Better law-making 2005: application of the principles of subsidiarity and proportionality. 13th annual report

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PURPOSE: the presentation of the Commission's 13th annual report on "Better lawmaking".

CONTENT: since 1992 the EU Heads of State, meeting at the European Council in Edinburgh, requested the Commission to present an annual report on the application of the principles of subsidiarity and proportionality. This request was later extended to include an annual evaluation of progress on improving the EU's regulatory environment. This report is the Commission's 13th annual review and covers the year 2005.

1) Better lawmaking: Streamlining the EU's regulatory environment is crucial if the EU's competitivness, growth, employment opportunities; sustainable development and quality of life is to improve. This requires the joint effort of the European Parliament, the Council, the Commission and the Member States. 2005 saw a growing interest amongst all of the actors involved to improve the EU's regulatory quality.

2) Commission actions: In 2005 the new Commission endorsed revised guidelines on the Impact Assessments; adopted a Communication on an "EU common methodology assessing administrative costs imposed by legislation"; adopted a Communication on "The outcome of screening pending legislative proposals"; adopted a Communication on "A strategy for the simplification of the regulatory environment"; and launched a high-level group of national regulatory experts.

The report makes the following findings:

- *Consultation of interested parties*: In 2005 the number of consultations increased significantly, with 187 non-legislative Communications (up by 28 compared to 2004 figures) and 106 internet based consultations (up 11 compared to 2004 figures). Overall compliance with the minimum standards for public consultation have been good. Experience shows that there is room for further improvements such as providing general feedback on how comments are taken into account and ensuring that comments which are receive are published.

- *Impact Assessments*: In 2005 the Commission improved it methodological framework for assessing the potential impacts of its proposals on policies. It also increased the number and quality of actual impact assessments. In future, particular attention will be given to alternative policy options.

- *Collection and use of experts:* 2005 saw the operational launch of SINAPSE (Scientific INformAtion for Policy Support in Europe). This acts as a new and powerful interface between experts in any given field and EU policy makers. In 2005 more than 300 European and international scientific organisation registered with SINAPSE. In other developments, Commission President Barroso has taken major steps to improve overall transparency. Since October 2005, for example, a new register provides both Parliament and the public with standard information of approximately 1200 expert groups who advise the Commission.

- *Updating and simplifying the acquis*: In October 2005, the Commission adopted a new phase of its strategy for the simplification of existing rules. Based on Member State input, the new strategy proposes a

three year rolling programme, which will be updated on a regular basis. The number of "simplification" proposal presented by the Commission is expected to increase significantly. For example, the rolling programme foresees the repeal, codification, recasting or modification of 222 legal acts. This alone is expected to have a knock-on effect on more than 1 400 related acts.

- *Estimation of administrative costs:* In 2005, the Commission rested, validated and presented a methodology for estimating the administrative costs of EU imposed legislation. Based on this the Commission has announced that this methodology will be included in future impact assessment reports. Together with a group of national experts the Commission will continue work on refining this common methodology.

- *Choice of instruments:* To recall, the Commission announced in its revised "2005 Action Plan" that it intended to pay more attention to the choice of instruments being proposed. The Commission has begun an inventory of existing cases for EU self-regulation and co-regulation. Whilst acknowledging that alternative approaches to regulation exist it nevertheless remains the Commission's view that regulation remains the simplest way to achieve the EU's overall objectives.

- *Monitoring the application of Community law:* Primary responsibility for applying Community law remains with the national administrations. The role of the Commission is to ensure that Community law is diligently and properly transposed and applied. The Commission notes that the management of complaints and infringements has improved in 2005 as has the use of less formal measures.

- *Screening and withdrawing proposals:* In September 2005 the Commission announced its intention of withdrawing 68 proposals on the basis that they were not consistent with the Lisbon objectives nor were they consistent with the new principles on better regulation. A list of proposals withdrawn was published in 2006.

2) Actions taken by the European Parliament, the Council, the Committee of the Regions and the EESC: In 2005 the European Parliament began work on several reports examining various aspects of better regulation. The Council and its Presidency were equally keen to examine the issue of better regulation. However, neither Parliament nor Council modified their working methods for the adoption of simplified proposals. In so far as this is key to the success of an overall simplification programme, the Commission expresses the hope that the legislator will proceed with the simplification proposals in an expeditious manner.

3) Actions taken by the Member States: Member States have an essential role to play in better lawmaking. The Commission argues that delivery of better regulation relies largely on them. Indeed, the Commission has suggested that better regulation become part of the national "Lisbon" programmes and recommends that the Member States report on their current activities and actions. The Commission, in particular, calls on those Member States who do not have a strategy on improved regulation, to assess the impact of the proposed legislation and to systematically consult stakeholders at all stages of the decision making process.

4) Applying the principles of subsidiarity and proportionality: The report notes that the explanatory memorandums, which accompany every legislative proposal, have led to a more detailed and systematic justification of the need for EU action. The European Parliament and the Council have introduced relatively few amendments referring explicitly to the subsidiarity and proportionality principles. The Commission notes that a large proportion of the Commission's proposals were in fact a response to invitations to act made either by the European Council, the Council or the European Parliament.

As far as the Committee of the Regions is concerned, the vast majority of its opinions did not criticise the Commission's proposal on the grounds of subsidiarity. Although twenty national parliamentary chambers stated that the Commission failed to adequately justify their proposals on the subsidiarity principle and

fourteen noted that certain proposals were breaching the subsidiarity principle, the Commission suggests that these views are possibly the result of an incorrect assessment of the principle.

In other developments, the principle of subsidiarity was referred to four judgements delivered by the Court of Justice and the Court of First Instance in 2005. No judgement concluded that the principle of subsidiarity had been contravened.