food in a local market with high stock turnover) they may be able to achieve the same standards of food safety with less burdensome and costly procedures. Examples of disproportionate burdens include:
  - \* **Dried meat.** The compound food industry often use dried meat, meat powder and meat extracts (e.g. instant soups). These products are completely stable at room temperature and pose no special risks. The use of meat powder and meat extract is exempt from special legislation, whilst the use of dried meat pieces is regulated by the full extent of Directive 92/5/EEC for meat products. This necessitates investments that cannot be justified by proportionality based on proper risk analyses.

- \* **Chilling.** Directive 91/497/EEC on health problems affecting intra-Community trade, production and marketing in fresh meat states (Annexe I, Chapter XIV) that "fresh meat must be chilled immediately after the post-mortem inspection and kept at a constant internal temperature of not more than +7 degrees Celsius for carcasses and cuts and + 3 degrees Celsius for offal. Freezing of fresh meat may be performed only in rooms of the same establishment where the meat has been obtained or cut or in an approved cold store, by means of appropriate equipment". However, allowing the chilling of fresh meat during transportation under certain conditions could lower costs for companies and the fresh meat could be delivered to their customers earlier. This Directive places a disproportionate burden on, in particular, small abattoirs.
- \* **Veterinary supervision.** Directive 91/497/EEC imposes additional burdens on small abattoirs through its insistence on the presence of a veterinary surgeon to carry out ante-mortem inspection in the abattoir and to be present at the slaughter of casualty animals on the farm.
- \* **Micro-biological standards.** The micro biological standards in the Directive 94/65/EEC impose disproportionate burdens on many companies without any added advantage to public health.

***Proposal 3***

***Vertical product directives should be revised in order to eliminate disproportionate burdens on business, and in particular SMEs.***

Within this general programme of simplification priorities for revision would include:

***Proposal 4***

***The use of dried meat should be exempt from special legislation.***

***Proposal 5***

***Directive 91/497/EEC should be changed in order to allow the chilling of fresh meat during transportation to the benefit of both companies and consumers.***

***Proposal 6***

***Directive 91/497/EC should be reviewed in order to reduce, wherever possible, the burdens on small abattoirs without compromising fresh meat safety standards.***

***Proposal 7***

***Microbiological standards in Directive 94/65/EEC should be simplified taking into consideration the proportion of the specific health risks involved.***

15. The marking of food products and transport documentation also creates difficulties for business. Some directives oblige producers to place "health marks" on their labels as identification that the product originates from an approved establishment. The objective of health marking is identification of the production unit to facilitate traceability of foodstuffs. Many directives also contain the obligation to place a health mark and/or the registration number of the factories and/ or other specific declarations on transport documents. Within

the directives, the use of the health mark and/or the registration number of the factories and/or other specific declarations is not consistent. It is sometimes not possible to properly identify the product categories that must have the health mark applied. Interpretations may also differ within and between the Member States.

16. Therefore, procedures for marking and for transport documentation can impose a heavy burden on trade. Concrete examples are distribution centres, where many products of different origin (and thus different registration numbers) are wrapped together. The hygiene Directive for milk requires that each separate number is identified in the documents. It is often not clear to what level in the distribution chain detailed transport documents must continue to be provided.

***Proposal 8***

***The requirement to use health marks and to provide detailed transport documents should be less strict and more proportionate. A radical revision of this set of rules is needed.***

17. Another example of complexity is the legislation on wild game. Directive 92/45, by imposing a system of skinning and plucking of these animals, which is not demonstrated on a scientific bases, involves costs constraints for trade, in particular wholesale trade, and inhibits the retention of a market where consumers are attached to a traditional presentation with "hair and feather".

***Proposal 9***

***Directive 92/45/EEC on wild game should be reviewed in order for the provisions to be built on a rigorous risk analysis.***

### **III. Using risk analysis**

18. Directives should base their rules on a consistent use of risk assessment for all products involved and be unequivocal between the various product categories. Currently, large differences in rules exist for different product categories even though the risks are the same. All food hygiene directives should refer to the use of appropriate risk assessment as a basis for regulation. Appropriate risk assessment must take into account the size of the manufacturing unit, the speed of execution and other factors influencing the identification of critical control points. Risk analyses should also be used to examine whether or not a group of products should be subject to prescriptive rules setting out methods of control or whether greater freedom can be provided to allow business of different sizes and types to meet the same high overall standards.

***Proposal 10***

***In all food hygiene directives reference should be made to risk assessment as a basis for future measures.***

19. If an approach to food hygiene based on risk assessment is to be effective development and dissemination of the approach is needed. In particular: improved health data in respect of both human and animal populations; improved data on the risks throughout the food production chain; improved coordination and cooperation between services, laboratories etc.; and improved information and education of farmers, traders, industry and consumers.

**Proposal 11**

***Data for, and understanding of, risk assessment should be improved and widely disseminated.***

20. The Hazard Analysis and Critical Control Points approach (HACCP) is a system of control giving industry primary responsibility to ensure that standards are enforced. The controlling authority has the responsibility to check the HACCP plan of the company, to check the microbiological laboratory, and to verify the records of the company to see that corrective action has been taken.
21. The principle of HACCP can be an important contribution to simplification without compromising safety standards. However, the principles need to be applied flexibly since all twelve stages of the full system would create disproportionate burdens on SMEs and some parts of the food distribution sector. Methodology should remain the responsibility of producers and not be the subject of additional Community legislation, as has been the case with HACCP procedures for the fish industry. Also the differences between the definition of HACCP in Article 3 of Directive 93/43/EEC and the wording in the various vertical Directives should disappear.

**Proposal 12**

***Common principles of Hazard Analysis and Critical Control Points approach (HACCP) should be used as the foundation of all food hygiene legislation, taking into consideration the risks involved.***

**IV. Harmonizing, application and enforcement of regulation**

22. Because of the political difficulties and national sensitivities involved in framing food hygiene directives many types of national derogation have been left in place. Although these exceptions are sometimes justified on objective grounds, in other cases they can give rise to barriers to trade. The unequal application of rules between Member States is keenly felt by many in the industry to be a distortion of competition.
23. Derogations are granted by national authorities and communicated to the Commission. For example, Article 10 of Directive 92/5/EEC provides for the possibility of temporary and limited derogations from certain technical requirements for establishments which have not yet been classified as falling under either Article 8 or Article 9 and/or do not yet comply with all requirements by the date that this Directive comes into force. It is reported that some 6000 establishments within the meat chain have been granted such derogations. Many companies fear that by 1 January 1996 many of these will still not have complied. The question then arises as to how the Commission and Member States will ensure that those who have invested in order to comply are not penalised.
24. A similar issue arises in the dairy industry, where a comparable number of temporary derogations have been granted under Directive 94/695/EC. In relation to the Milk Hygiene Directives (92/46/EEC and 92/47/EEC) possibilities for permanent and transitional derogations are numerous:
  - \* transitional derogations from Directive 92/47/EEC cover approximately 4000 dairy plants,
  - \* derogations for limited production, which currently are negotiated, may

- include 2000 plants on a permanent basis,
  - \* derogations for "traditional" products are being discussed and may include 1000 products,
  - \* derogations for "cheese not sold before 60 days of maturation".
25. With few exceptions products manufactured under derogation may move freely within the Union. The practice of derogations, which is the result of overly detailed and rigid texts and which lead to distortions in competition, should be curbed. In the framework of the application of HACCP principles, it is thus necessary to undertake a general review of product-specific directives in order to keep only the derogations which are necessary to specific production and marketing conditions, which concern, in particular, SMEs.

**Proposal 13**

***A review of product-specific directives based on a general application of HACCP principles should lead to less detailed and prescriptive provisions, which could limit the recourse to derogations.***

26. The confidence of producers in the way in which legislation is implemented and monitored both inside the Union and at its external borders needs to be reinforced.
27. The Single Market for food products requires common standards of control at external borders. Public health protection measures applicable to the import of foods of animal origin from third countries outside the European Union are already harmonised. This should create the conditions in which control measures for food products are at the same level no matter whether they are imported or internally produced. However, lenient control in some harbours has increased their attractiveness to importers of food products at the expense of other harbours and, possibly, the health and safety of EU's consumers. There should be regular contact between food control authorities and industry, at the European level, to ensure that uniform food control measures are being taken.
28. The monitoring methods used in the Member States should be harmonised and supervised by a body of Community inspectors. Ideally control mechanisms should be supervised by a reinforced team of Commission inspectors. Their inspections should be by the way of unannounced visits to a selected number of establishments, together with the controlling authority. It is critical to ensure that actual effectiveness of compliance is tracked over time. A similar approach to enforcement should also be applied inside the Community.

**Proposal 14**

***Enforcement of food hygiene legislation should be equally effective across Member States, both inside the Union and at its external borders. Standards of enforcement and control in the Member States should be harmonised and supervised by the Community inspectorate.***

## **V. Choice of legal instruments**

29. Given the political sensitivity of public health, Member States have generally preferred directives to EU regulations, even where the initial proposals from the Commission have been in the form of regulations.

30. Adopting the so-called "new approach", the horizontal directive, 93/43/EEC, sets out essential requirements and leaves Member States free to choose whether they wish to have more stringent criteria (whilst allowing cross-border trade in all products that conform to the essential requirements).
31. In the case of both the older directives and the "new approach", there remains a real danger that Member States will add extra provisions when transposing the legislation and will thus contribute to overcomplexity, additional costs to businesses and, ultimately, distortion of competition.

***Proposal 15***

***On important matters, the Community should consider the use of Community regulations in order to ensure a high and equal level of protection. In other areas, the Union should, wherever practicable, make use of alternative instruments such as mutual recognition, subsidiarity and codes of conduct drawn up by the trade bodies concerned.***

**VI. Closer harmonisation with internationally recognised practice**

32. International trade is increasingly important in the food sector. European industry should be well-placed to exploit these opportunities. European legislation on food hygiene should, therefore, use the Recommended International Code of Practice, General Principles of Food Hygiene of the Codex Alimentarius (basis of free trade within the scope of the WTO Agreement) as a reference (as well as being based on the principles used to develop the system of HACCP, as described in Article 3 (2) of Directive 93/43/EEC). Efforts must be made to adjust European legislation on food hygiene to the standards of the Codex Alimentarius, where these are satisfactory. For example, common positions on microbiological standards for pathogens, listeria and salmonella in particular, should be developed. In order to make sure that this happens, the Commission should play a strong and independent role in Codex.

***Proposal 16***

***European food hygiene legislation should be referenced to the Codex Alimentarius' standards where these are satisfactory. The Union should play a stronger role in developing a common Community position which can be adopted at the world level.***

## 4. EMPLOYMENT AND SOCIAL POLICY<sup>1</sup>

### I. ECONOMIC PROGRESS AND SOCIAL PROGRESS GO HAND IN HAND

1. Economic progress and social progress are dependent on one another. Therefore, the Community has to concentrate its efforts not only on its economic progress but has also to take into account its social dimension.
2. Consensus and peaceful social relations constitute essential conditions for stability and prosperity. An efficient economy is the bedrock of social progress; its redistribution mechanisms can create the right conditions for a worthwhile existence even for those who cannot make such provision by their own means.
3. This is why social rules are justified not purely by ethical or moral considerations, but also have an economic *raison d'être* and economic aims. The social environment, the social partners' freedom to negotiate working and employment conditions, the prevention of occupational risks, and social protection systems are likewise conditions for economic success.
4. In stressing the strong links between economic policy and social policy, it has to be recognised that social aspirations must not be allowed to overburden the economy nor prevent people and undertakings from assuming their own responsibilities, to the point of creating obstacles to economic growth and job creation. Social policy must be at the service of all, including those in work, but more so for the jobless. This is an essential point in an environment which is characterised by a very high level of unemployment and by the problems firms are encountering in extending their markets, boosting their investment and creating sufficient jobs.
5. As far as social relations are concerned, more flexibility to enable firms to adapt quickly to changing markets, technologies and consumer expectations, and to enable workers to satisfy their career aspirations. Social legislation must take account of all this so as not to impair competitiveness and job creation.
6. The group is aware that the excessive level of unemployment in the Community has a wide range of causes, and that it would be wrong to place the blame primarily with social legislation. However, it does feel that it is necessary to explore any means which might reduce unemployment, including – where appropriate – the unjustified level of costs due to complexity and rigidity in social legislation. In this regard, the group stresses that the important thing should be to examine national legislation, given that

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1. Sir Michael Angus, Mr Horgan, Mr Rinnooy Kan and Mr Schoser have expressed a dissenting opinion with respect to section II "labour law" of this chapter, which is reproduced at the end of the chapter. Mr Carniti has expressed a dissenting opinion with respect to section III "health and safety at work" of this chapter, which is reproduced at the end of the chapter.

the relevant Community legislation, looked at principally from the angle of subsidiarity, tends to be somewhat modest. However, the group does indicate certain examples of simplification of Community law which might help to facilitate the creation of jobs.

## II. LABOUR LAW

### COMMUNITY POLICY

7. If we leave aside the directives on occupational equality for men and women and the directives and regulations in the field of road transport, Community labour law currently extends to seven directives.

