

# **COMMISSION OF THE EUROPEAN COMMUNITIES**

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## **COMMISSION REPORT TO THE EUROPEAN COUNCIL ON THE ADAPTATION OF COMMUNITY LEGISLATION TO THE SUBSIDIARITY PRINCIPLE**

COMMISSION REPORT TO THE EUROPEAN COUNCIL ON THE ADAPTATION  
OF EXISTING LEGISLATION TO THE SUBSIDIARITY PRINCIPLE

I. The subsidiarity principle following the entry into force of the Treaty on European Union

1. Subsidiarity principle

The subsidiarity principle embodied in the Maastricht Treaty is assuming its full importance as the Community stands on the threshold of becoming a European Union endowed with new powers in areas such as currency, foreign policy and even defence.

It is one matter to develop balanced policies in clearly-defined areas, as the Community has always endeavoured to do, but quite another to define levels of responsibility between the Union and the Member States with regard to the range of twenty or so activities now open to Community intervention (see Articles 3 and 3a of the Treaty).

The aim of the subsidiarity principle is to see to it that decisions are taken as close as possible to the citizen, a constant watch being kept to ensure that action taken at Community level is justified in the light of the means available to national, regional or local authorities.

The practical effect of the Maastricht Treaty is to require the Community to demonstrate that there is a legitimate need for each new initiative.

Three questions must be answered in each case.

- What is the Community dimension of the problem?
- What is the most effective solution, given the means available to the Community and to Member States?
- What is the real added value of common action compared with isolated action by the Member States?

To this demonstration of the need-for-action, the Treaty adds the requirement that each proposal, whether in an area of exclusive or shared competence, must respect the principle of proportionality. The intensity of the action should leave the Member States all possible room for manoeuvre in its implementation. Subsidiarity requires Community legislation to be limited to what is essential.

There are two aspects to the subsidiarity principle: decentralization, but also a corollary function of integration, where effectiveness demands that a problem be solved in a common framework.

The main aim of the subsidiarity principle, therefore, is to improve the quality of Community action.

2. Scope of the subsidiarity principle

Subsidiarity is first and foremost a political principle, a sort of rule of reason. Its function is not to distribute powers. That is a matter for the constituent authorities - the authors of the Treaty. The aim of the subsidiarity principle is, rather, to regulate the exercise of powers and to justify their use in a particular case.

The Treaty on European Union simply makes a distinction between exclusive and shared competence without specifying the limits. In the new areas, the Treaty carefully establishes case by case a dividing line between matters that may be covered by Community measures in a given area and matters that must be left to the Member States (for example, there is to be no harmonization on health, culture, education or training).

Application of the subsidiarity principle has the following consequences:

- Community competence is not the rule but rather an exception to national competence; in other words, the Community must have powers specifically conferred on it;
- far from having the effect of freezing Community action, the dynamic of the subsidiarity principle should make it possible to expand it if required, or limit or even abandon it when action at Community level is no longer warranted;
- the regulatory role of subsidiarity, for which need-for-action is the criterion, applies to shared competence only; it cannot be used as a pretext for challenging measures in areas such as the internal market where the Community has a clearly defined and undeniable obligation to act.

The full effect of the subsidiarity principle depends on consideration by the Community's institutions of a number of questions of substance raised by the Commission in its Communication of 27 October 1992 (SEC(92)1990):

- What degree of constraint is to be applied for the implementation of shared powers?
- What are the limits on legislative action compared with non-binding means of action? In particular, what are the respective places of the directive or regulation in the absence of full recognition of the principle of mutual confidence?
- What is the role of subsidiarity in the management and control of implementation?

The declaration and interinstitutional agreement initialled by Parliament, the Council and the Commission on 29 October 1993 make it clear that all three institutions must respect the subsidiarity principle.

The interinstitutional agreement will make it possible to incorporate the subsidiarity principle more fully into the decision-making process. But subsidiarity cannot be reduced to a set of procedural rules; it is primarily a state of mind which, to be given substance, presupposes a political answer to the fundamental questions which application of the principle will undoubtedly raise once the Treaty on European Union enters into force.

## II. Undertakings given by the Commission with regard to application of the subsidiarity principle

Besides participating in the interinstitutional agreement, the broad lines of which were set out in its Communication of 27 October 1992 (SEC(92)1990), the Commission has given three undertakings, in particular at the Edinburgh European Council, with regard to application of the subsidiarity principle:

- justification included in legislative proposals,
- withdrawal or revision of pending proposals,
- review of existing legislation.

