Application of the Community legislation: operating framework for the European regulatory agencies helping to improve the implementation and the application of Community legislation

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PURPOSE : establish a horizontal framework for the creation, structure, operation, evaluation and control of European regulatory agencies.

PROPOSED ACT : Interinstitutional Agreement.

CONTENT : the European agencies have been set up in successive waves in order to meet specific needs on a case-by-case basis. They are typified by their diversity. If these agencies are set up in an uncoordinated manner, without a common framework having been defined, this is likely to result in a situation which is rather untransparent, difficult for the public to understand, and, at all events, detrimental to legal certainty.

In this context, this draft Interinstitutional Agreement aims to establish a horizontal framework for the creation, structure, operation, evaluation and control of European regulatory agencies. The Commission has proposed an interinstitutional agreement to ensure that the three institutions are involved from the outset in establishing the basic conditions to be met when acts are subsequently adopted to set up sectoral agencies. The fact that this type of legal instrument has been chosen does not rule out the possibility of more detailed arrangements subsequently being concluded as part of a framework regulation.

The interinstitutional agreement therefore also stipulates that, as a second step, the institutions will explore under what arrangements its scope could be extended to existing European regulatory agencies and, where necessary, to other agencies.

The operating framework must comply with the principles of good governance proposed in the July 2001 White Paper:

- Coherence: by adopting a horizontal approach, the aim is to ensure compliance with a minimum common core of principles and rules on the creation, operation and control of these agencies. Their involvement in exercising executive powers must be organised in a coherent and balanced way which takes account of the need to preserve the unity and integrity of this function at Community level.

- Effectiveness: the credibility of these agencies rests largely on their effectiveness. The principle of effectiveness essentially involves simplifying the decision-making process, cutting costs and giving these agencies a certain degree of organisational, legal and financial autonomy.

- Accountability: the independence of these agencies goes hand in hand with an obligation to meet their responsibilities. In order to strengthen the legitimacy of Community action, it is important to establish and delimit the responsibilities of the institutions and agencies. The decision to set up these agencies must be

taken prudently on the basis of an impact assessment conducted by the Commission. This impact assessment must be as thorough and rigorous as possible. Moreover, the principle of accountability requires that a clear system of controls be put in place.

- Participation and openness: the internal organization of the agencies must guarantee the participation of interested parties and a high level of transparency. The acts establishing these agencies must stipulate that, like the European institutions, they will be subject to the requirements of good administration.

Lastly, it should be noted that any proposal for the creation of a European regulatory agency must be the subject of a rigorous impact assessment which not only applies the principles of subsidiarity and proportionality but also includes an ex ante evaluation which is as thorough as possible.