



European Economic and Social Committee

INT/296
Strategy for simplification

Brussels, 5 July 2006

OPINION

of the

European Economic and Social Committee

on the

**Communication from the Commission to the European Parliament, the Council, the European
Economic and Social Committee and the Committee of the Regions –
Implementing the Community Lisbon programme: A strategy for the simplification
of the regulatory environment**

COM(2005) 535 final

On 9 December 2005 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Communication of the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Implementing the Community Lisbon programme: A strategy for the simplification of the regulatory environment

COM(2005) 535 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 31 May 2006. The rapporteur was Mr Cassidy.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 5 July 2006), the European Economic and Social Committee adopted the following opinion by 146 votes in favour and six abstentions.

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1. **EESC conclusions and recommendations**

- 1.1 This opinion is a referral from the Commission and is a follow-up of its Communication of March 2005 *Better Regulation for Growth and Jobs in the European Union*¹.
- 1.2 Simplification should result in a high quality regulatory framework, easier to understand and more "user friendly".
- 1.3 Simplification should increase respect for EU legislation and, in the process, reinforce its legitimacy.
- 1.4 The Committee believes that Member States have a heavy responsibility to ensure that EU measures are properly transposed into their national law and enforced. The Committee recognises that the Interinstitutional Agreement on Better Lawmaking² provides a "code of conduct" for Member States in better transposition and application of EC directives. What is important is that the resulting regulatory framework at national level is both as balanced in

¹ COM(2005) 97 of 16.3.2005.

² OJ C 321, 31.12.2003.

terms of content and as simple as possible for business, employees, consumers and all civil society players.

- 1.5 The Committee wishes socio-professional actors to be associated with the "comitology" procedures of simplification of regulation, on a model similar to the SLIM committees, but in a more systematic way and upstream of this regulation, rather than *a posteriori* as it was the case of the SLIM experiments.
- 1.6 The Committee would like to see more consultation between the Commission and stakeholders similar to that which has led to the Communication under discussion. It believes that this would be a material assistance to the "co-regulation"³ referred to in the Communication's paragraph 3d. It regrets, however, the absence of any reference to "self-regulation"⁴, something for which the EESC has been calling for some time⁵.
- 1.6.1 However, the Committee acknowledges that there is a danger with self-regulation that instead of rules which are binding on stakeholders, the stakeholders themselves conclude voluntary agreements which they may or may not choose to comply with.
- 1.7 The European Court of Justice is playing an increasing role in the interpretation of European Community directives and has found itself having to interpret the sometimes ambiguous wording of directives which emerge from the "co-decision" process. The ECJ is also being required increasingly to give guidance to national courts where their activities are complementary. The Committee notes the progress made by the ECJ in reducing by 12% the number of cases pending concerning Member States failure to notify, incorrect application and non conformity with EC directives.
- 1.8 The Committee acknowledges the importance of this Commission Communication in implementing the Lisbon programme, in which progress has been lamentably slow owing to the reluctance of governments of Member States to carry out the commitments they entered into at Lisbon.
- 1.9 The EESC particularly welcomes the Commission's commitment to make more extensive use of information technology and hopes that the Commission will ensure that whatever

³ Interinstitutional agreement on better law-making defines "co-regulation" in its paragraph 18 as "*the mechanism whereby a Community legislative act entrusts the attainment of the objectives defined by the legislative authority to parties which are recognised in the field (such as economic operators, the social partners, non-governmental organisations, or associations)*", OJ C 321, 31.12.2003.

⁴ Interinstitutional agreement on better law-making defines "self-regulation" in its paragraph 22 as "*the possibility for economic operators, the social partners, non-governmental organisations or associations to adopt amongst themselves and for themselves common guidelines at European level (particularly codes of practice or sectoral agreements)*" OJ C 321, 31.12.2003.

⁵ Information report on "*The State of co-regulation and self-regulation in the Single Market*", CESE 1182/2004 fin, 11.1.2005, rapporteur: Mr Vever.

arrangements are set up for improved IT, they will be compatible with national arrangements (or that national arrangements should be compatible with the EU's!).

- 1.10 The EESC has always supported the declaration by the Six Presidencies "Advancing regulatory reform in Europe" of 7 December 2004⁶ and hopes that the presidencies to follow will support the same declaration⁷.
- 1.11 The EESC is aware of the European Parliament's reports on better regulation and in particular the Gargani report on *Strategy for the simplification of the regulatory environment*⁸.
- 1.12 The Committee acknowledges that the current Commission is making a determined effort to build on the SLIM and BEST sectoral initiatives. The framework action (February 2003-December 2004) resulted in the screening of about 40 policy sectors and the adoption by the Commission of about 40 simplification proposals. To date, nine simplification proposals related to that programme are still pending.
- 1.13 The Committee acknowledges that the enlargement of the European Union to 25 Member States has also increased the regulatory burden both on the Commission services and on new Member State bureaucracies.
- 1.14 Simplification and better lawmaking are complementary activities involving Council and Parliament as well as the Commission, with the advice of the EESC and the CoR where necessary.
- 1.15 The Committee reiterates its support frequently expressed in previous opinions on the importance of alleviating the regulatory and financial burdens on business, especially SMEs.