### 1. Justification included in legislative proposals

Pending entry into force of the Treaty on European Union, the Commission has instructed its departments to provide detailed justification for all new legislative proposals, whether for regulations, directives or decisions.

For some months now the explanatory memorandum has included detailed answers to a series of questions relating to the subsidiarity criteria (in the broad sense, including the principle of proportionality as set out in Article 3b of the Treaty and the conclusions of the Edinburgh European Council). The questions are as follows:

- (a) What are the aims of the proposed action in terms of the Community's obligations?
- (b) Does the proposed measure fall within the Community's exclusive competence or is competence shared with the Member States?
- (c) What is the Community dimension of the problem (in other words, how many Member States are involved and what solution has been applied to date)?
- (d) What is the most effective solution, given the means available to the Community and to Member States?
- (e) What is the specific added value of the proposed Community action and the cost of failing to act?
- (f) What means of action are available to the Community (recommendation, financial support, regulation, mutual recognition etc.)?
- (g) Are uniform rules necessary, or would it be sufficient to adopt a directive laying down general objectives and leaving implementation to Member States?

Questions (c), (d) and (e) are not examined in the case of exclusive competence. When drawing the line between exclusive and shared competence, the Commission refers to the criteria outlined in its Communication of 27 October 1992.

Each proposal also includes a recital referring to the subsidiarity principle and taking account of the main elements of the answers given in the explanatory memorandum.

As indicated in its Communication of 27 October 1992 to Parliament and the Council, the Commission believes that, in the interests of openness, explanatory memoranda should be published with proposals in the Official Journal in future. National parliaments, ordinary citizens and interested parties would thus be aware of the detailed justification for the initiative in terms of subsidiarity, and could make their views known before the proposal was adopted. It might also be useful in certain cases to publish an assessment of the proposal's impact on business in general and small businesses in particular.

Detailed examination of the subsidiarity principle has already led to a reduction in the number of proposals put forward by the Commission in 1993 compared with previous years. Its legislative programme for 1993 was drawn up and discussed with Parliament in the light of the subsidiarity principle and contains fewer proposals than earlier programmes. At the Copenhagen European Council the Commission distributed a list of specific cases in which it had decided not to legislate or alternatively to reduce the intensity of its proposals. In future it will notify not only the Council and Parliament but also all interested parties (by publishing a notice in the C series of the Official Journal) of its reasons for not following up a proposal initially included in its legislative programme.

In addition, the Commission, as recorded in the conclusions of the Edinburgh Council, has declined to accept requests made by the Council at informal meetings that it should make proposals for directives. In the same vein, in order to avoid duplication, it has opposed Council resolutions asking it to draw up legislative proposals.

Lastly, several Commission proposals, notably those on deposit guarantees, animal welfare and foodstuffs, are being discussed in the Council and Coreper in terms of subsidiarity.

## 2. Withdrawal or revision of proposals

The Commission informed the Edinburgh European Council of its intention to withdraw or revise some twenty proposals which were not fully justified in terms of subsidiarity, with reference either to the need-for-action or the intensity criteria.

On 15 September 1993 Parliament adopted a resolution requesting that most of the proposals scheduled for withdrawal be retained.

The Commission has also begun a revision, based on a number of general principles, designed to simplify the proposals listed in the Edinburgh conclusions: takeover bids, common definition of the concept of Community shipowner, comparative advertising, labelling of footwear, liability of suppliers of services, protection of natural persons in relation to data processed via digital telecommunications networks.

Parliament has also given its opinion on proposals for revision, asking for the retention of texts that the Commission had quoted as examples of the revision of existing legislation.

The Commission has studied Parliament's 15 September resolution carefully and has made the withdrawals it felt were necessary. It is now revising the proposals requiring simplification.

The Commission may well announce the withdrawal of other proposals whose pertinence and utility have been challenged or which have been overloaded with detail in the course of the legislative process. It should be noted that in 1993 the Commission has withdrawn some 150 proposals which were technically outdated or politically obsolete.

### 3. Review of existing legislation

In Lisbon in June 1992 the European Council asked the Commission to draw up an overall report on the review of certain Community rules with a view to adapting them to the subsidiarity principle. In response to this request the Commission transmitted a memorandum to the Edinburgh European Council setting out the initial results of the review of existing legislation and giving a number of examples. In this way the Commission identified several families of existing rules and regulations for which it intends to propose a revision in 1993.

