



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION

**European Governance:  
Better lawmaking**

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### ***Accountability, effectiveness, proportionality***

In July 2001, the Commission presented its White Paper on *European Governance*. The basic message was a simple one and is as topical now as it was then: we need to *govern ourselves better, together* – European institutions and Member States. We can do this *without changing the Treaty*, without necessarily waiting for the successful outcome of a new intergovernmental conference. Better governance together means active cooperation between the European Parliament, the Council, the Commission and the national governments so that the people of Europe can see more clearly how they fit into major projects and into the EU's day-to-day business.

One thing we have to acknowledge is *the richness of the Community method*. Compared with other systems of international relations, it produces rules which can be applied in any national context and which have the backing of *legal certainty*. But this very success raises further questions.

There are a lot of complex issues at stake now in enacting good European legislation which is mindful of the principles of subsidiarity and proportionality. People nowadays take an interest in the *effectiveness* of the rules handed down "from Brussels" and the way they are drawn up. The advent of a democratic conscience is strengthening the need for *accountability and proportionality* in the way powers vested in the European institutions are exercised. This need is expressed more especially in transparency, clarity and the willingness to stand up to scrutiny. What we have here, then, is a veritable *ethical requirement*.

The resolution adopted by the European Parliament in November 2001 in the wake of the Kaufmann report strengthens this requirement still further. By clearly stressing the primacy of political accountability behind legislative action, the resolution brings out the need for more transparent, equitable and disputational consultation: it is the very quality of the legislation which is under scrutiny.

### ***Three communications for better lawmaking***

Inspired by this resolution and by the initial reactions during the consultations on the White Paper concerning the "better lawmaking" element, and bearing in mind the recommendations by the high-level group chaired by Mr Mandelkern, the Commission has now decided that the time has come to act in response to the strategy mapped out by the Lisbon European Council. That is the point of the *three communications* set out below.

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*.

#### *"Simplifying and improving the regulatory environment" – an action plan*

How can the various institutions and the Member States improve their lawmaking? This is the question which the first communication addresses in the form of an *action plan*. It deals in chronological sequence with the various stages of the legislative cycle. This makes it possible

to analyse the respective responsibilities of the various European institutions and to clarify what should be done under an *interinstitutional agreement*.

The *Commission*, first of all, is committed to be more transparent in the way it exercises its right of initiative and take greater account of diversities. In particular, the Commission 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.

#### *Promoting a culture of dialogue and participation*

Who is really consulted as part of the Community legislative process? Are the smallest voices really and always heard? What is the subject matter of consultation? And to what extent are people's opinions actually taken into account? This is the subject of the second communication, which 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.

#### *Systematising impact assessment by the Commission*

How can we take into account the "impact" of future legislation – in other words, what would be the benefit and the cost of implementing it? That is the subject of the third communication, which 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*.

### ***Political refocusing and the quality of policy execution: two sides of the same coin***

The "better lawmaking" action plan and the two accompanying communications are based on the same premise: to place the three institutions – Parliament, Council and the Commission – in a situation to produce better laws; their joint effort along with the Member States will result in a *basic legislative framework which is simpler, more effective and better understood*.

However, the White Paper on European governance did not stop there in terms of "refocusing". It pointed out that the *arrangements for policy execution* and the concrete conditions for applying them on the ground formed, together with the basic legislative framework, an *indissociable whole* in the public's perception. The facts and the quantified trends back up the importance of the executive functions: while the number of legislative texts, directives and regulations adopted by Parliament and the Council remains at around 200 per year, the number of executive acts adopted by the Commission has now reached several thousand and the trend is rising. Technological advances and the increase in the number of Member States go a long way towards explaining this dynamism.

Against the background of this proliferation of executive functions, there is the question of what are the executive's "core tasks", how the legislator monitors the way these tasks are carried out, and how we can ensure full participation by the administrative bodies on the ground, national or local, in the way European rules are finally applied.

The governance response to these questions is *decentralisation* and *increased accountability* on the part of the beneficiaries. It applies in four areas for which detailed proposals will be made in the autumn of 2002. At this present juncture, a number of broad lines can be set out for discussion.

#### *Clarifying executive responsibilities*

In the first place, the important thing is to *clarify in general terms* the way in which executive responsibilities are exercised, i.e. what currently comes under the "committee procedures" banner. The Commission's proposed approach is to start with a clearer definition of each institution's remit: as the body to whom the executive function is delegated, the Commission must take full responsibility for the corresponding decisions, with the help of expertise from national administrations in the form of committees of a purely advisory nature. For its part, the legislator must supervise the work of the executive. In so doing, the two branches of the legislative authority must be placed on an equal footing, at least for matters dealt with under the co-decision procedure. In that respect, the Commission announced in the White Paper on Governance its intention to launch a reflexion on the modification of Treaty Article 202 with a view to the next Inter-governmental Conference. Nevertheless, the Commission believes that adaptations might be achieved without waiting for a change of the Treaty and will propose already by next autumn an amendment to the Council Decision laying down the arrangements for applying Article 202.

### *A framework for the creation of European agencies*

However, the Commission's executive responsibilities do not mean (indeed, the opposite applies) that it must retain all the executive functions, including those which are sometimes of a highly detailed nature, which the Commission is required at present to bear in principle. The decentralisation of some of these tasks to *European regulatory agencies*, within limits which have to be laid down precisely in advance, does not detract from the Commission's effective responsibility. The White Paper on governance announced that "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. The plan is to conclude a limited number of pilot contracts between the Commission, certain Member States and regional or local authorities with a view to achieving the Community's sustainable development objectives, like sustainable coastal management or urban mobility, in full respect of existing constitutional provisions in each Member State. These contracts will be of a voluntary nature and will involve no binding legal commitments. The results of the pilot experiment will issue in a second stage, which might lead to the amendment of certain legislative texts with a view to simplifying the executive arrangements and taking more account of the local contexts.

### *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. This approach will be based on the premise that the Commission's resources are inevitably limited, and will be even more limited in a Community with something like 470 million people. More attention will have to be given to the at times unacceptable delays in implementing national application measures.

### ***The Community method: a basis for building the Union***

Changing what is amenable to change, without necessarily awaiting a reform of the Treaties; and in doing so, safeguarding the conditions for legal certainty; clarifying ways in which the Treaties can be deepened, and thus facilitating reform of the Treaties: this is the basic element which has emerged from the concept of European governance.

The first thing is that this approach can underpin *the way the three institutions operate* – Parliament, the Council and the Commission – and improve the way they work together. The Commission, with its internal reform supplemented by the White Paper on governance; the European Parliament, with the Corbett report which affects all its rules of procedure; and the Council of Ministers, with the proposals put forward by its Secretary General, have all committed themselves to this approach. The point now is to pursue and deepen these reforms.

The real significance of this approach, though, lies in the remit of the *European Convention* itself, which is to lay down the constitutional foundations of the European Union, in line with the message which the Commission spelt out in its "project for the European Union".

Viewed as a quiet revolution in terms of the way we act, European governance 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*.

Similarly, the complementarity between the institutions, which is at the very heart of the unique Community system, will mean having to consolidate this refocusing effort, as prompted by the governance reforms, and for reasons of *accountability, proportionality, transparency and legal certainty*. And finally, with the move towards more rationalised consultations, the systematic and a priori consideration of the impacts the proposed legislation will have, we are touching on the vital question of the intensity of Community action, lying at the very heart of the balance between effectiveness and the preservation of diversities which should, according to the Laeken declaration, help to clarify the way powers are exercised between the EU and its Member States.