2. Introduction

- 2.1 The Committee has over the years delivered a number of opinions on Simplification going back to a request from the European Council in 1995 when a working party was set up to consider ways of simplifying EU rules.

In this series of opinions, the EESC has concluded that:

- there should be a dialogue between the EESC and the Committee of the Regions as well as with the Economic and Social Councils in the Member States;

⁶ A joint statement of the Irish, Dutch, Luxembourg, UK, Austrian and Finnish Presidencies of the EU.

⁷ 2007: Germany January to June; Portugal July to December; 2008: Slovenia January to June; France July to December.

⁸ A6-0080/2006, adopted on 16.5.2006.

- *the simplification process does not need new ideas; what it needs is the effective implementation of the ideas which have already been expounded by the European institutions and by the Lisbon European Council;*
- legislative proposals should respond to the following criteria:
 - are the provisions understandable and user-friendly?
 - are the provisions unambiguous in intent?
 - are the provisions consistent with existing legislation?
 - does the scope of the provisions need to be as wide as envisaged?
 - are the time scales for compliance realistic and do they allow business and other stakeholders to adapt?
 - what review procedures have been put in place to ensure even enforcement and to review effectiveness and costs?
- there is a great deal of support from "stakeholders" for the idea of more self and co-regulation;
- *the possibilities have not been properly explored for less detailed and less finicky regulation, offering scope for co-regulation and self-regulation⁹.*

2.2 There is a necessary interaction between simplification and better implementation and enforcement. The current Commission Communication shows signs of having taken account of some of the conclusions of previous EESC reports recognising that "*simplification is not a new issue*". The series of Commission Communications dates back to 1997, i.e. two years after the EESC's first call for simplification.

3. **Summary of the Commission Communication**

3.1 The Communication recognises that the requirement is for simplification, not only at Community but also at national level to make things easier and more cost-efficient for citizens and operators.

3.2 An important part of the new simplification strategy at EU level is a review of the *acquis*. It sets out an ambitious 3 year rolling programme from 2005 to 2008 based on stakeholders' practical experience with an approach based on continuous in-depth sectoral assessment.

3.3 The Commission's approach to simplification is based on five instruments¹⁰:

⁹ Information report on *The State of co-regulation and self-regulation in the Single Market*, CESE 1182/2004 fin, 11.1.2005, rapporteur: Mr Veveř.

¹⁰ Action plan for *Simplifying and improving the regulatory environment* COM(2002) 278 final and Codification of the *Acquis communautaire*, COM(2001) 645 final.

- a) **repeal** - the elimination of irrelevant or obsolete legislation;
- b) **codification** - the consolidation of an act and all its amendments into a new instrument without changing the substance;
- c) **recasting** - consolidation as above but with some change of substance;
- d) **modification of the regulatory approach** - identifying a more legally effective approach to that currently in use e.g. substituting a regulation for a directive;
- e) **reinforcement of the use of information technology**¹¹ - facilitating the use of IT to improve efficiency.

3.4 The Commission's Communication recognises that it can only succeed with support from other EU Institutions and above all of Member States. An important part would be the recognition by the latter of the need to keep the implementation of EU legislation as close as possible to the original directives agreed under the co-decision procedure and not to add on (or "gold-plate").

3.5 The Communication takes account of the findings of the widespread consultation process with the Member States and stakeholders. The conclusion of the process is that EU proposals should:

- **clarify and improve the legibility of legislation;**
- **update and modernize the regulatory framework;**
- **reduce administrative costs;**
- **reinforce the consistency of the *acquis*;**
- **improve the proportionality**¹² **of the *acquis*.**

The last is probably the most far-reaching concern of stakeholders.

The Commission's Communication in its Annex 2 lists 222 measures for simplification. The Commission's simplification programme covers the period 2005 to 2008.

3.6 The first Company Law Directive (68/151/EEC) was simplified, updated and modernised in 2003 to maximise the potential of modern information tools and technologies and to enhance transparency regarding public limited liability companies. However, the modified Directive could well be included in a possible recast or codification exercise. A public consultation has been launched at the end of last year to collect stakeholders' views on such options.

¹¹ The Commission proposes to bring forward an initiative in the area of e-government with a launch of an e-government Action Plan in 2006.

¹² Regulations should be proportionate to the aims to be achieved.