### III. Work on the revision of existing legislation

It should be borne in mind that the Commission's work on the revision of Community legislation represents a second stage in an operation to simplify legislation. The first stage resulted from Community harmonization itself which, generally speaking, led to the abolition of a multitude of national instruments and rules and the elimination of decades of red-tape accumulated by the Member States.

A shining example was the introduction of a single administrative document which eliminated a thousand different forms at a stroke. This administrative document was itself abolished with the introduction of the temporary VAT arrangements on 1 January 1993.

The present review of existing Community legislation is an enormous task. Commission departments have scrutinized the families of rules and regulations for compliance with two of the subsidiarity criteria:

- What rules and regulations in areas of shared competence no longer pass the need-for-action test, on account of doubts about either the effectiveness, or the value added of action at Community level compared with action at national level?
- What rules and regulations in areas of shared competence fail the proportionality test (a) because they go into excessive detail, or (b) because they could be couched in a flexible type of instrument, such as a recommendation, code of conduct, agreements between the two sides of industry, mutual recognition, etc. rather than a binding legal instrument?

1. Precautions to be taken

A number of precautions were agreed for the purpose of this exercise:

- the acquis communautaire should not be called into question, i.e. under the pretext of revision, the debate should not be reopened in the Council and Parliament on the fundamental principles of Community policies, or on particular points of an instrument considered essential by one or other Member State;
- priority should be given to the review of old legislation; experience has shown that it is more easily revised than more recent instruments; as a rule, the Commission does not intend to propose amendments to legislation adopted within the past two years;
- the review should be limited to rules and regulations of a legislative nature applicable to firms and individuals; it should not extend to areas in which major changes are under consideration (e.g. cohesion).

2. Main considerations

The Commission has grouped the legislation to be revised under three headings.

(a) Rules and regulations to be recast

This involves modernizing and reordering all legislation with sufficient maturity to make it possible to distinguish the essential from the secondary in its operation. The accumulation of successive texts - not always consistent - to cover the entire sector necessitates the inclusion in a single instrument of general principles and important specific rules, particularly with regard to certainty as to the law and individual rights, and reduction of implementing rules to a single procedure. One example of this is the Customs Code adopted by the Council last year. The Commission is considering a similar recasting in the case of pharmaceutical products and the right of residence, for example. A clear distinction should be made between this and the customary legislative or declaratory consolidation exercise.

(b) Rules and regulations to be simplified

Recasting apart, experience has shown that simplification could prove necessary in the case of certain regulations since they contain excessive detail which could be covered by a national or regional instrument, or indeed by an international agreement. This is true in the case of the families of existing rules and regulations referred to in the Edinburgh conclusions. The Commission is planning to begin transmitting proposals for simplification of these rules and regulations to the Council. It has also identified other rules and regulations to be simplified e.g. takeover bids, indirect taxation, common organization of agricultural markets, etc.

(c) Rules and regulations to be repealed

Certain regulations should be repealed either because they are included in a recasting or because they have been superseded by the development of other techniques such as the "new approach" or mutual recognition.

### 3. Conditions for the success of the exercise

Care must be taken that revision does not develop into a free-for-all, in which the various parties, with no regard for consistency, would propose the revision or repeal of legislation for reasons of expediency.

The Commission would therefore draw the Council's attention to a number of general conditions on which the success of the revision exercise depends.

- however committed the Member States may be, attempts to simplify rules and regulations which do not satisfy the proportionality criterion run the risk of encountering resistance from national administrations which, because of a mutual lack of confidence, are anxious to obtain the most detailed regulations possible; the elimination of rules and regulations which do not meet the need-for-action criterion is proving even more difficult in the absence of an answer to the fundamental questions raised by subsidiarity, and particularly a consensus on areas of exclusive competence;
- an agreement on recasting with the Council and Parliament, along the lines of the agreement on consolidation which is in preparation, to ensure that examination of Commission proposals does not reopen discussions on points of substance going beyond the subsidiarity exercise or generate a plethora of amendments;
- the possibility of the Community actually exercising its external powers - in other words the Council accepting that the Community is competent to negotiate and conclude international agreements - where the Commission refrains from introducing internal legislation that would duplicate an international agreement;
- giving more weight to the principle of mutual confidence between Member States in areas which are from the health point of view sensitive, such as consumer protection and plant health inspections. The delegations which are most in favour of subsidiarity at a political level are often those which call for detailed harmonization at a legal level;
- a better use of the delegation of implementing powers to the Commission.

