

**Opinion of the Committee of the Regions on:**

- the ‘Report from the Commission “Better Lawmaking 2002”’, and
- the ‘Communication from the Commission “Updating and simplifying the Community acquis”’

(2004/C 73/07)

THE COMMITTEE OF THE REGIONS,

having regard to the decision of its Bureau of 8 April 2003, under the fifth paragraph of Article 265 of the Treaty establishing the European Community, to instruct its Commission for Constitutional Affairs and European Governance to draw up an opinion on the Report from the Commission ‘Better Lawmaking 2002’ and the Communication from the Commission ‘Updating and simplifying the Community acquis’ (COM(2002) 715 final and COM(2003) 71 final);

having regard to Article 5 of the EC Treaty and Amsterdam Protocol;

having regard to the draft Constitutional Treaty adopted by the Convention on the future of Europe and presented to the President of the European Council in Rome on 18 July 2003 (CONV 850);

having regard to the Interinstitutional agreement on better lawmaking reached by the Council, the Commission and the Parliament, announced by the European Council in Thessalonica on 20 June (see point 49 of Council conclusions);

having regard to the European Commission Communication on ‘Updating and Simplifying the Community acquis’ (COM(2003) 71 final and SEC(2003) 165);

having regard to the 10th report from the European Commission on ‘Better Lawmaking 2002’ (COM(2002) 715 final);

having regard to the European Commission ‘Action Plan: Simplifying and improving the regulatory environment’ (COM(2002) 278 final);

having regard to the European Commission Communication on ‘impact assessment’ (COM(2002) 276 final);

having regard to the European Commission Communication on ‘European Governance: Better lawmaking’ (COM(2002) 275 final);

having regard to the European Parliament draft Report on simplifying and improving the regulatory environment (A5-0443/2002);

having regard to the European Parliament report on Better Lawmaking 2000, 2001 (A5-0100/2003);

having regard to its opinion of 21 November 2002 on ‘Simplification of the Union’s Instruments’ (CdR 263/2002 fin) <sup>(1)</sup>;

having regard to its opinion of 13 April 2000 on ‘Better lawmaking 1999’ (CdR 18/2000 fin) <sup>(2)</sup>;

<sup>(1)</sup> OJ C 73, 26.3.2003, p. 73.

<sup>(2)</sup> OJ C 226, 8.8.2000, p. 60.

having regard to its opinion of 15 September 1999 on 'Better lawmaking 1998 — a shared responsibility' (CdR 50/1999 fin) <sup>(1)</sup>;

having regard to its opinion of 15 September 1999 on 'Implementation of EU law by the regions and local authorities' (CdR 51/1999 fin) <sup>(2)</sup>;

having regard to its opinion of 11 March 1999 on 'Developing a genuine culture of subsidiarity. An appeal by the Committee of the Regions' (CdR 302/98 fin) <sup>(3)</sup>;

having regard to its draft opinion (CdR 62/2003 rev. 2) adopted on 26 September 2003 by its Commission for Constitutional Affairs and European Governance (rapporteur: Mr Gordon Keymer, Leader of Tandridge District Council (UK-EPP),

adopted unanimously the following opinion at its 52th plenary session of 19 and 20 November 2003 (meeting of 20 November).

## 1. Views of the Committee of the Regions

### The Committee of the Regions

1.1. welcomes the overall objectives of the Commission towards better law-making and simplification;

1.2. reiterates its view that EU legislation should be clear, easy to read, understandable and proportionate as to its objectives. Above all, EU law should be relevant and necessary. The CoR welcomes the fact that the draft Constitutional Treaty proposes to significantly reduce the number of legal instruments and simplifies the legal terms for the benefit of European citizens;

1.3. recalls Article 6 of the Protocol to the Treaty of Amsterdam which states that 'the Community shall only act to the extent necessary'. Also Article 9 which requires that any burden, financial or administrative, falling upon local authorities, economic operators (etc.) 'to be minimised and proportionate as to the objective to be achieved';

1.4. considers that the CoR, as the EU body representing local and regional government, is the natural champion of subsidiarity, particularly in view of the draft Constitutional Treaty extending subsidiarity to the local and regional spheres of governance; as such has a legitimate role in monitoring the application of subsidiarity and proportionality principles, including recourse to the Court of Justice to bring actions in the case of non-compliance with these principles;

1.5. considers that all EU institutions, EU bodies and national governments have a duty to respect the principles of subsidiarity and proportionality, in order to ensure that decisions are taken as close to the citizen as possible, which in many cases implies by local and regional authorities, taking as a basis the European Charter of Local Self-Government;

1.6. welcomes Commission intentions to improve Celex and related information tools in order to make the active *acquis* more accessible and so aid active involvement by interest parties;

1.7. regrets that earlier attempts to simplify the regulatory environment (such as the 1996 SLIM initiative) appear to have foundered, which is particularly unfortunate because the accession countries are now faced with an unnecessarily immense *acquis* of 97 000 pages;

1.8. considers that deregulation and reduction of the financial and administrative burden of EU legislation, and a rigorous cost-benefit analysis of legislation will lead to direct cost-saving for public authorities and businesses, and will free scarce human and financial resources for more productive activities. In this way, the EU can take a further step towards its strategic goal of becoming the most competitive and dynamic knowledge-based economy in the world;

1.9. considers that by consulting local and regional government in the early drafting stage of preparing legislation, problems of implementation and financial or administrative burden can be identified and resolved, thereby improving the general quality, practicability and relevance of EU lawmaking;

<sup>(1)</sup> OJ C 374, 23.12.1999, p. 11.

