Better lawmaking 2004: application of the principle of subsidiarity. 12th annual report

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PURPOSE: to present the European Commission's report 'Better lawmaking 2004'.

CONTENT: The obligation on the Commission to present an annual report on the application of the principles of subsidiarity and proportionality to the European Council and the European Parliament was enshrined by the Edinburgh European Council in December 1992. Since 1995 this report has also applied to measures taken to improve the quality and accessibility of legislation.

This report is the 12th of its kind. It reviews the situation in 2004 and covers the following points:

1) Better regulation: Improvement of the regulatory environment is an absolute must both with a view to enhancing competitiveness, growth and employment and to promoting sustainable development and a better quality of life for European citizens. Because of the division of responsibilities within the Union, this improvement requires a joint effort on the part of the European Parliament, the Council, the Commission and the Member States. There is a need to consolidate the achievements made so far but also to define supplementary actions on the basis of the experience gained during the past three years. The creation of a new Commission with a new agenda and new priorities offers an ideal window of opportunity in this connection. Although performances were mixed, all the parties concerned have at any rate expressed their growing interest in actions to improve regulatory quality. Hence the Commission considers that the rationalisation of structures and procedures is an issue which must be addressed as soon as possible.

- *Consultation of interested parties:* In 2004, the number of consultations increased significantly. This was achieved while complying with most of the minimum standards for consultation introduced in 2003. The Commission still needs to make additional efforts on feedback to respondents and, to a lesser extent, on transparency. Constant vigilance is also needed to engage all parts of society at the consultation stage.

- *Impact assessment:* Assessing the potential impacts of often highly complex scenarios across 25 Member States and beyond is particularly difficult. 29 Extended Impact Assessments were completed in 2004 (compared with 21 in 2003). While initial experience shows that the methodology used is sound, there needs to be a more systematic application of the current methodology across Commission services and greater focus on competitiveness issues. Additional resources will also be needed to meet growing internal ambitions and external expectations.

- *Collection and use of expertise:* In 2004, the collection of expertise in specific domains has been systematised thanks to the sixth Framework Programme for R&D. Work also started to improve transparency on expert groups established by the Commission. It will result in the publication, early 2005, of a list of these groups and in the launch, later that year, of a register providing Parliament and the public with standard information on all expert groups.

Updating and simplifying the acquis: The Commission actively pursued its rolling programme on simplification. The Commission is considering reinforcing the mechanisms for identifying legislation which is disproportionately burdensome for EU manufacturers in relation to the public interests that it aims to safeguard. This exercise could lead to the launch of a new phase of the Commission's simplification programme. The reduction of the volume of Community legislation remains a relatively weak point (codification and elimination of outdated legislation).

- *Choice of instruments:* The Commission has prepared an inventory of the co-regulation mechanisms put in place by the Union and the forms of self-regulation with a Community dimension. This inventory will be used as a basis for the first report on the possibilities of growing use of these regulatory alternatives, which will be presented in 2005. Moreover, the Commission continued to argue and act in favour of decentralising some highly detailed executive tasks to European regulatory agencies. Lastly, progress was made on target-based tripartite contracts and agreements between the Community, the States and regional or local authorities.

- *Monitoring the application of Community law:* The new Member States have been fully integrated into the system for the control of the application of Community law (on-line notification of national measures transposing directives, etc). A procedure has also been established to ensure monitoring and review of the overall impact of enlargement. Problems citizens and businesses encounter with the application of Community law have been better addressed thanks to measures such as SOLVIT, the Internal Market's problem-solving network. Moreover the Commission has prepared the launch in 2005 of a new internet-based tool to facilitate the filing of complaints by citizens and businesses concerning non-respect of Community law.

2) Actions taken by the Member States

The regulatory burden on European operators still is mainly due to national legislation. Further progress is therefore necessary at Member States level. The Commission calls in particular on Member States to consult and to assess impact before adopting national legislation transposing EC acts. Lastly, it recommends the introduction of comparable, or at least compatible, regulatory quality indicators at EU and Member State level in order to monitor progress and facilitate the identification of best practices.

3) Application of the principles of subsidiarity and proportionality

The Commission took its procedural obligations regarding subsidiarity and proportionality very seriously. Efforts to consult widely before proposing legislation reached record levels. The decrease in the number of regulations and directives compared to the number of decisions and recommendations, both in absolute and relative terms, indicates how careful the Commission has been to choose the lightest instrument. In a number of cases, however, the Commission was criticised for not addressing the principles in more precise terms and for the way it assessed the burden put on certain stakeholders. In order to better explain reasons for concluding that its proposals comply with these principles and to facilitate compliance monitoring, the Commission developed and tested a new software application for drafting explanatory memoranda. This application will ensure that all requested information on the principles is provided in a systematic way. It will be used by all services in 2005.

As for burden assessment, the Commission wishes to underline that this is a fairly complex matter in a Union so large and so diverse. Providing precise forecasting on each and every possible impact is not always possible; when it is feasible, it is often very costly and long. Attempting to be exhaustive could result in legislative paralysis at the very time the Union is confronted with urgent challenges. The Commission therefore thinks that the principle of proportionate analysis should continue to prevail.

On the whole, the European Parliament and the Council introduced relatively few amendments referring explicitly to subsidiarity and proportionality. In most cases, the three institutions eventually managed to come to a common interpretation of subsidiarity and proportionality. As regards political monitoring of the Union's legislative process, the Committee of the Regions has recognised, in the great majority of its opinions, the legitimacy of Union action. As regards ex-post judicial review, the subsidiarity principle has been referred to on six occasions by the European Court of Justice. No judgment has concluded that the rules of the Treaty have been badly applied in this connection.