The Commission is still convinced that the real answer to the problem of complex rules lies in the introduction of a hierarchy of Community norms to be examined, as required by the Maastricht Treaty, at the 1996 Intergovernmental Conference.



The Commission also believes that once legislation has been revised it should be subjected to a new principle of legislative drafting to ensure that amending texts do not proliferate once again. In future, as is already the case in certain areas (e.g. directive on the liberalization of capital movements), any amendment (or addition) to a Council regulation must be included in a proposal for a single instrument containing the new provisions and the provisions retained and repealing the old text, it being understood that discussion would be confined to the new provisions. The effects of such a reform would be to:

- put an end to the coexistence of successive regulations calling for a codification exercise which is overtaken before long;
- stabilize the volume of permanent legislation, thanks to the combined effect of a 25% reduction as a result of the proposed repeal of certain instruments, and a smaller number of new proposals.

The Commission has looked carefully at the Franco-British list sent in June. It has reached the conclusion that sixteen of the twenty-two items listed should in fact be reviewed in one form or another. Its conclusions are set out in the attached memo. The Commission will also study the memorandum sent by the German authorities on 16 November and any other contributions it may receive.

Finally, the Commission would stress that in this report it has endeavoured to take the broadest possible look at all areas of Community legislation. It believes that only this overall approach can guarantee the effectiveness of the exercise.

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The present report reflects work in progress and does not rule out the possibility of further proposals for revision or withdrawal.

## I. Rules and regulations to be recast

Certain rules and regulations set out in a number of instruments need to be recast and brought together in a single instrument.

### 1. Customs

The Community customs code represents a recasting of around 25 Council regulations and directives, 75 Commission regulations and directives and several hundred amending regulations and directives, all adopted since 1968. The recasting exercise involved simplifying and bringing all existing legislation together in two regulations:

- a Council Regulation of 12 October 1992, containing 253 articles; and
- a Commission Regulation, adopted in June 1993, comprising 915 implementing provisions.

The subsidiarity principle has been applied, using intensity or proportionality as the criterion rather than need for action since this is an area in which the Community clearly has exclusive competence. Repetitive or excessively detailed provisions have been replaced by a set of more general provisions, reinforcing the old legislation by structuring it into a single system, without changing the substance.

Recasting not only increases transparency but also produces a clearer division of powers between the Community and the Member States and between the Council and the Commission in the customs field (particularly in the case of Community transit arrangements). This enables each institution to concentrate exclusively on its main concern: basic legislation in the case of the Council and implementing rules in the case of the Commission.

Furthermore, the two regulations will serve as a useful frame of reference for non-member countries (notably the countries of Central and Eastern Europe) wishing to step up cooperation with the Community. Lastly, by significantly reducing the plethora of separate rules and regulations, the customs code will make it easier to analyse existing legislation in the context of the accession negotiations.

### 2. Right of residence

The right of residence for Community nationals is governed by ten Council directives and regulations adopted between 1968 and 1990 and by a 1970 Commission regulation. Initially, only those engaged in economic activity (employees and the self-employed) were granted the right of residence. Later however this was extended to other groups (pensioners, students and others not in gainful employment). Instruments governing the right to enter and leave Member States, the right of residence, types of residence permit and who qualifies for them, the rights of family members, exemptions for reasons of public order and other such matters, all use identical phrasing or, alternatively, refer to each other.

The fact that the rules are scattered between so many pieces of legislation makes it difficult for individuals to establish what

exactly their rights are at Community level. By contrast, national rules are usually set out in a single, coherent set of legislative instruments and regulations. Given the prospect of "European citizenship" introduced by the Maastricht Treaty, some provisions should be updated to take account inter alia of the dismantling of internal frontiers. The case law of the Court of Justice should also be incorporated into legislation. The whole recasting exercise should be completed in 1994.

### 3. Pharmaceutical products

As part of the single market project, the Community succeeded in harmonizing all health-related aspects of human and veterinary medicines, restoring protection for innovation and making the implementation of socio-economic measures more transparent. Thanks to an ongoing process of clarification and simplification, Community pharmaceutical legislation now sets the standard internationally and has enabled the Community to launch a major international pharmaceutical harmonization initiative involving the United States and Japan.