#### Labour law directives

1. **Council Directive 75/129/EEC of 17 February 1975** on the approximation of the laws of the Member States relating to collective redundancies as modified by Council Directive 92/56/EEC of 24 June 1992.
2. **Council Directive 77/187/EEC of 14 February 1977** on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses.
3. **Council Directive 80/987/EEC of 20 October 1980** on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer.
4. **Council Directive 91/533/EEC of 14 October 1991** on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.
5. **Council Directive 93/104/EEC of 23 November 1993** concerning certain aspects of the organisation of working time.
6. **Council Directive 94/33/EC of 22 June 1994** on the protection of young people at work.
7. **Council Directive 94/45/EC** on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community scale groups of undertakings for the purposes of informing and consulting employees.

8. Labour law within the Community is faced with three basic problems, which may at times be acute. First of all, the need for Community action is a perennial problem and may be difficult to justify. Quite simply, the division between what is proper to the Community and what is proper to the Member States has not been properly settled. Secondly, where the Community does intervene in the form of a directive, it often does so in too much detail or in such a complex fashion that the objectives behind the measure are no longer clearly identifiable and the directive then appears to be more an adjunct to national legislation than a means of bestowing harmonisation or convergence on such legislation. In the absence of common social principles, the complexity of certain directives leads to a quest for compromises on secondary issues to the detriment of the essential elements. Finally, the role of social partners and the conclusion of agreements between them, which could avoid legislative action, are not sufficiently developed.

## PROPOSALS

### A new approach

9. One solution might be in the European Union recognising certain fundamental rights and principles. By this we mean rights and principles which are applicable directly to all, which can be invoked by all, and which are formulated in a simple way which enables them to be adapted to the full range of situations. Recognition of such rights and principles would effectively make the Member States – and more especially the social partners – responsible for giving them concrete form. At the same time, all workers and all employers would have an assurance that such fundamental rights and principles would be respected by all the public institutions – more particularly at national level – and by the social partners. Recognition of these fundamental rights and principles would also help to give the people of Europe a feeling of belonging to a Community and a sense of solidarity. Moreover, the existence of these common values within the EU may encourage third countries to take them as a point of reference for their own social policies.

#### ***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.***

10. If such fundamental rights and principles were to be recognised at European level, there would be a substantially reduced need for Community regulatory action in that implementation of such rights and principles would, to a very great extent, be a matter for the Member States and the social partners. In such a case, Community legislation should primarily focus on trans-national situations such as the status of migrant workers and worker information and consultation procedures in multinational businesses.

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

***Community legislation should primarily focus on recognized trans-national problems. The relevant legislation should be as simple as possible.***

### General proposals

11. The proposals put forward with a view to improving the way Community initiatives are prepared and applied (see Chapter 1) are also relevant for social policy; so there is no need to reproduce them. There is one such proposal, though, which is particularly significant in terms of labour law. A social culture finds expression first and foremost in a language. This gives rise to comprehension and interpretation problems in the various directives. The terminology used in such directives should be coordinated.

**Proposal 3**

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

12. The Commission should play a more active role in order to promote a common understanding and application of Community law,

**Proposal 4**

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

13. It should be possible to go a step further. For maximum effectiveness, analysis and inspection procedures must have a broad information base. In addition to information and analyses which the Member States provide on their own systems, it would seem expedient to extend this process to take in the social partners and other competent organisations. The results of their work must be made public.

**Proposal 5**

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

**Specific proposals**

*Choice of instruments*

14. Directive 94/55 on European Works Councils deals with a trans-national subject. It is characterised by two elements: firstly, it creates a new law rather than harmonising existing national provisions; secondly, it gives priority to collective bargaining and provides for a legislative approach only where such negotiations fail. In such cases, a regulation would be preferable to a directive. If the Protocol on Social Policy, which served as the basis for this directive, makes no provision for the use of regulations, it must be amended.

**Proposal 6**

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

15. An enhanced role for the social partners, as enshrined in the Protocol on Social Policy, is desirable. Their activity should make legislative initiative on the part of the Community superfluous. All the more reason, then, for the social partners to agree as soon as possible on what the arrangements should be. The Community and the Member States should refrain from altering the conditions for negotiation by setting up beforehand the rules which would be applicable in the absence of an agreement between social partners.

**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.***

*Content of certain directives*

16. Directive 91/533 concerning information for employees on their conditions of employment can be simplified. The objective the Community is pursuing is incontestable; but if only a principle were stated clearly, it could be left up to national legislation or the social partners to give it concrete form, with the Community assuming a watchdog role. National legislation can also take into account the special needs of small and medium-sized enterprises in order not to create impediments to new employment. The provisions in the Directive relating to expatriate workers should, however, be maintained.

**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 would simplify Directive 91/533.

17. Directive 93/104 on the organisation of working time is not a recommended model. Several provisions of this Directive are probably not in line with the present needs of business. For example, the deadline of 4 months for the compensation of overtime does not correspond to the idea, more and more admitted, that a one year period is more suitable to the necessary flexibility for the organization of work.

**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.***

18. Part-time work is one of the most promising avenues for reducing unemployment, but if the moves are to produce significant result, part-time working must cease to be concentrated on low-skilled jobs and become more attractive. In this direction, Community action could contribute in a simple way to the creation of jobs by establishing at least equal treatment between

part-time and full-time workers. This line of argument can be generalised to other flexible forms of employment.

***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.***

### **III. HEALTH AND SAFETY AT WORK**

#### **IMPORTANCE OF HEALTH AND SAFETY**

19. Health and safety at the workplace are essential. Accidents not only harm the worker involved but also place a burden on to the employer concerned and on society. According to the Commission, the direct costs paid out in the Community in compensation for industrial accidents and occupational diseases were nearly ECU 27 000 million in 1992. Accidents and illness at work account for approximately 7% of all social security expenditure in the EU.

#### **COMMUNITY POLICY**

20. The Community legislation on health and safety at the workplace addresses the obligation to prevent accidents and disease at work. Other aspects such as responsibility to, and compensation for, workers, and sanctions, are not dealt with, because their application are entrusted to the Member States.
21. The Community initially legislated on health and safety at work on the basis of Article 100 of the Treaty. Since the Single European Act, the European legal framework to ensure health and safety at work has been principally based on:
  - harmonized provisions based on Article 100a, which subjects the introduction of products and equipment within the internal market to design, production or marketing rules in order to ensure their free circulation;
  - provisions based on Article 118a and setting minimum requirements for the protection of the health and safety of workers, including rules in the use and maintenance of the abovementioned equipment.
22. Legislation based respectively on Articles 100a and 118a thus pursue different objectives. Directives based on Article 100a, for example the machinery Directive, impose obligations prescriptions to ensure the free movement of goods within the internal market. Directives based on Article 118a introduce minimum requirements that Member States are free to upgrade. This difference can render the situation particularly complex, for example if requirements for the design of machines or equipment, which are stricter or divergent from those imposed by directives based on Article 100a,

are incorporated into provisions based on Article 118a .

23. Article 118a covers the overall working conditions which affect health and safety. Indeed, it provides that Member States shall pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers, and shall set as their objective the harmonization of conditions in this area, while improving the improvements made.
24. Article 118a emphasizes that the relevant directives should avoid imposing administrative, financial and legal constraints in a way which would hinder the creation and development of small and medium-sized enterprises.
25. Framework Directive 89/391/EEC is at the centre of the legal system constructed by the Union to cover health and safety at work, and is the basis on which specific directives - the "daughter directives" - are adopted. This framework Directive is based on the principle of the adjustment of work to man and contains general principles concerning the prevention of occupational risks, the protection of safety and health, the elimination of risk and accidents factors, the informing, consultation, balanced participation and training of workers and their representatives.

#### **EFFECTIVENESS OF COMMUNITY POLICY**

26. The business community queries the necessity of complementing Article 100a directives by special minimum requirements under Article 118a, given employers' general responsibility to protect the health and safety of workers in all work-related aspects.
27. It is generally acknowledged that minimum standards to ensure health and safety at work should be the same in large and small enterprises. However, the procedures provided for in the directives are not readily applicable in small companies which do not have the management structures and methods that would enable them to put in place complicated procedures. This underlines the need for simple regulations. For example, the procedures and the extent of risk assessments introduced in the proposal for a Directive on Physical Agents are considered by business as too complex. It is therefore essential to develop administrative procedures which do not discourage the creation and development of small and medium-sized enterprises and thus of more employment.
28. There are also complaints that Community legislation in this field is not always based on well-established scientific data.
29. It is questioned why the specific directives unnecessarily reaffirm - sometimes in different words - obligations already imposed on employers in the framework Directive. Unjustified nuances should be eliminated.
30. Whilst recognizing the legal and moral obligation of employers vis-à-vis the safeguarding of health and safety of workers, questions have been raised about certain inequitable obligations imposed on employer, for example, with

respect to events beyond his control. An absolute guarantee against all risks is practically impossible and certainly not part of minimum requirements.

31. Some have raised the question of the costs which would be involved if no Community action were taken in the area of health and safety at work. In this case, unjustified competitive advantages would appear in countries where the absence of Community harmonization would lead to the retention of substantially weaker legal requirements than those which prevail in more advanced countries.

## **PROPOSALS**

### **INTEGRATING DIRECTIVES**

32. The existence of a great number of directives, including those based on Article 100, adversely affects the understanding of health and safety legislation. The terminology is not always the same, there is overlapping between various directives, and specific directives often reaffirm obligations already imposed on employers in the framework Directive.

#### ***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***

33. It is essential for Community provisions to be transposed and practically implemented in all Member States. Accordingly, the first priority must be transposition and application in all Member States of the framework Directive adopted in 1989 and the specific directives implementing it in order to prevent distortions of competition in the internal market.

#### ***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.***

#### ***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 within the subsequent year.***

#### ***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.***

34. The machinery sector provides a good example of the problems which may arise from the interaction of directives based on Articles 100a and 118a. The machinery Directive (89/392/EEC) contains an annexe specifying the requirements to be met by machinery being placed on the market for the first time. The work equipment Directive (89/655/EEC) partly covers the same requirements by imposing the measures that an employer shall take to ensure that the work equipment can be used by workers without impairment to their safety or health. As far as new machines falling within the scope of the machinery Directive are concerned, an employer should not be responsible for a defect in those characteristics, unless the defect has been revealed during the operation of the machine.

***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 (89/686/EEC).***

However, the employer should still be obliged to ensure that machinery or personal protective equipment is used in suitable circumstances, in particular, that the organization of work, the equipping of workplace, the training and information of workers are adequate and that the global conditions for health and safety at work, for example the noise level, are secured.

35. There is a fundamental divergence between the objectives pursued by legislation respectively based on Article 100a and 118a. Directives based on Article 100a impose harmonized prescriptions based on a high level of health and safety protection to ensure the free movement of goods within the internal market, whereas article 118a introduces minimum requirements related to the health and safety of the workers which Member States are free to raise. This divergence may create genuine incompatibilities, for instance if requirements for the design of machines or equipment are incorporated in directives based on Article 118a.

**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.***

**SMALL AND MEDIUM-SIZED ENTERPRISES**

36. The level of safety and health must be the same in all enterprises, independent of their size. The cumulative effect of our proposals will be beneficial to SMEs. Nevertheless, the directives give the impression of having been designed for large companies. Legislation should be designed so that it can be easily applied in small businesses. It is important to pay particular attention to the needs of SMEs right from the beginning of the drafting of health and safety legislation.

**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.***

**SCIENTIFIC EVIDENCE**

37. New scientific findings may demonstrate an increased or reduced concern with health and safety at work. For this reason, periodical review of the directives and their annexes are necessary in order to assess their continuing relevance. On the other hand, technological progress in equipment development can render initial health and safety concerns no longer relevant. This is particularly the case with the display screen equipment Directive (90/270/EEC).

**Proposal 20**

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

**Proposal 21**

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

**Proposal 22**

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

## SIMPLIFYING EXCESSIVELY DETAILED RULES

38. Employers' organizations complain that the specific "daughter" directives based on the framework Directive (89/391/EEC), and in particular their annexes, offer unduly prescriptive and detailed solutions to health and safety problems.

### ***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 healthy workplace;***
- ***proper training;***
- ***safe work equipment;***
- ***provision of protective equipment.***
- ***etc.***

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

39. The Directive on manual handling of loads (90/269/EEC) is hard to implement and discourages job creation. A Directive on monotonous work could bring the same practical problems.

### ***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.***

## RISKS IN SPECIAL ACTIVITIES

40. There are activities intrinsically hazardous from which known risks cannot be eliminated even by the taking of every reasonable precaution. Particular examples are private fire services, private guards, employed football players, etc. The framework Directive acknowledges this without limiting the employer's obligations in respect of such risks (with the exception of specific public service activities such as the armed forces and the police). The employer's duty in such cases should be precisely defined.