<sup>(2)</sup> OJ C 374, 23.12.1999, p. 25.

<sup>(3)</sup> OJ C 198, 14.7.1999, p. 73.

1.10. welcomes in general terms the piloting of Extended Impact Assessments during 2003. Nevertheless, whereas the Impact Assessments are intended (inter alia) to assess compliance with principles of subsidiarity and proportionality, the CoR regrets that the reports published so far make little or no reference to the impact on local or regional authorities, even where these are likely to be the bodies ultimately responsible for delivering or supporting the initiative.

## 2. Recommendations of the Committee of the Regions

### The Committee of the Regions

2.1. recommends greater use of alternatives to traditional regulation, and non-regulatory measures should be thoroughly considered; greater use should be made of mutual recognition and approximation of national laws, rather than continuing top-down regulation and harmonisation;

2.2. recommends there should be benchmarking of regulatory performance between administrations, such as Member State governments and those of third countries, to maximise learning from best practice wherever it exists;

2.3. calls for improvements to the processes of transposition of European legislation by Member State governments, including better domestic consultation of key stakeholders including local and regional authorities and their associations. Member States are urged to refrain from over-implementation ('gold-plating');

2.4. reiterates that the CoR should be given the right to bring actions before the European Court of Justice for breaches of subsidiarity as regards legislative acts on which it was consulted, as indicated in the draft Treaty text prepared by the Convention. However, this will have major implications for the resources and internal organisation of the CoR itself;

2.5. recommends that the CoR should be involved in any subsidiarity ex-ante or 'early-warning' process alongside national parliaments;

2.6. recommends that future Commission reports on Better Lawmaking include an overview of Court of Justice rulings during the period covered by the report on actions brought for infringement of the subsidiarity principle;

2.7. notwithstanding the commitment of the Commission towards a new culture of impact assessment, the CoR calls for a much-improved system within the Commission for assessing the impact of proposed legislation, including the financial and administrative burden falling on local and regional authorities and other parties involved in implementing the measure; an assessment of why non-regulatory action is deemed insufficient; and consideration of the option 'not to act'. The impact assessment should be dynamic — i.e. it should be updated throughout the decision-making process to reflect changes introduced by Council and Parliament, as recommended by the Commission;

2.8. calls for better consultation earlier in the policy-making process. The CoR acknowledges recent initiatives by the Commission in this area. The initial impact assessment should accompany the consultation document to inform interested actors of the options, risks, costs, benefits and affected parties;

2.9. recommends that the rolling programme of simplification and codification of existing legislation should include highlighting future possibilities for repeal of obsolete or excessively burdensome legislation, especially where alternatives to legislation are known to exist. The CoR welcomes the commitment in the 2002 Action Plan to including review or 'sunset' clauses in all new legal acts and calls for its comprehensive application. The CoR undertakes to assist the Commission in simplification of legislation impacting on local and regional authorities;

2.10. recommends that a coherent screening system be developed for checking whether subsidiarity has been applied in specific cases. The system could also be used as the basis for checking existing legislation in the context of updating and simplifying the Community acquis, in order to abolish existing provisions that violate the subsidiarity principle;

2.11. recommends that 'subsidiarity' and 'continuing relevance' be included in the list of indicators for screening the *acquis* for simplification;

2.12. recommends that consideration be given to creating an independent expert advisory group to monitor impact assessments, assure objectivity and encourage good practice.

The group might comprise lawyers and practitioners from relevant bodies, including the CoR, and would provide expertise for the Commission in its systematic screening of legislative proposals and assessments of the existing *acquis* with a view to repeal, codification or simplification. The group could include, or work in parallel with, advisors from the business community, and would complement the political role of the CoR during later phases of the decision-making process.

Brussels, 20 November 2003.

*The President*

*of the Committee of the Regions*

Albert BORE

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**Opinion of the Committee of the Regions on 'The local and regional dimension of the Area of Freedom, Security and Justice'**

(2004/C 73/08)

THE COMMITTEE OF THE REGIONS,

having regard to the decision by its Bureau on 1 July 2003 to instruct the Commission for Constitutional Affairs and European Governance, in accordance with Article 256(5) of the Treaty establishing the European Community, to draw up an opinion on 'The local and regional dimension of the Area of Freedom, Security and Justice';

having regard to the conclusions of the Tampere, Laeken, Seville and Thessaloniki European Councils;

having regard to the Communication from the Commission to the Council and the European Parliament: Biannual update of the scoreboard to review progress on the creation of an area of 'freedom, security and justice' in the European Union (first half 2003), COM(2003) 291, 22.5.2003;

having regard to the Communication from the Commission to the Council and the European Parliament: Biannual update of the scoreboard to review progress on the creation of an area of 'freedom, security and justice' in the European Union (second half 2002), COM(2002) 738, 16.12.2002;

having regard to the European Parliament resolution on progress in 2002 in implementing an area of freedom, security and justice (rapporteur: Baroness Sarah Ludford) (B5-0193/2003);