However, the Community's pharmaceutical rules are still laid down by a highly complex patchwork of instruments relating to the various aspects of medical and social protection, such as research and development tests, procedures and requirements concerning the marketing of new products, good manufacturing practice, labelling, advertising, patents, pricing and reimbursement through social security.

The rules, published by the Official Publications Office in seven volumes and a number of languages under the title "Rules governing Medicinal Products in the European Community", comprise around 20 Council regulations and directives, eight Commission regulations and Directives, two communications (on prices and parallel imports) and 50 or so explanatory notes for manufacturers on presentation of authorization files, testing and production.

The Community will also be introducing a common marketing-authorization system involving the European Agency for the Evaluation of Medicinal Products.

In this connection recasting would increase the degree of consistency and help put the main ideas behind subsidiarity into practice by:

- clarifying - particularly with regard to authorization and withdrawal - the difference between Commission decisions based on the opinion of the Medicinal Products Agency and decisions made by the national authorities and ensuring better coordination and hence increased consistency between decisions taken at Community and national level; and
- simplifying and updating basic concepts and clarifying terminology in the various Community languages, given the importance of terminology in this particular field, and eliminating needless repetitions of definitions and procedural overlaps, thus reducing the volume of regulations by more than a third.

Its entry into force could be arranged to coincide with the setting-up of the Agency, i.e. towards the end of 1994 or the beginning of 1995.

#### 4. Competition

Most of the rules and regulations on competition (and state aids in particular) emanate from the Commission rather than the Council and take the form of guidelines and communications. Some of the guidelines have become extremely complex as a result of successive amendments to reflect economic developments or changes in common policies. To improve effectiveness and increase transparency, the Commission therefore intends to proceed to a gradual recasting of some of these guidelines once the customary detailed discussions have been held with national governments.

With regard to aid to the regions, the Commission plans to produce a comprehensive map of regions eligible for Community aid and for national regional aids.

As to the rules applicable to firms, the Commission intends to merge and streamline Regulation 2349/84 (block exemption for patent licensing agreements) and Regulation 556/89 (block exemption for know-how licensing agreements) in the course of 1994.

#### 5. Trade mechanisms for agricultural products

The rules covering trade mechanisms (licences, refunds, levies, guarantees, etc.) need to be made more coherent. The legislation now includes instruments as diverse as horizontal regulations adopted by the Council, regulations on common market organizations, Council and Commission implementing rules, interpretative notices, judgments of the Court of Justice, etc.

This exercise, which will take a number of years to complete, could start with a review of export refunds and make it possible to clarify the rules and spell out the responsibilities of the various Community institutions, national intervention agencies and operators.

### II. Simplification of rules and regulations

#### A. Families of rules and regulations referred to in the conclusions of the Edinburgh European Council

In advance of the Edinburgh European Council the Commission had identified several families of rules and regulations for review and has been scrutinizing them since early 1993 with a view to simplifying them.

##### 1. Technical standards

The conclusions of the Edinburgh European Council state: "As far as technical standards are concerned, a series of directives embodying excessively detailed specifications could be streamlined and replaced, under the new approach to harmonization, by minimum requirements to be met by products circulating freely within the Community. The directives in question relate in the main to foodstuffs (preserves, natural mineral waters, honey, coffee extracts, fruit juices). The Commission will also propose that the scope of certain directives be clarified. Although adopted under the new approach to harmonization, these texts (the low-tension and machinery directives, for instance) present problems of overlapping."

(a) Foodstuffs

Application of the subsidiarity principle to foodstuffs legislation is being considered in two phases.

In the first phase, priority is being given to the two specific aspects identified in the conclusions of the Edinburgh European Council:

- rationalization of the "vertical" directives relating to chocolate products, jams, fruit juices, honey, sugars, coffee extracts, preserved milk and mineral waters;
- potential reduction of the number of specific directives to be adopted on foodstuffs for particular nutritional purposes covered by Directive 89/398/EEC.

Commission departments have begun consideration of the measures that might be taken to simplify the "vertical" Directives, notably to avoid possible overlaps or inconsistencies with general legislation applicable to foodstuffs, and to limit the scope of the texts to essential requirements for the categories of products concerned. Consultations have begun with the Member States and the industries concerned, the Commission's objective being to present appropriate proposals in the course of 1994.

However, in the case of the natural mineral waters Directive, it appears that a different approach should be followed, since the objective here is to harmonize essential requirements with a view to protecting public health.