### ***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.*

## **MODIFICATION OF EXISTING WORK EQUIPMENT**

41. According to the Work Equipment Directive (89/655/EEC), employers must make equipment which was already in use before the end of 1992 comply with the detailed requirements of the annexe of this directive before the end of 1996. These requirements are modelled - although not totally - on the detailed safety requirements to be met by any new machines according to the Machinery Directive (89/392/EEC). This adaptation of existing machines presents a costly burden. The recent proposals of the Commission on the minimum safety and health requirements for the use of work equipment by workers at work [COM(94)56 final] do not bring any major relief to this situation: according to UNICE, estimated costs of conformity with the requirements of the proposed amended directive in the UK (1997-2006) are UKL 200 million at 1994 prices (costs for implementing the original Directive in the UK is estimated by the CBI at between UKL 8 million and 15 million over 10 years). Estimated costs of bringing existing machines into line with the requirements of the existing Directive in France are FF 30000 million for the metalworking industry alone; in Belgium, estimated conformity costs for existing machines in some companies employing between 500 and 2000 people are thought to be in the range of BFR 5 to 25 million per company. In Germany, an estimate 20000 bakeries would be liable for modification work - the modifications of old dough mixers could cost, depending on their size and age, between 2000 and 10000 DM each; as for meat slicers, about 300000 German businesses would need to have their equipment modified, at an estimated cost ranging between 1000 and 2000 DM, including assembly. Costs of modification also concern "new" machines that have been placed on the market during the transitional period of the Machinery Directive (between 1992 and 1995) and built according to national requirements. Such costs necessarily put major constraints on maintaining and creating employment. As national health and safety standards already apply to such work equipment, a greater flexibility could be achieved for the modification of old work equipment, taking into account the regular investment cycles.

### ***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.***

**Statement of**  
**Mr. Alexander Rinnooy-Kan, Dr. F. Schoser, Mr. J. Horgan**  
**and**  
**Sir Michael Angus**

We find the section of Chapter 4 dealing with labour law most unsatisfactory and in particular we cannot support Proposal 1.

This proposal asks the Commission to consider creating a set of fundamental rights and principles relating to labour law which would be directly applicable in Member States.

The main justification suggested for this text is that such rights would lead to simplification. We do not agree with this assertion.

The establishment at the Community level of fundamental rights which are directly applicable would be extremely difficult to achieve, would increase administrative and legal complexity and instead of simplification, could lead to endless litigation and legal uncertainty for business. Such burdens and uncertainties would ultimately damage employment.

Directly applicable rights could also seriously damage long standing social traditions in Member States and carefully balanced relations between social partners. This cannot be justified.

The proposal on fundamental rights therefore raises basic but complex constitutional issues which require informed debate and wide consultations. It does not represent a practical contribution to the immediate requirements for simplification and we feel strongly that it goes beyond the mandate of the Molitor Group.

Our objections as described here should not be seen as modifying our overall support for the Report of the Group and in particular its general recommendations for simplification.

**Dissenting opinion from Mr Pierre Carniti regarding  
section III "health and safety at work" of chapter 4**

The section III on health and safety at work is unacceptable, because it undermines existing Community policies in this area.

## 5. ENVIRONMENT<sup>1</sup>

### COMMUNITY POLICY

1. The protection and improvement of the natural environment of the European Union is vital for the health and welfare of present and future generations, and is essential for sustainable economic growth and employment. The environment must therefore be a high priority for the whole European Union.
2. Although the environment was not mentioned in the EEC Treaty, Community environmental policy now plays a key role. Legislation began, however, even before the Single European Act introduced a specific commitment to Community actions and set out specific objectives and principles in Article 130r which became -and remains- the usual basis for subsequent environmental regulation. The Treaty on European Union created for the first time a Community policy, aiming at a high level of protection based on specific principles: of preventing pollution, rather than dealing with its effects; that environmental damage should be rectified at source; and that the polluter should pay. It also stipulated that environmental protection requirements be integrated into the definition and implementation of other Community policies; and explicitly recognised the link between economic development and the protection of the environment.
3. Community policy aims to protect and preserve the environment through a range of policies which include the allocation of Community funds to environmental projects as well as over 200 Community acts, including around 90 regulations and directives. The intended priority has been to preserve the elements vital to human life: air, water, the atmosphere, flora and fauna, silence.
4. Specific measures range from common policies for waste management and the transport of hazardous waste to the approximation of Member States' laws on lawnmower noise, and including a directive on the conservation of wild birds.
5. Just as the reasons for Community action have evolved over time, as reflected in the changing legal bases in the Treaty, so has the approach to policy design. The bulk of existing legislation, dating from the 1970's and 1980's, was a somewhat ad hoc response to specific political pressures and to growing interest in green issues. These mainly vertical directives were typically targeted at individual point of source emissions and set specific limit values or targets for each of a wide range of pollutants. Limits were changed, and legislation extended to cover new

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1. Mr Carniti has expressed a dissenting opinion on this chapter, which is reproduced at the end of the chapter.

pollutants, as new scientific evidence became available.

6. This early regulatory approach tended to be too prescriptive and too rigid, and hence not effective in achieving the Community's environmental objectives. It became increasingly apparent that such an approach did not adequately protect the environment, nor recognise the interdependence of environmental issues.
7. Recognition of these difficulties led to the development of a new approach which aims, as set out in the Fifth Environmental Action Programme of 1992, to set clear objectives whilst leaving Member States and/or business to decide how best to achieve them. It embodies three main principles:
  - reliance, when possible, on market based mechanisms rather than command and control regulation;
  - a move away from highly prescriptive rules towards greater flexibility for Member States and/or businesses to decide on implementation that would meet clearly defined objectives;
  - a move towards environmental quality standards and general permitting requirements.
8. The Commission has embarked on a major review of the main body of environmental legislation and, as confirmed in the 1992 Edinburgh European Council conclusions, it intends "to simplify, consolidate and update existing texts, particularly those on air and water, to take new knowledge and technical progress into account".

## **THE EFFECTIVENESS OF COMMUNITY POLICY**

9. The Treaty on European Union and the 1992 Fifth Action Programme on the Environment are important steps towards constructing the stable and consistent policy framework that industry needs and that will better protect the environment than did the policies of the past.
10. Industry seems ready to respond to an increased reliance on market based mechanisms, so devoting less management time to implementing command and control type regulations and more to devising appropriate innovations to meet -or beat- the desired targets. Costs are likely to be lower, innovation more rapid, processes more flexible and employment higher, with greater positive impact on the environment.
11. Although there are many options for simplifying current regulation, it is also necessary to look forward to the next generation of regulation; that should not only take account of the constraints under which the private sector operates but also aim to harness its vast potential for innovation and efficient management of costs. Despite recent policy improvements, there are still several areas where environment policies could be made more effective and less burdensome:

- **IMPLEMENTATION AND ENFORCEMENT**

No Community policy instrument is effective unless it is transposed appropriately into national law by the specified deadline and properly enforced. Industry is especially concerned by uneven implementation (both through inconsistent transposition and through weak enforcement). Furthermore, scepticism about national enforcement can lead to pressures for overly prescriptive measures, even to burdensome command and control regulations at European level.

- **COST BENEFIT ANALYSIS**

Evaluation of costs and benefits now forms a part of any new proposal, and is a useful framework for assessing the overall impact on the European economy and environment, taking into account present and future effects on industry, employment and consumers, as well as the risk to the environment. The cost-benefit analyses have been of variable quality and have put too little emphasis on showing that the expected cost burdens are in reasonable proportion to environmental benefit.

- **DEFINITIONS**

Definitions are, in certain cases, inconsistent across related directives.

- **STANDARDS**

Industry complains that standards and controls for substances are in some cases set without sufficient evidence that they cause serious harm.

- **CONSOLIDATION**

The piecemeal approach of the past has left a legacy of overlapping and related directives which may have an onerous impact when taken together. In such cases (for example 17 water directives) there is a need to re-examine the body of legislation as a whole, with a view to radical consolidation into as few pieces of legislation as possible.

- **INFLEXIBILITY**

Although maximum limits are necessary for dangerous materials, there is a tendency to inflexibility by setting maximum limits on individual emissions rather than setting limits - or minimum standards - for overall emissions where that would have equivalent effect.

- **DEGREE OF HARMONISATION**

Standards may be set that are inappropriate for the national conditions in different Member States. On the other hand, there are complaints that the existence of diverse systems in member states distorts competition and discourages trade. The appropriate intensity of harmonisation has to be carefully considered for each policy measure.

## **PROPOSALS**

12. This section sets out a number of general proposals for simplifying current and future environmental regulation, followed by specific proposals for

tackling regulation in the areas of waste, water, overall pollution, and a number of other areas where regulation has a particular impact on costs, competitiveness and employment.

## GENERAL PROPOSALS

### POLICY DEVELOPMENT

13. The group welcomes the new approach and the initiative of the Commission in bringing forward proposals for its implementation. Allowing Member States, but more especially industry, a greater degree of freedom in choosing how to implement specific targets can lead to major efficiency improvements and, over the longer term, enhance innovation and so competitiveness.

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

***The new approach to environmental regulation, which stresses the setting of general environmental 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.***

14. Policy will, in general, be more effective if it is targeted directly on the fundamental objective of quality of the environment rather than on intermediate or proximate targets. A greater emphasis on environmental quality objectives would have significant impact on the efficiency of EC regulation without loss of effectiveness, and would avoid excessive costs through unnecessary harmonisation. This does not call into question the current policy of fixation of differentiated emission objectives according to the existing conditions in the various zones of the Community.

#### ***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.***

#### ***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.***

15. The environment is sensitive, complex, and highly interdependent; intervention at one point can have considerable direct and indirect consequences on other points in the system. As Exhibit 1 shows, the integrated chain management of substances suggests that balanced policy should aim to match the throughput of the substance with sustainable production while minimizing leaks from the system.

**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.***

16. There are clear potential environmental and economic benefits from giving firms greater freedom to choose how they adapt to environmental targets, but it remains essential to ensure effectiveness through appropriate enforcement. Governments should be encouraged to develop monitoring methods that will be effective, without imposing undue burdens on business. These might include systems of spot checks or auditing by approved environmental verifiers.

**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.***

**IMPLEMENTATION AND ENFORCEMENT**

17. There are delays and failures to transpose Community directives into national law; cases of inadequate transposition; and cases of failure to enforce compliance. This can cause resentment, destroy confidence between industry and the regulators, reduce public support for the European institutions, distort competition and impact on jobs. The framework model will be more acceptable to business, the European Parliament, and other interested parties, if it is underpinned by greater confidence in Member States' commitment to deliver real environmental improvements. The European Environmental Agency could contribute, through the analysis of the implementation and enforcement of Community policies.

**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.***

**ENVIRONMENTAL IMPACT ASSESSMENT - THE UNLEVEL BUILDING SITE**

18. The Environmental Impact Assessment Directive requires that an environmental impact assessment be made of projects which are likely to have significant effect on the environment. The costs of an environmental impact assessment process are, in general, low; although there are complaints about excessive costs caused by governments' procedural delay and interference with project design procedures. Some firms have saved money, for example, when the environmental impact assessment helped avoid expensive public enquiries, but businesses also claim that their competitiveness is damaged by Member States' different

interpretations, with some applying the Directive more widely or less deeply than others. This hampers those bidding for contracts in other member states and, through increased uncertainty and delays, could damage employment.

19. Complaints about an unlevel playing field appear to be supported by studies showing a wide variation in both the quantity and quality of environmental impact assessment carried out in the Member States. Member States have set very different national criteria for determining whether or not a project must be assessed by virtue of its nature, size or location.

***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).***

20. The Community has stressed its commitment to the evaluation of environmental impact in the presentation of Member States' regional development plans for action under the Community's structural funds, and should further reinforce implementation of this approach.

***Proposal 8***

***Major construction and infrastructure 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.***

## **COST BENEFIT ANALYSIS**

21. The Commission now presents a summary cost-benefit analysis as part of the explanatory memorandum for any individual legislative proposal. Nevertheless, proposals tend to rely for their justification more on a general appeal to the Treaty principles than on being justified in cost-benefit terms (the latter could of course include qualitative as well as quantitative assessments). Costings are poor, and detailed studies of compliance or other costs are often delayed until after a proposal has been brought forward. It must, however, be recognised that the move to the framework approach - setting objectives but leaving implementation to the Member States - makes it more difficult to estimate costs (when the means of implementation are as yet unknown). Nevertheless, scenario analysis could present a range of options showing under what cost-benefit and risk assumptions the proposed objectives would justify policy intervention.
22. The analysis should be presented in an accessible form, explaining who benefits and who bears the costs. This would certainly help to deal with political pressures, whether within the Council or in the Parliament, to include detailed specifications that do not lead to effective regulation.

**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.**

23. Market based methods tend to increase flexibility and minimize the adverse consequences of intervention.

**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.**

**DEFINITIONS**

24. Problems of interpretation for firms and governments would be reduced if definitions were consistent across related directives, and consistent wherever possible with definitions used in international bodies or in existing legislation of major international competitors. Where the European Union is ahead of its international competitors in this field, there is the added potential advantage that it may be able to influence bodies such as the International Standards Organisation or the new World Trade Organisation.

**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.**

**SPECIFIC PROPOSALS**

**WASTE**

25. The definition of "waste" in the Waste Framework Directive is too broad, including substances that are still within the commercial cycle; and unclear, since the precise effect of the definition depends on how it is transposed and interpreted which increases the complexity of decision making. By defining as waste substances which might be suitable for recycling or reuse it imposes unjustified cost burdens on business, and creates disincentives to process innovation or to creating new markets for recycling and reuse.

