

Community legislation: simplifying and improving the regulatory environment

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The European Commission presented three communications which aim for better consultation and accountability and which set out a modernisation plan for clearer and better European legislation. These three communications form a whole centred on the basic lawmaking framework of the European Union, including the way EU law is transposed into national law. They are designed to apply to all the EU's regulatory areas - not just the Community "pillar", but also the third "pillar" that relates to justice and home affairs, bearing in mind the institutional framework and the decision-making arrangements proper to each "pillar". The Commission believes that the communications could come into force from the beginning of 2003, keeping in mind that some of the proposed provisions are a matter for an inter-institutional agreement.

1) Simplifying and improving the regulatory environment - an action plan : it deals in chronological sequence with the various stages of the legislative cycle. It analyses the respective responsibilities of the various European institutions and to clarify what should be done under an interinstitutional agreement. The Commission is committed to be more transparent in the way it exercises its right of initiative and take greater account of diversities. In particular, it shows how it sets out clearly the reasons why it takes a particular initiative, and how it sets out to ensure that the substance of its legislative proposals are restricted to the bare essentials. Parliament and the Council, which are responsible in the final analysis for the proportionality of the legislative instruments and the simplicity of the legislation, are invited to firmly commit themselves in the same direction: returning to the original concept of the directive as provided for in the Treaty, laying down common criteria and providing for the involvement of the legislator in co-regulation, qualified-majority voting, the way the codecision procedure is conducted, and the use of impact assessments. Finally, the action plan suggests measures under the direct responsibility of the Member States which could greatly improve the quality of the European regulatory environment.

2) Promoting a culture of dialogue and participation : the subject of the second communication is who is really consulted as part of the Community legislative process. This gives practical expression to the emerging culture of dialogue and participation. Based on broad experience of mandatory or informal consultation exercises, five minimum consultation standards are set out, to be applied by the Commission's departments. The purpose is to enable the legislator to be sure of the quality, and particularly the equity, of consultations leading up to major political proposals. The move is motivated by three concerns: to systematise and rationalise the wide range of consultation practices and procedures, and to guarantee the feasibility and effectiveness of the operation; to ensure the transparency of consultation from the point of view of the bodies or persons consulted and from the legislator's point of view; and to demonstrate accountability vis-à-vis the bodies or players consulted, by making public, as far as possible, the results of the consultation and the lessons that have been learned.

3) Systematising impact assessment by the Commission : the third communication explains the systematic approach to assessing the impact of initiatives, essentially legislative ones, which the Commission now intends to apply. Practical and adapted to each instrument, the approach is a measured one, in that the legislative process should not get blocked pending an excessively long or over-costly evaluation. It takes the form of a general-purpose impact analysis tool which can be applied to all initiatives undertaken under the Commission's programme of work. Impact assessment is in the same line of thinking as the European sustainable development strategy. The intention is that it should play a major role throughout the process of improving the quality of European legislation, providing a decision-making aid but not taking the place of political judgement. For one thing, it will guide and justify the choice of the right instrument at the appropriate level of intensity of European action. For another, it will provide the legislator with more accurate and better structured information on the positive and negative impacts, having regard to economic, social and environmental aspects. Thirdly, it will constitute a means of selecting, during the work programming phase, those initiatives which are really necessary. The importance of decentralisation and increased accountability on the part of the beneficiaries is underlined by the Commission and a number of broad

lines can be set out for discussion: - clarifying executive responsibilities : to clarify in general terms the way in which executive responsibilities are exercised, i.e. what currently comes under the "committee procedures" banner; - a framework for the creation of European agencies : the Commission will define in 2002 the criteria for the creation of new regulatory agencies and the framework within which they should operate. In more specific terms, the Commission will be submitting to Parliament and the Council the terms of an interinstitutional agreement setting out the conditions for the creation of such agencies, based on the principles of a clear separation of responsibilities; - taking account of the regional, urban and local contexts : a first stage in the experimental implementation of tripartite contracts will be presented; - a new approach to vetting the application of the law : In the same spirit of decentralisation, the Commission will lay down the framework for a new approach to the way it exercises its responsibility for checking on the application of Community law. The Commission illustrates the potential and flexibility of the Community method, the very basis of the European Union. As the cornerstone of this method, the Commission's right of initiative is the indispensable counterpart to majority voting in the Council, in as much as the Commission's right of initiative guarantees vital minority interests when it comes to defining the general interest. In tomorrow's world, this balanced view of the general interest will be even more important with a view to ensuring its autonomy, and that is the very point of the action plan for better lawmaking.