European governance: operating framework for the European regulatory agencies

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PURPOSE : to present a communication from the Commission concerning the operating framework for the European Regulatory Agencies. CONTENT : within the EU's legal system, there are various decentralised organisations which can be grouped together under the general umbrella of European agencies. These include 15 agencies created under the EC Treaty, one under the Euratom Treaty and four under the second and third pillars of the European Union. The creation of regulatory agencies in clearly defined areas of competence could help improve the way rules are applied and enforced across the EU. In the perspective of a growing role for regulatory agencies, the framework proposes detailed criteria concerning the creation of regulatory agencies, their functioning and control mechanisms. The aim is to enhance implementation and enforcement of Community rules while emphasising the unity and integrity of the executive function at the Community level. These agencies have certain formal characteristics in common: they were created by regulation in order to perform tasks clearly specified in their constituent Acts, all have legal personality and all have a certain degree of organisational and financial autonomy. However, their differences - in terms of internal structure, their relations with the institutions, responsibilities and powers - far outweigh their similarities. These differences arise from the fact that the agencies were created at different points in the past to meet specific requirements identified at the time. In other words, there is no single model for a European agency; there are several. In view of these great differences, some specialists have suggested that existing agencies be classified by various criteria, such as the institutional and legislative frame of reference, the tasks they have been delegated and the executive powers they have been given, etc. Each classification envisaged is made up of several categories of agencies. More pragmatic discussions conducted by the Commission have identified the profiles of two types of agencies: - Executive : Executive agencies are responsible for purely managerial tasks, i.e. assisting the Commission in implementing the Community's financial support programmes and are subject to strict supervision by it. The Commission has presented a proposal for a regulation to establish their general status in order to make it easier to set up an agency of this type whenever it is deemed to be suitable for implementing a specific programme. This proposal for a framework regulation is already at an advanced stage of examination by the Council after having elicited a favourable opinion from the European Parliament. - Regulatory ones : by contrast, regulatory agencies are required to be actively involved in the executive function by enacting instruments which help to regulate a specific sector. The majority of them are intended to make such regulation more consistent and effective by combining and networking at Community level activities which are initially a matter for the Member States. They are examined in detail in the White Paper on European Governance. The White Paper on European Governance proposes setting out aframework of conditions for the use of agencies, focusing on the regulatory agencies under the EC Treaty. There are many factors in favour of this proposal. Firstly, it is not possible to draw up a single framework covering all the prospective agencies, in view of the major differences between them. Nor is there any point in devising several different frameworks for the various categories of agencies. It is best therefore to concentrate on the above two types of agencies which are likely to play an important part at Community level in the immediate future in coping with the shortcomings the system is known to have. As mentioned above, a proposal for a regulation has accordingly been presented for the executive agencies but nothing of this nature is in the pipeline for the regulatory agencies as yet. Secondly, the conditions for the creation, operation and supervision of the regulatory agencies need to be more coherent and transparent than they are at present. At the moment, even within this fairly restricted category, there are differences in the internal structures, such as the composition and method of appointing the governing bodies; in their relations with the institutions, for example the role played by the Commission; and, especially, in their responsibilities and powers. Thirdly, criteria should be defined once and for all which guarantee greater effectiveness of the agencies' activities while ensuring that the agencies themselves fit in fully with the general scheme of the Treaty and its

fundamental principles. In other words, an appropriate framework will make for a coherent approach to creating future regulatory agencies, by providing for an internal organisation which is up to the tasks the agency will be called upon to perform. It will also facilitate the decision-making process involved in the creation of each individual agency, by guaranteeing that its sound organisation and operation are not prejudiced by tactical considerations connected with particular sectors or interests. And, finally, use of agencies as an executive instrument will be governed by greater transparency vis-à-vis Europe's citizens. The Commission must ensure that the unity and integrity of the executive function at Community level is safeguarded.