**Proposal 12**

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

26. There are 12 pieces of legislation affecting waste, and their cumulative effect is perhaps the single biggest burden on business in the area of environmental legislation. 4 further pieces of legislation are awaiting

adoption, and 4 more are being thought about. Whilst proposal 12 above would go some way to resolving difficulties with the Waste Framework Directive, the real need is for the Commission to review all current and proposed legislation together. Piecemeal solutions are unlikely to lead to the most effective and efficient means of reducing the environmental impact of waste.

***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.***

27. As many Member States are acting to reduce rapidly their waste volumes, barriers to the transport of non-hazardous waste across borders may contribute to unnecessary environmental damage and increase business costs through inefficient use and development of capacity. As the decision of the European Court of Justice of 9 July 1992 stated: "waste, recyclable or not, should be treated in the same way as products whose circulation, according to Article 30, should not be prohibited. To remove unnecessary barriers, and contribute to protection of the environment, particularly groundwater, the Community should rapidly adopt minimum standards for landfill.

***Proposal 14***

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

***Proposal 15***

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

28. Different policies on product waste in different Member States deter competition and keep costs unnecessarily high. A significant degree of harmonisation of product waste policy, based on flexible agreements between industry groups and regulators, should lead to enhanced competition; inappropriate cartel-like behaviour must, however, be prevented.

***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.***

***Proposal 17***

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

29. The Packaging and Packaging Waste Directive has yet to be fully implemented, but has been criticised by some parts of industry as regulation without harmonisation. Management time is wasted on studying 15 different national implementing measures. This may deter exports, particularly from small and medium sized enterprises to new markets in the Community. And potential economies of scale could be lost. There is no easy solution, but there is a lesson for future legislation to build in minimum standards for export or mutual recognition. As this is the first Directive to embody the principles of voluntary agreement to achieve objectives set out in legislation, it is especially important that the effectiveness of the approach is assessed, and that any distortions of competition are dealt with at an early stage.

***Proposal 18***

***The implementation of the Packaging and Packaging Waste Directive (94/62/EC) should be reviewed by the Commission, two years from the date by which the Directive must be implemented in national law, in order to assess the extent of effective mutual recognition and to report any specific problems.***

**WATER**

30. The costs of water and of effluent disposal have increased significantly in recent years. The cumulative effect of Community legislation has not helped to reduce this cost and may have unnecessarily increased it. Companies either pay more for treatment or have to install and run their own effluent treatment plant. Adopting the flexibility principle, looking at the overall impact of various substances - allowing trade-offs - rather than setting limit values for individual substances, is likely to increase innovation and so increase the export capability - and hence job creation - to third country markets with specific local conditions and problems.

***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).***

31. The proposed Integrated Pollution and Prevention Control Directive should facilitate an overall improvement in environmental quality across the European Union and ease administrative burdens by allowing industry and the competent regulatory authority to deal with polluting emissions to air, water and land under one single permit. It is, however, unclear whether this Directive will simply be added to the already long list of directives relating to water and air rather than being the basis for dismantling the already unwieldy legislation currently in place. In particular, it appears that, in respect of water, smaller plants will continue to be regulated by the Dangerous Substances Directive. Future monitoring and assessment will be essential to check whether the approach is effective.

**Proposal 20**

***Given the importance of the proposed Integrated Pollution Prevention and Control (IPPC) Directive for the future water policy of 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.***

32. Guide levels in the Drinking Water Directive should be abandoned as they do not relate to scientific data, in general have no legal significance, and over-complicate the legislation. Further simplification would result from considerably reducing the number of standards set at Community level.

**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).***

33. The Urban Waste Water Treatment Directive sets an overly short time scale for the introduction of suitable collecting systems and treatment plant. By ignoring the normal investment cycle, it requires investment to be brought forward at excessive cost. These costs, if not alleviated by a change to the regulation, will impact not only on business but also on consumers through higher product prices and through higher water charges.

**Proposal 22**

***The time scale for adaptation in the Urban Waste Water Treatment Directive (91/271/EEC) should be reviewed.***

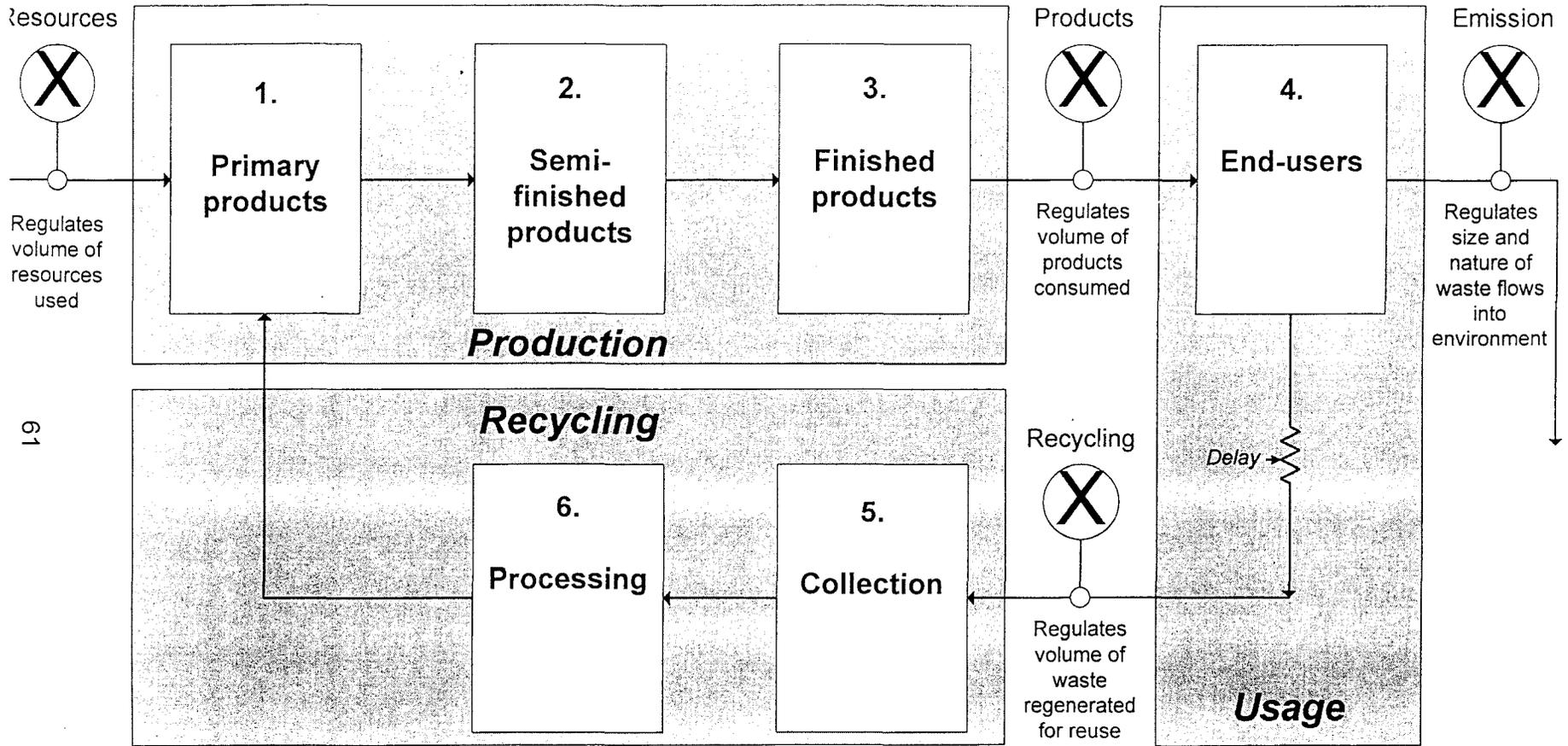
**OTHER MEASURES**

34. There have been calls for a polluting emissions register which aims to improve public access to environmental information. However, such a register seems likely to add to the burden of administration and bureaucracy without any clear demonstration of benefits from collecting data additional to what could be available through the European Environment Agency working on data collected nationally. It should be left to the Agency to consider how best to use available data to better inform the various audiences.