4. General comments

- 4.1 Generally, "simplification" must not be misunderstood as a means of achieving deregulation "through the back door". Social standards – and in particular standards for the protection of employees, consumers and the environment – must not be undermined or watered down as a result of administrative simplification.
- 4.2 The Committee welcomes the Communication and supports the Commission in pointing out that the success of simplifying the regulatory environment depends as much on the Member States and their regulatory agencies as it does on the European Institutions.
- 4.2.1 It would be helpful if a code of conduct could be drawn up as previously suggested in EESC opinions¹³ (see also Appendix I).
- 4.2.2 The EESC recalls the fact that the success of the simplification programme will not depend solely on the Commission's ability to deliver, but also on the co-legislators' capacity to adopt within a reasonable timeframe the simplification proposals tabled by the Commission.
- 4.2.3 It should be recalled that the interinstitutional agreement on "better lawmaking" stipulates in its § 36 that *"within six months of the date upon which this Agreement comes into force, the European Parliament and the Council, whose task it would be as legislative authority to adopt at the final stage the proposals for simplified acts, need to modify their working methods by introducing, for example, ad hoc structures with the specific task of simplifying legislation"*.
- 4.3 The Communication acknowledges the importance to SMEs and to consumers of the simplification initiative. Poorly drafted EU or national legislation leaves consumers uncertain as to their rights and their possibilities of redress.
- 4.4 The Committee also welcomes the Commission's commitment to improving the process of producing Impact Assessments, not only in the context of burdens on business, but also in their impact on consumers, on disadvantaged groups (such as people with disabilities) and on the environment. In line with the declared goal of the Lisbon process of creating "more growth and employment", impact assessments for employees and employment in general would also be very positive. Especially welcome is the suggestion that there should be more use made of "one-stop-shops" and its reference in certain directives to "virtual" or "self-testing" in the context of motor vehicles.

¹³ Especially opinion on the *Communication from the Commission – simplifying and improving the regulatory environment* of 21.03.2002, rapporteur: Mr Walker (OJ C 125, 27.5.2002) and opinion on *Simplifying rules in the single market* of 19.10.2000, rapporteur: Mr Vever (OJ C 14, 16.1.2001).

4.5 It would be helpful if the Commission could produce an impact assessment to justify its withdrawal of proposals as it is now doing for new proposals.

5. **Specific comments**

5.1 The Communication implies that the process of adapting directives to technical progress ("comitology") needs to be made more transparent – something urged frequently by the European Parliament. Member States have a responsibility in this, however. The comitology work is carried out by "national experts" and there is considerable evidence to suggest that these "experts" do not take account of their government's views in their comitology activities (an example of this is the 1979 Birds Directive to which the technical annexes were added by "experts" after ministers had given their approval in Council to the directive itself).

5.2 The importance of simplification to consumers, social partners and other "stakeholders" should be highlighted. Conflicts between national implementing legislation and the original EC directives on which they are based add greatly to the work load of the European Court of Justice (ECJ) whose role is "interpretation" but which is increasingly finding itself having to fill in details which appear to be overlooked or for which the requirement for Council unanimity has failed to produce a satisfactory text e.g. in taxation matters. However, the fact that the ECJ is increasingly being given the role of a political decision-maker is a problem. The ECJ lacks a clear political basis for this, besides exceeding its remit. It therefore takes decisions which should be taken by democratically elected authorities.

5.3 The EESC acknowledges that the Commission itself has made an effort and there have been several hundred repeals and declarations of obsolescence, which should have significantly contributed to reducing the volume of the *acquis* but not necessarily reducing burdens on business, on employees, on consumers or on other "stakeholders". The Committee acknowledges that there are still areas where more legislation is needed at EU level in order to defend the environment and the rights of employees, consumers and disadvantaged groups (such as people with disabilities or other minorities), and to make sure that they all can have full access to the benefits of the single market.

5.3.1 On the other hand the most commonly employed system to date is that of updating. While this permits the introduction of certain necessary changes so as to update the regulations, the aim of simplification is not always achieved; indeed, on the contrary, measures are sometimes superimposed so that old and new regulations exist side by side in some Member States causing confusion to stakeholders. Enforcers in Member States may be left in doubt as to whether or not they are acting in accordance with their legal institutions.

5.3.2 The simplification features of each simplification proposal of the Rolling Programme should be clearly spelled out in the corresponding exploratory memorandum, and, where relevant, the accompanying Impact Assessment. The Commission services should carefully monitor these proposals in the course of their inter-institutional decision-making process to ensure that the

simplification dimension is preserved, as required by Interinstitutional Agreements (on the "codification technique"¹⁴, on the "recasting technique"¹⁵ and on "Better Lawmaking"¹⁶).

- 5.4 The Committee draws attention once again to its long series of opinions on the need for better regulation and simplification, particularly to its most recent opinion on "*Better Lawmaking*"¹⁷ in response to a request for an exploratory opinion of the UK Presidency.
- 5.5 The Committee reiterates its frequently expressed wish that the process of better regulation and simplification should continue following the Six Presidencies declaration¹⁸.

Brussels, 5 July 2006

The President
of the
European Economic and Social Committee

The Secretary-General
of the
European Economic and Social Committee

Anne-Marie Sigmund

Patrick Venturini

14 OJ C 102, 4.4.1996.

15 OJ C 77, 28.3.2002.

16 OJ C 321, 31.12.2003.

17 CESE 1068/2005, OJ C 24, 31.1.2006, rapporteur Mr Retureau.

18 *Advancing regulatory reform in Europe* – A joint statement of the Irish, Dutch, Luxembourg, UK, Austrian and Finnish Presidencies of the European Union of 7.12.2004.