**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.***

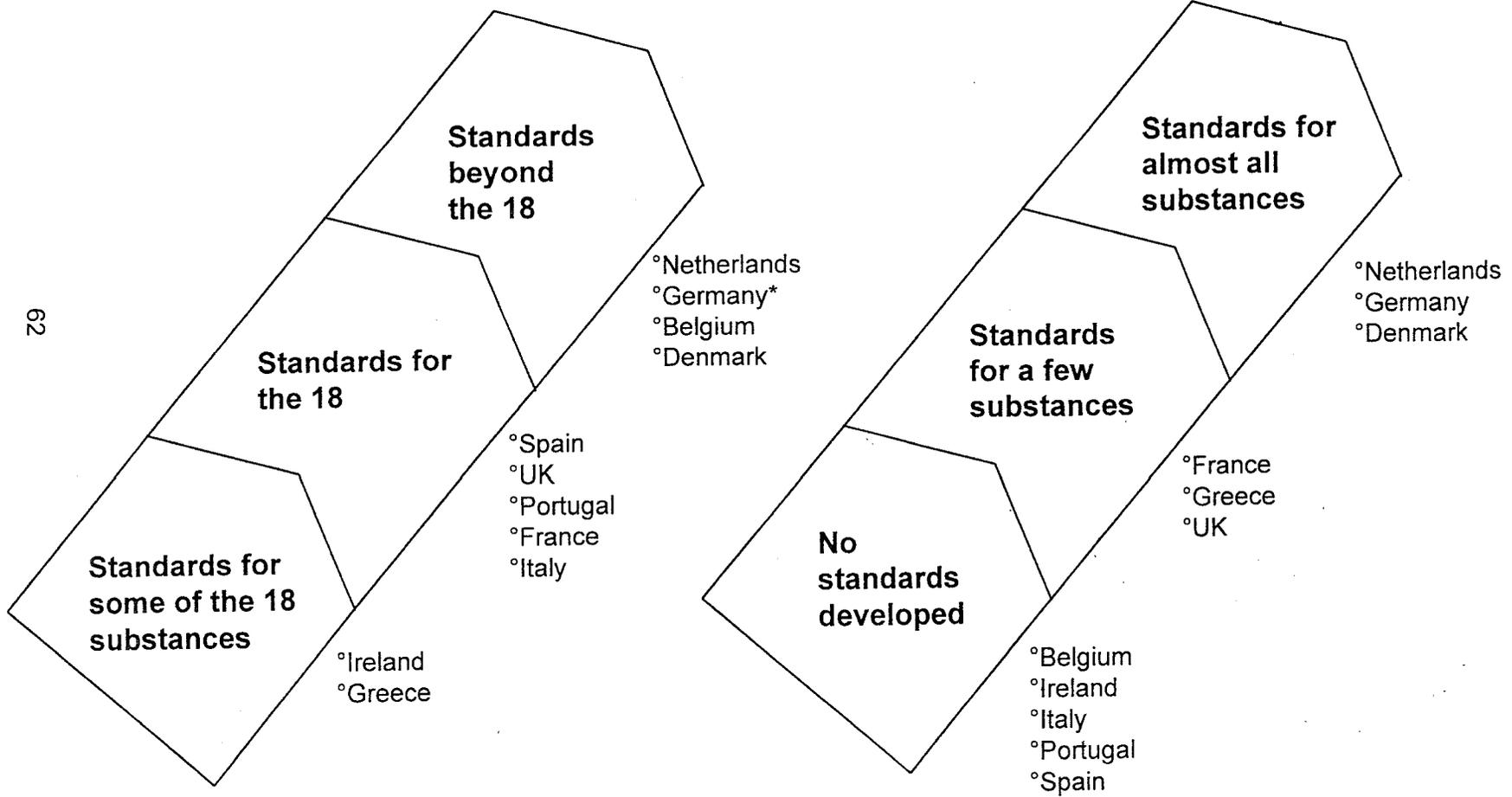
Exhibit 1  
THE INTEGRATED CHAIN



Source : Mc Kinsey and Company, Inc. 1995

**List I Substances**

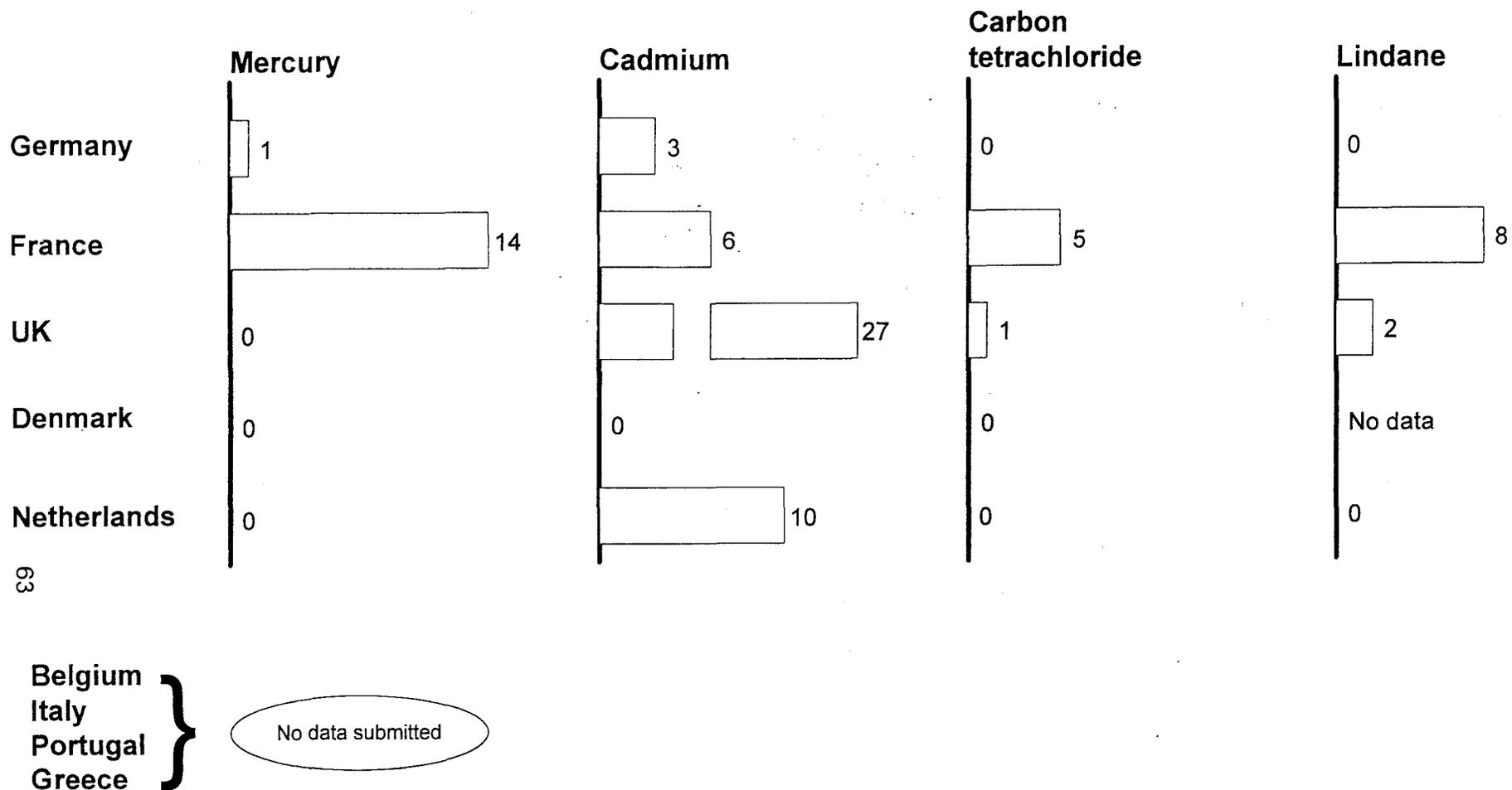
**List II Substances**



\*Based on sum-parameters  
Source: ERM / Mc Kinsey and Company, Inc.

Exhibit 3  
 UNEVEN NATIONAL REPORTING AND COMPLIANCE - 1988

Number of plants exceeding standards



Source: European Commission / Mc Kinsey and Company, Inc.

**Dissenting opinion from Mr Pierre Carniti  
regarding the chapter on the environment**

The chapter on the environment is unacceptable, because it treats environmental issues basically as obstacles to economic activity, whereas they should be seen from the point of view of improving people's quality of life.

## 6. FURTHER AREAS OF CONCERN <sup>1</sup>

1. In the course of the group's work, many subjects for simplification were suggested, either by respondents to the questionnaire or by members of the group. Submissions were made in many areas such as biotechnology, taxation, public procurement, construction products, consumer protection, company law, commercial policy, energy, common agricultural policy, fisheries, banks, statistics, competition policy, transport, telecommunications and social security. Due to time constraints, the group could not analyze all those areas sufficiently. It therefore transmitted to the Commission all the materials received for consideration along the lines suggested by the group in the present report. However, in a number of cases, the group saw the need to make concrete proposals at this stage. They concern biotechnology, public procurement, construction products and rules of origin.

### BIOTECHNOLOGY

2. On several occasions, the Commission and the Council stressed the importance of biotechnology as one of the most promising new fundamental technologies. In the next century, it will permit the creation of new products and highly competitive processes in a large number of industrial and agricultural activities. The European Council of Essen, in December 1994, requested the Council and the Commission to continue work on legal provisions concerning biotechnology. The outcome must take full account of the need for health and environmental protection and the need for European industry to be competitive.

**Quotation from the minutes of the Council (Industry) of  
28 September 1994.**

The Council's discussions reinforce the Presidency's conviction that:

- the public must be given a better understanding of modern biotechnology, for example by enhancing information and extending the debate on bioethics;
- Community policies which affect competitiveness in the biotechnology sector must meet the needs of European industry while maintaining the level of security - taking particular account of the need to protect the environment and health - and strengthen its competitiveness on world markets;
- a large majority of delegations consider that experience gained so far gives sufficient certainty about the safety of genetic engineering, justifying a reduction in administrative requirements, without undermining the safety of human beings and the environment;
- a large majority of delegations consider that there are grounds for amending the Community's regulatory framework in order to reduce excessive constraints hampering European industry in relation to competitors on the world market.

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1. Abstention from Mr Carniti.

3. The Group considers action in this highly innovatory sector to be urgently necessary. In the European Union, 184 000 jobs already depend on biotechnology and its application in industry. The European market for biotechnological products is estimated at ECU 38 000 million a year and is rapidly growing. Many small and medium-size enterprises are active in this sector. The potential for job creation is high.
4. Moreover, the regulatory environment for research and production is considerably less favourable in the European Union than in third countries, in particular in the U.S.A. and Japan. European firms have already transferred parts of their activities to these countries. Europe risks losing its importance as a centre of biotechnology-based industries.
5. The EU directives on the contained use of genetically modified micro-organisms in contained systems (90/219/EEC) and on the deliberate release into the environment of genetically modified organisms (90/220/EEC) were adopted in order to set, respectively, minimum requirements for contained biotechnological activities, and common rules for deliberate release into the environment of genetically modified organisms. In the meantime, a lot of experience in handling genetically organisms has been gathered within the Community and worldwide. It appears that concrete alleviations in the regulatory framework are possible without affecting health and safety. They should rapidly be introduced into practice to improve the competitiveness of the European industry and to use the potential for job creation in this field.
6. The distinction between Type A and Type B operations is introduced for administrative purposes and does not reflect real risk. Risk, as judged in the light of scientific knowledge and international experience, should be the criterion for administrative procedures and notification requirements.

***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).***

7. Micro-organisms which are non-pathogenic and have a proven history of durably safe use or built-in biological barriers which, without interfering with optimal growth in the reactor or fermentation vessel, confer limited survivability and replicability without adverse consequences in the environment, are a low risk group (Group I organisms).

***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 without a***

*waiting period.*

8. Delays and documents required for the approval of the deliberate release of genetically modified organisms (Part B of Directive 90/220/EEC) or for the placing on the market of products containing genetically modified organisms (Part C of Directive 90/220/EEC) can be reduced by avoiding duplication and repeated tests.

***Proposal 4***

***The procedures for the 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 principle of "one door-one key" should be implemented by way of adoption of vertical legislation.***

9. Compared with the situation in the Community, the U.S. regulatory framework is more influenced by the principle that biotechnological products are to be treated in the same way as any other product. The fact that an organism has been genetically modified is not *a priori* considered to be a basic indicator of risk. The Group has insufficient expertise on that point, but suggests that the Commission examine carefully whether the American experience in this field could justify further modification of the approval system.
10. The legal protection of biotechnological inventions is important for increased activities in research and product development. The joint text of the Conciliation Committee was rejected by the European Parliament on 1 March 1995. This creates new uncertainties for business in this important field and risks further transfers of activities in the field of research and development to third countries.

***Proposal 5***

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

The group understands that the Commission intends to do so. Failure to adopt rapidly adequate protection of biotechnological inventions at the level of the Community could lead to individual action of Member States, creating distortions in the internal market, or to further transferring of research and production activities to non member countries.

## **PUBLIC PROCUREMENT**

11. As regards public procurement, many comments were made in the replies to the questionnaire and in talks with economic interests. The Group notes generally that firms do not question the principle of opening up public procurement through the implementation of Community legislation, although

both the business side and the contracting entities are unsatisfied with the legislation applying to them.

#### Directives on Public Procurement

89/665/EEC Council Directive of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.

92/13/EEC Council Directive of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

92/50/EEC Council Directive of 18 June 1992 relating to the coordination of procedures for the award of public service contracts.

93/36/EEC Council Directive of 14 June 1993 coordinating procedures for the award of public supply contracts.

93/37/EEC Council Directive of 14 June 1993 concerning the coordination of procedures for the award of public works contracts.

93/38/EEC Council Directive of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

12. The goal of overall effectiveness requires clarity, simplicity and flexibility. Certainty should not be confused with uniformity, as this risks losing sight of flexibility objectives.
13. One of the main difficulties at present is the differences between Member States are regards transposal of directives. This creates uncertainty for businesses, which have to check how the law stands in each Member State and compare it with the Community legislation. The legal instrument chosen at Community level (the directive) leads to Member State legislation of a number of different kinds, the upshot of which is a lack of transparency. For industry, a single clear system would certainly be preferable. The instrument which would best enable this to be achieved is the regulation.

#### ***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 procurement ought not to be altered by national rules directly or indirectly limiting their effect.***

#### ***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.***

14. Establishing common standards at Community level is not enough if sanctions for not complying with them vary fundamentally from one Member State to another. In addition to the uncertainty to which it leads for industry, this brings about discriminatory situations as between Member States. We must thus think about how to overcome these difficulties. The solution is to ensure that sanctions are equally effective in all Member States. Subsidiarity allows for each Member States to decide on sanctions which fit within its national culture and legal framework. Some Member States have already adopted rules providing, in the event of violations, for the contracting entity to be liable to a penalty equivalent to the profit forgone by the business which is improperly excluded.

***Proposal 9***

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

15. The Group was worried by how much SMEs could profit from the opening-up of public procurement. The Commission is encouraging cooperation among SMEs, and subcontracting at European level, by means of standard contracts and clauses. With a few exceptions, subcontracting as such is not covered by any specific rules and thus falls within the scope of general contract law. The Group favours greater recourse to subcontracting, national or cross-border, and the division of large contracts into lots, enabling SMEs to tender. It does not, however, consider it feasible to discriminate positively in favour of SMEs.

***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.***

## **CONSTRUCTION PRODUCTS<sup>1</sup>**

16. Early in 1994, the Atkins Report underlined the importance of the construction sector for the competitiveness of Europe. *"Construction is an industry in which Europe can beat the world. But there is a danger of failing to grasp the opportunities, and allowing the markets in Europe and the quality of construction to decline. There is still much that can be done to make the industry stronger and to remove some of its weaknesses, and to improve the built environment of Europe"*. The competitiveness of the construction sector could be improved by the establishment of free circulation of products in the EU.

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1. For some key figures, see appendix 1.

17. Directive 89/106/EEC, as amended in 1993, - hereafter Construction Products Directive (CPD) - aims to remove barriers to the free circulation of construction products caused by:
  - diverging standards, testing procedures and procedures for certification of conformity ;
  - diverging national legislation on construction (products).
18. The CPD is one of the "New Approach" directives. It contains essential requirements for construction works as a whole, not for individual construction products; for example:
  - mechanical strength and stability;
  - fire safety;
  - hygiene, health and the environment;
  - safety in use;
  - protection against noise;
  - energy economy and heat retention.
19. This means that the Member States can only allow those construction products to be put on the market which have such qualities that the construction work in which the products are used complies with the essential requirements of the Directive.
20. Unlike other New Approach directives, the essential requirements of the CPD have to be elaborated in "*interpretative documents*". These interpretative documents serve as a basis for *harmonized* European standards or other technical specifications at the European level, for the drawing up or granting of European technical approval or for the recognition of national technical specifications.
21. The preparation of harmonized European standards for construction products is carried out by *CEN* (the European Committee for Standardization). To use a CE mark, the product must be in conformity with the European technical specifications, which are:
  - European harmonized standards (European organizations : CEN, CENELEC);
  - European technical approvals (European organization: EOTA);
  - recognized national technical specifications.

The CE mark indicates that the products conform to the relevant European technical specifications. To certify this, the conformity procedures apply. In principle, there are two ways in which this can be done:

- (1) a conformity declaration to be issued by a manufacturer;
- (2) a conformity certificate to be issued by an approved body.

22. Although the CPD was adopted in 1988 and had to be transposed at the latest by 27 June 1991, it is still - seven years later-, not possible for industry to use the CE mark for construction products.

Progress is lacking for two reasons:

- Drawing up the mandates to CEN for harmonized standards takes too long. Of the 80 documents needed only four have been finalized so far: progress therefore is far too slow.
  - Unlike the other New Approach Directives, the CPD does not allow for producers to use the CE mark directly for products which meet the essential requirements of the directive. The CE mark can only be fixed if there is conformity with the harmonized European technical specifications. In practice, this means that the manufacturer is not able to use the CE mark, because no harmonized technical specifications are available.
23. At present, the New Approach is not working in the construction products sector. Without harmonized standards or other technical specifications there will be no free circulation of construction products. Construction products still have to comply with different national requirements, which hampers the competitiveness of the European construction industry.

***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.***

**RULES OF ORIGIN**

24. The trade arrangements which the Community has concluded with a range of countries provide preferential terms for the entry and the exports of goods, in particular with the EFTA countries, the Central and East European countries and the Mediterranean countries<sup>1</sup>.
25. In order to distinguish between third countries' goods that are not entitled to tariff preferences and those originating in the countries for which the preferential terms are applied, rules of origin have been established by the negotiating parties for over 20 years. The rules differ substantially from one country to another: in the degree of liberalization, in the percentage of processing required to be carried out on non-originating materials, in the application of the principles of territoriality, in the products covered, in the possibilities for "cumulation of origins" or in the way administrations must cooperate.
26. The need to examine the rules applicable to each case of imports into or exports from the countries concerned constitutes an administrative burden on

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1. See list in a Appendix 2.

business. In particular, the SME's, which frequently lack the expertise to distinguish between the different arrangements, are hampered in their competitiveness.

***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.***

**KEY FACTS ON THE EC CONSTRUCTION SECTOR**

* CONSTRUCTION OUTPUT	1992: ECU 520 000 million , 10% of GDP
	1990: ECU 550 000 million , 12% of GDP
* VALUE ADDED BY CONTRACTORS	Approximately 5-6% of GDP
* EMPLOYMENT (1990)	9 million jobs in contractor 1 million jobs in design and consultancy 2,5 million jobs in construction products manufacture Estimated 14 million jobs in services, government, distribution and other suppliers Total: 20% of EC civilian jobs
* 60% of gross fixed capital formation	
* 1,8 million enterprises (including one-person firms)	
* 90% of employment in enterprises with less than 500 employees	
55% of employment in firms with less than 20 employees	
(97% of all firms)	
* SHARES IN EC CONSTRUCTION OUTPUT (1991)	New residential 23% New non-residential 21% Civil engineering 23% Renovation & maintenance 33%

### **The Community's preferential agreements**

#### **(1) Agreements negotiated between the EU and third countries**

- agreements with the EFTA countries, largely covered by the EEA agreement;
- agreements with Central and East European countries (CEEC), such as the Visegrad countries, Romania and Bulgaria, the Baltic States, Slovenia,
- an agreement with the Faroe Islands;
- the Lomé IV Convention - an agreement between the Community and 70 developing countries in Africa, the Caribbean and Pacific Ocean (ACP) regions, which provides preferential customs treatment for imports into the Community of goods originating in ACP countries that are signatories to the Convention;
- agreements with certain Mediterranean States: Algeria, Morocco, Tunisia, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Syria.

#### **(2) Preferences autonomously granted by the EU**

- the Generalized System of Preferences (GSP) - an agreement which provides for preferential customs treatment of goods imported into the Community from a large number of developing countries;
- the overseas countries and territories: a Council decision which provides for preferential treatment of goods originating in OCT;
- the Occupied Territories;
- Bosnia-Herzegovina, Croatia, Slovenia, Former Yugoslav Republic of Macedonia.

## 7. Small and Medium-Sized Enterprises (SMEs)<sup>1</sup>

### The importance of the SME sector

1. The European production structure is characterized by the existence of a large number of medium size enterprises (250 to 50 employees), small enterprises (50 to 10 employees), and micro enterprises (less than 10 employees).

#### Exhibit 1

##### The role of SMEs in the EU economy

Size of enterprises	Enterprises (% of total)	Employment (% of total)	Sales (% of total)
Less than 250 employees	99,8	65,6	62,7
Less than 50 employees	98,8	50,0	43,0
Less than 10 employees	92,7	31,5	23,8

### Community policy

2. The importance of SMEs to growth and employment has been widely acknowledged in all OECD countries and specific policies for their creation and development have been established. Policies have included, for example, creating easier access to capital; supporting training; and encouraging investment in technology. It has also been widely recognized that the complexities of the administrative and legal environment may be detrimental to SMEs. As a result many initiatives have been taken to alleviate these burdens.
3. At the European level Council Decision 89/490/EEC focused attention specifically on the need for the Community to promote and develop the SME sector. The importance of SMEs has been reinforced in subsequent Council discussions, most recently at the Essen Summit.

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1. Abstention from Mr Carniti.

**Exhibit 2****Council Resolution  
of 10 October 1994**

*The Council of the European Union,*

*EMPHASIZES that it is a priority concern of enterprise policy in the Community.....to improve the legislative and administrative environment for enterprises.....*

*CONSIDERS it necessary to step up action in favour of SMEs to improve and simplify the legislative and administrative environment.....*

At the end of 1993, the Commission's White Paper on Competitiveness and Employment further emphasized the importance of a simple administrative and legal framework for SMEs and their key role in job creation.

4. The Community's policies towards SMEs have been consolidated within the framework of the Multiannual Programme in Favour of Enterprises (Decision 93/379). With respect to alleviating legislative and administrative burdens on SMEs, Community action focuses on two lines of action:
  - the preparation, for new legislation, of an impact statement (fiche d'impact) which takes specific account of the particular burdens which may be imposed on SMEs;
  - the development of "best-practice" legal and administrative environments for SMEs (and businesses in general), by promoting exchange of national experience.

### **The administrative burdens on SMEs**

5. The burdens on SMEs created by the legislative framework can only be judged against an understanding of the particular requirements of SME success
  - ° SMEs are defined by the Commission to include firms with up to 250 employees. This is a broad definition and the needs of the smallest firms (e.g. less than 20 employees) may be significantly different to larger medium-sized enterprises. Very small firms are distinguished in particular by operating in highly localized national markets and by the special (personal) relationship between employer and employee.
  - ° The importance of SME size in relation to administrative burdens is demonstrated in Exhibit 3.

### Exhibit 3

#### The average costs of administrative burdens per size class, enterprise and employee in the Netherlands, 1993 (in ECU).

Number of employees	Costs per enterprise	Costs per employee
1 - 9	12,100	3,500
10 - 19	20,500	1,500
20 - 29	47,100	1,400
50 - 99	62,000	900
100 or more	171,000	600

Source: "Administratieve lasten bedrijven 1993" (Administrative Burdens in enterprises 1993), EIM Small Business Research and Consultancy, 1994.

Any decrease of the financial costs incurred due to the legal and administrative framework, is, therefore, beneficial to the development of SMEs.

- Evidence from across the Community has demonstrated that successful SMEs derive much of their competitive advantage from their flexibility and responsiveness to changes in markets and customer need. If legislative frameworks impose rigidities in the choice of products or the use of factors of production, including labour, then SMEs will not be able to compete effectively and grow.
  - SMEs are frequently constrained by access to capital, to know-how and to management skills, all of which are essential if they are to grow successfully. The legislative framework should not inhibit SME success by introducing additional costs and constraints. For example, legislation may require firms to invest in new equipment, in advance of their normal development plans, increasing short-term capital requirements and creating a disproportionate burden on balance sheets and cash flows.
6. Two other factors exacerbate the burden of legislation and regulation on SMEs:
- As well as the particular impact of any specific piece of legislation, costs and rigidities result from the accumulation of regulation. When the business environment is highly regulated and governments (at every level) interfere unnecessarily across a wide-range of business decision-making, SMEs may become more conservative and risk averse and particularly cautious in their approach to job-creation.
  - SMEs (and other businesses) are subject to regulation from every level of government (i.e. from European to local). Many of the constraints on the SME sector are the result of national and local legislation and inappropriate and costly enforcement and inspection procedures, leading

to large administrative and bureaucratic complexities. Whilst the Community must examine its own legislation for impact on SMEs, simplification is equally important at the national and local levels, if SME development is to make its full contribution to competitiveness and employment goals.

## **The effectiveness of Community Policy**

7. A carefully designed legal and administrative framework that minimizes costs to SMEs, that doesn't impose large or premature capital investments and that allows for maximum flexibility and responsiveness in operations is required.
8. Simplification has been identified by the Community as a necessary support to the overall employment and competitiveness strategy. Given the disproportionate burdens on SMEs and the cumulative impact of regulation, comprehensive and permanent programmes of simplification are required if SME growth is to be enhanced. Simplification, through its impact on SMEs, can also make an important contribution to broadening the benefit of the single market. By removing disproportionate burdens on SMEs, they will be better able to compete, sometimes on a cross-border basis, with larger firms
9. The Community has already taken some steps to simplify legislation and the existence of this group attests to the commitment to accelerate this process. Chapter 1 of this report contains recommendations to ensure that simplification, which pays particular attention to the needs of SMEs, becomes a permanent part of the culture of the Community, at both the European and national levels.
10. Thresholds have been used, in specific Community Directives, to exempt SMEs from particularly onerous burdens. However, their use is, and should be, constrained by:
  - ° the dangers of undermining fundamental standards of, for example, worker safety, consumer and environmental protection (and in so doing to create difficulties for SMEs in retaining customers, employees or even finance);
  - ° the difficulty of setting appropriate thresholds (for example, the borderline between "small", "medium" and "large"; and the disincentives to grow beyond the thresholds);
  - ° the dangers of distorting competition between firms on either side of the threshold.
11. Whilst there are instances in which thresholds are practical and helpful they should not be used as a substitute for a comprehensive programme of overall simplification. As we discuss elsewhere in this report it is desirable, as part of that programme, to replace prescriptive legislation with

legislation which focuses on goals. If this is done appropriately those enforcing regulations can frequently allow SMEs to use low cost means to achieve common goals which a larger and more complex business can only reach if it uses high-cost control processes (e.g. the local butcher vs the transnational food company).

12. Against this background we have identified five areas of particular concern to SMEs where, as part of our overall programme of simplification, SME-oriented solutions should be sought as a matter of priority:

- **Identifying the SME interest**

We need to ensure that the design of legislation takes full account of the impact on SMEs (of different kinds).

- **Role of Member States**

Member States have a critical role in the development of SMEs. The transposition of EU legislation has frequently added significantly to costs and rigidities (for example, in implementing company law); enforcement can be insensitive to the particular needs of SMEs and is uneven across the Community; and national legislation has added significantly to the cumulative burden faced by SMEs.

- **Company law**

Company law provides an essential framework for business life, but has frequently been driven by the needs of the larger company. For SMEs company law needs to achieve a better balance between cost and creating a secure framework for SME access to capital and credit.

- **Statistics**

We live in the "information age" in which greater demands for statistical information are continuously being made by both government and private users. However, these demands are often imposed without any analysis of the disproportionate costs which they can impose on SMEs.

- **Social and environmental protection**

Employment, consumer and environmental protection have become an essential part of the "acquis communautaire". However, without careful design and the appropriate application of subsidiarity principles, they can easily inhibit competitiveness and employment growth in all businesses. Their disproportionate impact on SMEs has been significant and in principle cannot be effectively removed through application of thresholds.

## **Proposals**

- I. **Identifying the SME interest**

13. It is vital that the general programmes of simplification and deregulation recommended in Chapter 1 are informed by a practical understanding of SME interests and needs. This understanding needs to be applied both to existing legislation and to proposals for new initiatives.

**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 focused 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.***

14. We have identified the importance of the cumulative burden of regulation on SMEs. It is important, therefore, that the Commission is able to identify that cumulative burden and ensure that it is also taken into account when specific new legislative proposals are considered.

**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.***

**II. The role of Member States**

15. Whilst poorly designed Community Directives inhibit SME development, the cumulative impact of legislation on SMEs is greatly accentuated by failings at the national level.

**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.***

**III. Company law**

**Access to capital and credit**

16. Coordination of company law (following Article 54(3)(g) of the Treaty of Rome) has led to a number of Directives setting out requirements in respect of: the disclosure of information which is essential regarding the formation of a company incorporated with limited liability, operating in other Member States; the minimum capital requirement, and the rules governing changes of this capital throughout the company's existence; the measures relating to the protection of shareholders and of third parties in the case of mergers or of division of one company into several companies; and the certification of annual accounts. In general these provisions play an

important role in creating confidence to enable firms and financial institutions to develop effective cross-border businesses and investments.

17. With the exception of a Directive on single member limited liability companies, the remaining Company Law Directives have been tailored to the needs of large limited liability corporations with activities in several countries and wide responsibilities towards shareholders and creditors.
18. However, in order to avoid creating overcomplex functions in SMEs, the Company Law Directives were the first to introduce the threshold concept in Community legislation. In the Fourth Directive on financial reporting (78/660/EEC), limited disclosure of accounts (abridged accounts) or no need for a outside audit are envisaged for SMEs below the threshold, (and thresholds are defined in terms of net turnover, balance sheet total and average number of employees).
19. Despite these provisions few member countries have fully implemented the derogations foreseen in this Directive. Furthermore, in the transposition process, many Member States have imposed more stringent and complex rules (e.g. increasing minimum capital requirements or imposing further accounting rules). Whilst it is true that the Directives have achieved many of their harmonization goals and in particular the Accounting Directives have raised the level of financial reporting in the EU, the administrative burden for enterprises, and particularly for SMEs, has increased.
20. This situation is unsatisfactory. It adds disproportionately to the costs of the SME sector, and has provided incentives for the adoption of other legal solutions to conduct economic activities (partnership rather than limited liability companies, with even complex variations such as the GmbH & Co KG which allow an unlimited partnership to have limited companies as partners, and which have been consequently assimilated to limited partnerships by Directive 90/605/EEC), or non-compliance with certain legal obligations (eg. disclosure of financial accounts) in some Member States.
21. The need to simplify Company Laws applicable to SMEs has been widely recognized, and justified on the basis of the principles of subsidiarity and proportionality (Report of the Commission to the Council of 24 November 1993, COM(93) 545). However, previous attempts to act in this direction have faced political obstacles (e.g. a proposal to amend the Fourth Directive which would have allowed Member States not to apply the Directive to small closely held companies was rejected by the Council in 1990, mainly on the basis that in matters of disclosure of accounts, to distinguish between SMEs and large companies would distort competition).
22. We consider that a substantial increase in the thresholds for SMEs which were established in the Fourth Directive would lower the administrative burden for many SMEs without disturbing the existing equilibrium between users and providers of financial information, and that the case of GmbH & Co KG should be reconsidered.

**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.***

**Access to the Single Market**

23. The Community has an important responsibility to ensure that the legislative framework facilitates SME growth in the single market through cross-border cooperation and investment. For instance, impediments to the free provision of services and to the freedom of establishment of liberal professions should be eliminated, or taxation be adjusted, where appropriate.

**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.***

24. Council Regulation (EEC) No 2137/85 of July 1985 established the European Economic Interest Grouping (EEIG), an original legal instrument governed by Community-wide laws which allows Community-wide company cooperation (developing joint transnational projects while maintaining national legal status). Although 600 EEIGs have been established during the last six years, the Regulation is constrained by a set of restrictions on maximum size and on the capacity to run the operations (activities remain with the individual companies creating an EEIG). Reducing or eliminating these restrictions could support further development of transnational networks of SMEs.

**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.***

25. For a number of years, the Commission has been promoting new Regulations in the area of Company Law dealing with the Statutes of the European Company, the European Associations, the European Cooperative Society, and the European Mutual Society. These proposals have included requirements regarding the involvement of employees. Lengthy negotiations have not overcome the fundamental objections by

some Member States to these particular provisions. However, recent developments at the national level (particularly the small "Aktiengesellschaft" in Germany) and the agreement under the Social Chapter to the European Works Council Directive (which excludes SMEs) open new opportunities for progress, at least for SMEs.

**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.***

**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.***

**IV. Statistics**

26. In order to adapt the statistical system to the functions of the internal market, the Council has issued regulations that have created concern among SMEs, in so far as the relative cost of providing statistical information is higher the smaller the firm.
27. Council Regulation (EEC) No 3330/91 on the statistics relating to the trading of goods between Member States was necessary in order to fill the statistical void created by the elimination of intra-trade customs in the internal market. Further regulations by the Commission introduced thresholds for enterprises using simplified declarations or even dispensing with declaration. In practice, the costs for most SMEs have, at worst, been small and at best have yielded cost savings. In the UK, for example, cost savings of £135 million per annum have been reported as a result of removing fiscal, statistical and regulatory controls. Thresholds have removed small firms from the INTRASTAT system.
28. Whilst the direct statistical implications of moving to a single market may not have added to the burdens on SMEs we share their concern that statistical costs will grow unless checked. We live in an "information age" and there is continuous pressure from both governments and private businesses to collect more data without regard to the costs imposed on providers. Within the single market there will be the additional danger of imposing the highest standards used by any individual Member State on the Community as a whole.

**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.***

**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.***

**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.***

**V. Social and environmental protection**

29. The Community has adopted, as a fundamental principle, the achievement of common basic standards of protection in health and safety, consumer purchasing, environment and employment. It is envisaged that these standards should be set at levels which are affordable by the Community as a whole but should not discriminate either between Member States or between large and small businesses.
30. Our sectoral investigations have examined legislation in a number of these fundamental areas. SMEs and their representative organizations have, in general, agreed with the principle of common standards across all businesses and all Member States. They recognize that it would damage their credibility; with consumers, with employees, and with financiers if SMEs were in general allowed to operate at lower levels of protection. However, in these areas important SME concerns were also voiced:
- ° Standards are sometimes set at levels which impose high costs (affordability) and/or which are not justified by the (scientific) evidence on the risks involved.
  - ° Historically, legislation has frequently been prescriptive rather than goal-oriented and this has imposed unnecessarily high compliance costs and operating rigidities on SMEs in particular.
  - ° A prescriptive approach focuses compliance on detailed regulation of production processes. Partly as a consequence, enforcement can be uneven, both within a Member State and, more particularly, between Member States, distorting competition.
  - ° Implementation periods are frequently too short for SMEs to adapt economically to new standards.
31. The Community has recognized these problems and in more recent legislation has shown a willingness to move to a goal-oriented approach which gives much greater flexibility for SMEs to find appropriate ways to meet standards which are common to all. For example, many of the

requirements in the General Hygiene Directive (93/43/EC) are risk-related, applying only "where necessary for food safety". If the risk to food safety does not require it, which may often be the case for SMEs serving local consumers and with high stock turnover, then the requirements do not apply. Similarly, the framework Directive on health and safety also provides flexibility to establish enforcement conditions appropriate to SME needs.

32. However, as we have described in earlier Chapters, this process of legislative transformation is far from complete. Prescriptive legislation remains in force and there is sometimes overlap and confusion between the two approaches. The overall acceleration of the comprehensive programme of simplification which we recommend is therefore of particular relevance to SMEs, as well as of benefit to the Community's overall goals of competitiveness and employment growth.
33. Even where legislation is goal-oriented, the development of appropriate means to reach agreed ends can impose significant burdens on business. SMEs, in particular, will frequently lack the in-house expertise and funds to implement best-practice approaches.

***Proposal 12***

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

***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.***

***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.***

34. The persistence of prescriptive legislation which places disproportionate burdens on SMEs has led to a series of derogation based on thresholds set at various levels according to the subject concerned (eg. accounting requirements) or to the specific size of enterprises (eg. micro enterprises). The existence of those derogations should not reduce the pressure put on the Community to determinedly take up the challenge of simplification. The group considers that the SMEs interests will be best supported by the general programme of simplification recommended in this report.

**Minority statement from Mr. Søren Christensen**

The content of the report is not in accordance with what I have tried to achieve. The differences in opinions between me and the majority of the group are of such an importance that I can not underwrite the report as a whole.

The important task of simplification could be at risk due to the suggestions of this group, which in my opinion set important policy areas in the Maastricht Treaty at risk.

Improvement of the European economy's competitiveness and employment potential depends to a certain extent on the European business sector's legislative and administrative burden. Small and medium-sized enterprises are particularly vulnerable to administrative burdens. The growth and employment potential in particular of the SMEs is thus an argument for simplification of unnecessary or inexpedient regulation on Community as well as on national level.

However, the implementation of the Community's overall objectives on a sustainable and balanced basis - and not least the implementation of the objectives laid down in Article 2 of the Treaty - implies that considerations of economic competitiveness alone should not lead to uncritical simplification and deregulation. Thus regard for the functioning of the Internal Market cannot in itself justify the dismantling of equally important rules serving high priority objectives, such as: The environment, the social dimension including working environment, health and consumer protection.

The simultaneous objective to enhance economic growth as well as to protect people's living conditions and the environment, which was built into the European Single Act and strengthened in the Maastricht Treaty, must be respected.

This was recognized in the group's "Terms of reference", where it is stated that the group should take into account both economic and social considerations.

This balance of objectives is, however, not reflected in the report. The focus of the report is solely on economic considerations, which is underlined by the call for deregulation. This implies a questioning of the basic tenets of the "acquis communautaire" and thus of the European Union's policy priorities. There is no basis for this in the group's terms of references nor in the group's work; neither in the empirical work of the rapporteurs nor in the discussions in the group, which have been much more balanced between the different overall objectives of the EU.

Furthermore it has not been possible to establish any strict relation between regulation and competitiveness and employment. On the contrary, absence of rules does not improve performance, nor does the presence of regulation

necessarily impede adjustment and worsen performance. Neither has it been possible to clarify to what extent legislative burdens are created at EU or at national level.

In my experience, it is often the unexpected changes in the legislation as well as differences in Member States' legislation rather than legislation in itself which constitute the greatest obstacles to economic growth and employment.

This calls for stable legislative principles. Furthermore, regulation should be transparent and predictable for consumers and enterprises and result in the smallest possible bureaucratic burden. In this connection, efforts to improve business enterprise's access to information on Community and national legislation are equally important.

While I thus share many of the points of view set up in the terms of references as well as introduced in the group's discussions I cannot support the report's call for deregulation as an objective in itself, which implies a *de facto* dismantling of the "acquis communautaire". I do not agree with this approach neither in the general chapter nor in the sector specific chapters. Among the number of problems this approach leads to I would notably like to emphasize the following:

Regarding the section of the report concerning the environment the proposals imply not just simplification but an unacceptable change in the Community acquis as regards e.g. water and waste policy. That also goes for the part of the report concerning biotechnology. Furthermore the sections dealing with employment and social policy and health and safety at work propose one-sided and unbalanced reductions in the protection level of employees as well as changes to the existing Community policy. The proposed reduction in the employer's responsibility constitutes a major problem since Denmark at present operates with objective responsibility in this area.

As far as the machine directive is concerned I do not at this time consider the proposed exceptions to the directive suitable, notably the necessary harmonization of European standards, especially since the entire directive first came into force on 1 January 1995.

Finally regarding biotechnology in my view the entire section including the proposals set out an unacceptable low level of regulation which do not assure adequate protection of public interest as well as the interests of the individual human being in this new field of industry.

I can add that I fully support the declaration of MM. Carniti and Johnson which has been written in cooperation with me.

**Minority statement from Mr. Göran JOHANSSON**

As Swedish member, I joined the group as late as in March 1995. This explains to some degree the need for this minority statement.

The report is lacking an analysis of the effects of the different systems of rules on competitiveness and employment. It does not clarify to what extent legislation has caused the competitiveness of western European companies to deteriorate on the global market, nor does it analyze the question of to what extent weakened competitiveness has contributed to the present high unemployment.

It is regrettable that the report lacks a survey of these fundamental correlations. Such an assessment was set out in advance in the terms of reference of the group. The conclusions of the report are based far too little on an analysis of economic circumstances and are far too much a reflection of political views on different issues. The report pays a disproportionately large amount of attention to questions concerning relations between the social partners. In addressing these issues, there is a clear tendency to advocate changes which in various respects weaken the position of the employees vis-à-vis the employers.

I take the view that all forms of legislation should be as simple as possible. This applies not least to legislation concerning trade and industry. SMEs are in particular affected by problems if rules are worded in a too complicated manner. There is a need to have ongoing assessment as to whether the overall effects of different types of legislation are reasonable.

Before decisions of simplification it is, however, important not only to take account of economic aspects, but also of other high priority goals, for instance, with regard to the social dimension including the working environment, the external environment, health and consumer protection.

In these respects, the conclusions and proposals in the report are not sufficiently balanced. This lack of balance has left its mark on the different chapters in the report.

In addition to these general points, I want to comment in particular on certain questions of significance for employees and for relations between the social partners.

It is in my view very important to give support to the weaker party on different markets. This applies for example to relations between the individual employee and the employer on the labour market and between the vendor and the consumer on the goods and services markets.

In both cases, it is a question of strengthening the weaker party, i.e. the

employee and the consumer. Such measures are not only justified for social reasons; they also improve the functioning of these markets.

The means used to achieve a better balance can however vary. In the case of the labour market some countries put the accent on legislation, while in other countries, the social partners have a great responsibility for making rules. The latter is for instance the case in the Nordic countries. Collective agreements play a central role for regulating conditions on the labour market. One prerequisite is however that the trade unions are representative of the employees and that the collective agreements give good coverage.

Opting for the collective agreement solution increases the scope for adjustments with regard to individual branches. At the same time, the need for comprehensive and detailed rules decreases. One way of promoting such a development is through "semi-dispositive" legislation. This means that provisions set out in the law only apply when no collective agreement exists. EU has in some cases opened the way for this type of arrangement. There is a reason to analyze the scope for making use of this approach to a greater extent, not least because of its advantages in terms of greater flexibility.

The report expresses some support for giving the social partners a more significant role with regard to reducing the need for EU legislation. At the same time, however, it is clear that the report rejects "semi-dispositive" EU-legislation as a means of achieving such a development, but does not suggest any other method. It does so by rejecting the idea of having the type of well-functioning legislation which has been used in connection with European Work Councils.

When it comes to working time issues substantial deteriorations of present rules are proposed in the report. This is also the case concerning the field of work environment. Inter alia it is proposed to limit the responsibility of the employer. In these respects, among others, the proposals are characterized by an unacceptable imbalance which cannot be motivated by demand for simplification.

The report proposes that the Community examines the possibilities to acquire a set of fundamental rights and principles. In my view such a system would be valuable. The degree of precision of the formulation of such fundamental rights and principles is, however, decisive for the possibilities to achieve a real simplification in relation to labour law on the EU level. Very general and imprecise formulations give inadequate guidance for the legislative work in the member countries.

**"Group of independent experts  
on legislative and administrative simplification"**

**Terms of reference**

As stated in the conclusions of the Council meeting of Ministers of Economic and Financial Affairs on June 1994, the Commission is to set up a group of independent persons to assess the impact of Community and national legislation on employment and competitiveness with a view to alleviating and simplifying such legislation.

The Commission will ask the group to adopt the following approach :

- a. The group will examine the state of Community and national legislation and taking into account of economic and social considerations in order to identify the real obstacles to the creation of jobs and to competitiveness - the excesses, weaknesses in application or deficiencies - and how this might be alleviated and simplified, especially for small and medium-size enterprises.
- b. In order to facilitate the work of the group and ensure a coherent approach, attention could be focus for example on a number of topics (see indicative list annexed).
- c. The group should take account measures initiated by the Commission with a view both to the full application of the principle of subsidiarity, and also the procedures put into effect to evaluate the impact of proposals on employment in general and the initiatives taken to alleviate charge on small and medium-sized enterprises.

The group should present his report to the Commission before June 1995 and, if possible, give a progress report at Essen.

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**Annex**

-	Technical standards :	Machinery
-	Industry :	Biotechnology
-	Environment :	Legislation on polluting emissions
-	Employment and social affairs :	Safety and health at the workplace (including working time) Access to professions
-	Construction :	Major infrastructure projects
-	Taxation :	Value added tax
-	Services :	Banking
-	Agriculture:	Veterinary legislation

Independent Experts Group on Legislative and Administrative Simplification

## Chairman of the Group:

Dr Bernhard Molitor	Former Head of the economic policy Department at the German Ministry of Economy
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## Members of the Group:

Sir Michael Angus	Chairman Whitbread PLC and Boots PLC; former Chairman Unilever; former President of the CBI (Confederation of British Industry)
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Mr. A. Bagão Felix	Member of the Portuguese national Commission on administrative simplification; former Vice-governor of the Banco de Portugal; former Secretary of State for employment;
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Mr. Fernand Braun	Former General Director of internal market and industrial affairs at the European Commission
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Mr. Pierre Carniti	Former General Secretary of the Italian Confederation of free labor unions (CISL); Member of the European Parliament
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Mr. Søren Christensen	Former Danish Secretary of State for the civil service; prefect of the County of Copenhagen
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Mr. Alvaro Espina	Former Spanish Secretary of State for industry; former permanent Secretary for employment and industrial relations; Counselor at the Ministry of economy and finances
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Mr. Fernand Grévisse	<i>Président honoraire de section</i> at the French <i>Conseil d'Etat</i> . Judge at the EC Court of Justice until October 1994
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Dr Heinz Handler	Director-General at the Austrian Federal Ministry of Economic Affairs
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Mr John M. Horgan	Head of Human Resources, Analog Devices.
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M. Göran Johnsson	President of the Swedish Metalworkers' Union
Dr A.H.G. Rinnooy Kan	Chairman of the Dutch employers' organization Confederation of Netherlands Industry and Employers VNO-NCW
Dr Franz Schoser	Chief executive DIHT (Deutscher Industrie- und Handelstag)
Prof. Henri Sneessens	Professeur of economy at the Catholic University of Louvain-la-Neuve
Mr. Costas Vergopoulos	Professor of economic sciences at the University of Paris and at the Pandios University of Athens
Mr. Claude Villain	<i>Inspecteur général des finances</i> ; former Director-General of competition and prices in France; former Director-General of agriculture at the European Commission
Dr. Gerhard Wendt	Chief Executive Officer in Kone Corporation

**LIST OF CONSULTED ORGANIZATIONS**

Airport Council International -European region (ACI Europe)

Algemeen Verbond Bouw Bedrijf (AVBB)

Amalgamated Engineering and Electrical Union (AEEU)

Anglo-German Group on Deregulation

Architects' Council of Europe

Asociacionde Empresas Constructoras de Ambito Nacional (SEOPAN)

Association des Chambres de Commerce et d'industrie européennes (Eurochambres)

Association des Cockpits Européens (ACE)

Association des Grandes Entreprises Françaises (AGREF)

Association des Obteneurs de Variétés Végétales de la Communauté Européenne (COMASSO)

Association des Transports Aériens à la demande (ACCA)

Association Européenne des Classes Moyennes (AECM)

Association européenne du Ciment (CEMBUREAU)

Association of Cooperative Banks of the EC

Association of European Airlines (AEA)

Association of European Community Airlines ( AECA)

Association of European Cooperative Insurers (AECI)

Banking Federation of the European Community

Brewers and Licensed Retailers Association (UK)

British Hospitality Association

British Rail

Bund Der Selbständigen (BDS)

Bundesverband der Deutschen Industrie EV (BDI)

Bundesvereinigung der Deutschen Arbeitgeberverbände (BDA)

Bundesvereinigung der Fachverbände des Deutschen Handwerks (BFDH)

Bureau Européen des Unions des Consommateurs (BEUC)

Bureau International des Producteurs d'Assurances et de Réassurances (BIPAR)

Bureau Technique Syndical (BTS)

Centre Européen des Entreprises à participation Publique (CEEP)

CIETT-Temporary Work Business

COGENE-International Council of Scientific Union

Comité de Coordination des Associations de Coopératives de la CE (CCACC)

Comité de liaison de l'IRU auprès de la CE

Comité de liaison des praticiens de l'art dentaire des pays de la CEE

Comité des Associations des Armateurs (ECSA)

Comité Européen de Coopération des Industries de la Machine-Outil (CECIMO)

Comité Européen de la Petite et Moyenne entreprise Indépendante (EUROPMI)

Comité Européen de Liaison des Commerces Agroalimentaires (CELCAA)

Comité Européen des Assurances (CEA)

Comité Européen des Coopérations de Production et de travail associé (CECOP)

Comité Européen des groupements de constructeurs du Machinisme Agricole (CEMA)

Comité Général de la Coopération Agricole de la C.E (COGECA)

Comité permanent des infirmières de la CE

Comité permanent des médecins de la CEE

Comités des Organisations Professionnelles Agricoles de la CE (COPA/COGECA)

Comité Syndical de Transport dans la Communauté Européenne (CSTCE)

Comité Syndical Européen Textile, Habillement Cuir

Committee for European Construction Equipment (CECE)

Communauté des Chemins de Fer Européens

Communication Workers Union (CWU) -UK

Community of European Railways

Confederação Geral dos Trabalhadores Portugueses (CGTP)

Confédération de l'Industrie Européenne de la Construction (FIEC)

Confédération des associations nationales de l'Hôtellerie et de la Restauration de la CE (HOTREC)

Confédération des Industries Agro Alimentaires de la CEE (CIAA)

Confédération espagnole des entrepreneurs (CEOE)

Confédération Européenne des Cadres (CEC)

Confédération Européenne Des Indépendants (CEDI)

Confédération Européenne des Industries du bois (CEI)

Confédération Européenne des Syndicats (CES)

Confédération Européenne des Syndicats Indépendants (CESI)

Confédération Internationale du Crédit Populaire

Confédération Nationale de la Construction (CNC)

Confederation of British Industry (CBI)

Confederation of Danish Industries (DI)

Confederation of Family Organizations in the European Community (COFACE)

Confederation of Finnish entrepreneurs (SYKL)

Confederation of food and drink industries of the EC (CIAA)

Confederation of Netherlands Industry and Employers (VNO -NCW)

Conseil des barreaux de la CE (CCBE)

Conseil Européen de l'Industrie Chimique (CEFIC)

Conseil Européen de l'Industrie Chimique -Additives Technical Committee (CEFIC-ATC)

Conseil Européen de l'Industrie Chimique -Automobile Emissions Control by Catalysts (CEFIC-AECC)

Conseil Européen de l'Industrie Chimique -European Fuel Oxygenetes Association (CEFIC-EFOA)

Conseil Européen des Producteurs de Matériaux de Construction (CEPMC)

Conseil National du Patronat Français (CNPF)

Corporation of London

Crediaval SGR

Danish Employers Confederation (DA)

Dental liaison Committee EEC

Deutsche Bahn (DB)

Deutscher Industrie und Handelstag (DIHT)

DOW Europe S.A

Engineering Consulting

European Federation Agricultural Workers' Union (EFA)

Eures

Eurocadres

Euro Citizen Action Service

Euro-Fiet

European Association of Cooperative Banks

European Chemical Industry Council (CEFIC)

European Committee of Food, Catering and Allied Workers' Unions

European Communities Biologists' Association

European Community of Consumer Cooperatives (EURO COOP)

European Community Shipowners Association (ESA)

European Construction Industry Federation

European consumer organization (BEUC)

European Environment Bureau (EEB)

European Federation of Animal health (FEDESA)

European Federation of Biotechnology Dechema

European Federation of Building Societies

European Federation of Finance House Association (EUROFINAS)

European Federation of Pharmaceutical Industries Association (EFPIA)

European Grouping of the Electricity supply Industry - EEIG (Euroelectric)

European Natural Heritage Fund

European Petroleum Industry Association (Europia)

European Public Services Committee (EPSC)

European Regional Airlines Association (ERA)

European Round Table of Industrialist (ERT)

European Secretariat for the liberal professions

European Secretary of National Bioindustry Associations (ESNBA)

European Timber Association (ETA)

European Trade Union Confederation (ETUC)

European Union of the Natural Gaz Industry (Eurogas)

Europêche

Fédération bancaire de la CE

Fédération de l'Industrie Européenne de la Construction (FIEC)

Fédération des Experts comptables Européens (FEE)

Fédération des Industries Mécaniques (FIM)

Fédération des vétérinaires de la CEE - FVG Paris

Fédération Européenne d'Associations Nationales d'Ingénieurs (FEANI)

Fédération Européenne de la Manutention (FEM)

Fédération Européenne de la Santé Animale (FEDESA)

Fédération Européenne des Métallurgistes

Fédération Européenne des Syndicats de la Chimie et des Industries diverses (FECSID)

Fédération Européenne des Travailleurs de l'Agriculture (EFA)

Fédération Européenne des Travailleurs du Bâtiment et du Bois (FETBB)

Fédération hypothécaire auprès de la CEE

Fédération Nationale des Syndicats de Commerces de Gros en Produits Avicoles, Gibiers, Agneaux de Lait et Chevreux (FENSCOPA)

Fédération Nationale des Syndicats d'Exploitants (FNSEA)

Fédération Nationale du Commerce de Produits laitiers et Avicoles (FNCPIA)

Federation of European Wholesale and International Trade Association (FEWITA)

Federation of Finnish Entrepreneurs

Federation of Greek Industries

Federation of Swedish Industries (IF)

Federation of Veterinaries of the EC (FVE. PARIS)

Finnish Dental Association

Forum for European Bioindustry Co-ordination (FEBC)

Friends of the Earth

Geschäftsführer des Verbandes der Chemischen Industrie e.V. (VCI)

Green Industry Biotechnology Platform (GIBIP)

Greenpeace - EC Unit

Groupement des associations meunières des pays de la CEE

Groupement des Banques Coopératives de la CE

Groupement des caisses d'épargne de la CE

Groupement des industries meunières des pays de la CEE (GAM)

Groupement européen des banques coopératives

Groupement pharmaceutique de la CE

Health & Safety Advice Centre (HASAC)

Institute for European Environmental policy

Institute of Directors (IoD)

International Air Carrier Association (IACA)

International Civil Airports Association (ICAA)

International Confederation of Temporary Work Business (CIETT)

International Council of Scientific Unions (COGENE)

International Federation of Industrial Energy Consumers (IFIEC)

International Policy British Rail

International Road Transport Union

International Union for Inland Navigation

Leamington and Warwick trades Union Council (UK)

Leaseurope

Le comité Conjoint du "Dialogue social"

Liaison centre of the meat processing industry in the EEC (CLITRAVI)

Liaison office of the European Ceramic Industry (CERAME-UNIE)

Lyonnaise des Eaux Dumez

MSF - The Union for skilled and professional people

NCMV- Belgian Organization of Independent Entrepreneurs

Organisation Européenne des Bateliers

Organisme de liaison des industries métalliques européennes (ORGALIME)

Product Safety Enforcement Forum of Europe (PROSAFE)

Retail, Wholesale and International Trade Representation to the EC (EUROCOMMERCE)

Royal Association of Small Employee's Association - MKB Netherland

Royal Institute of British Architects

RWE AG

Sandoz Ringaskiddi Ltd.

Savings Banks Group of the European Community (GCECEE)

Secrétariat Européen des Professions Libérales, Indépendantes et Sociales (SEPLIS)

Sécretariat Européen des Travailleurs de l'Agro-alimentaire (SETA)

Senior Advisory Group Biotechnology (SAGB)

Swedish Dental Association

Swedish Employers Confederation (SAF)

Syndicat Européen de travailleurs de l'alimentation de hôtellerie et des branches connexes dans l'Uita (SETA-UITA)

The Baker Suite (ERA) -UK

The EU Committee of the American Chamber of Commerce in Belgium

The European Confederation of Associations of Manufacturers of Insulated Wires and Cables (EUROPACABLE)

The Green Alliance

The Retail Wholesale and International Trade Representation to the European Union (Eurocommerce)

Union des Groupements d'achat coopératif des détaillants de l'Europe (UGAL)

Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises (UEAPME)

Union européenne des classes moyennes (EMSU)

Union Européenne des Exploitants d'Abattoirs (UEEA)

Union Européenne du Commerce du Bétail et de la Viande (UECBV)

Union Internationale de la Navigation Fluviale (UNIF)

Union of Industrial and Employers' Confederation of Europe (UNICE)

West Midlands Health and Safety Advice Centre

Wirtschaftskammers Österreich

Working Committee of the Malting industry of the EU (EUROMALT)

World Wildlife Fund for nature (WWF)

Young Entrepreneurs for Europe -Yes for Europe

Zentralverband des Deutschen Handwerks

Zentralverband Elektrotechnik und Elektroindustrie