The Commission has also initiated consultations with Member States on the potential reduction of the number of specific directives to be adopted on foodstuffs for particular nutritional purposes and hopes to present a proposal in the matter in the autumn of 1993.

In the second phase, the Commission is considering the feasibility of preparing a general framework directive on foodstuffs legislation, which will set out the general objectives of Community policy and seek to rationalize the specific provisions relating to additives, labelling etc. The Commission has already begun wide-ranging consultations on this issue.

(b) Simplifications under the "new approach"

In connection with the proposed "CE mark" directive, the Commission presented an amendment to the "low-tension" Directive to the Council to introduce procedures for evaluating conformity and marking under the new approach, so as to bring it into line with the "machinery" Directive.

The Commission gave CEN/Cenelec a mandate to supplement or modify existing harmonized standards bearing the essential requirements of the "machinery" Directive in mind.

The aim here is to establish a coherent framework of standards, which could be deemed to guarantee compliance with the essential requirements of both the "machinery" and the "low-tension" Directives.

Once the amendment to the "low-tension" Directive is adopted, the Commission intends to publish a new notice in the C series of the Official Journal, amending the 15 December 1981 notice on application of the "low-tension" Directive. It will cover every aspect of the Directive, including its application in combination with the "machinery" Directive.

These three steps should clarify all the questions raised in Edinburgh.

As regards clarification of the scope of other directives, the Commission has already begun work in several areas in connection with implementation of the Sutherland Report. The pending proposal on electrical equipment in explosive atmospheres will bring the three existing basic directives and nine amendments together in a single piece of legislation.

The pending proposal on lifting equipment and lifts will recast the two existing directives and four amendments. The Commission will also be presenting two new proposals based on the "new approach", the first on pressure equipment, repealing existing legislation, and the second replacing the current basic directives on metrology and associated amendments.

The Commission also intends to proceed to a gradual revision of legislation - based entirely on the "old approach" - on motor vehicles, (110 separate measures) and on agricultural tractors (38 directives), as and when changes are made to the Council or Commission directives.

## 2. Professional qualifications

The conclusions of the Edinburgh European Council state that "the Commission will review the already quite old directives on certain regulated occupations to facilitate implementation and reinforce mutual recognition."

The first directives based on the recognition of qualifications are working relatively well. By contrast the operation of a number of rather old directives (doctors, pharmacists, midwives, veterinarians, dentists, nurses), based on the harmonization of training rather than mutual recognition, has proved to be rather unwieldy. These directives should be reviewed and simplified, beginning with procedural arrangements for the various committees involved.

With regard to mutual recognition, improvements could be brought about by incorporating the directives on the recognition of certificates of professional experience into Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training, which complements Directive 89/48/EEC, after it enters into force on 18 June 1994.

### 3. Environment

The conclusions of the Edinburgh European Council state: "On the environment, the Commission intends to simplify, consolidate and update existing texts, particularly those on air and water, to take new knowledge and technical progress into account."

#### (a) Water

The bulk of the Council directives on water protection date from the late 1970s, and few of them have been amended since. They comprise:

- the Directive on the quality required of surface water intended for the abstraction of drinking water, supplemented by the Directive on measurement and sampling methods and the Decision on a Community information system on the quality of surface water;
- the Directive on the quality of bathing water;
- the Directive on the quality of freshwater needing protection or improvement to support fish life, and the Directive on shellfish waters;
- the Directive on pollution caused by certain dangerous substances discharged into the aquatic environment;
- the Directive on the protection of groundwater;
- the Directive on the quality required of water intended for human consumption.

As announced in its legislative programme for 1993, the Commission is planning a review of all this legislation to simplify and streamline it in line with basic standards for water quality and discharges, updated to take account of scientific progress and practical experience.

In line with the subsidiarity principle, the Commission intends to reorient rules and regulations towards compliance with essential quality and health parameters, leaving Member States free to add secondary parameters if they see fit. This means that, in future, water protection will be based in essence on two sets of directives:

#### (i) Firstly, a set of directives comprising:

- a drinking water quality directive, covering water for use in the home and water used in the food industry that can affect the health properties of the final product. It would define general parameters, some of which would be fixed in technical terms at Community level and others at national level; one of the thorniest problems here will be the question of pesticide residues. This directive will ultimately replace the existing Directive on the quality of water for human consumption and perhaps part of the Directive on surface water intended for the abstraction of drinking water if the new directive



on the ecological quality of surface water does not cover certain specific elements;

- a directive on the ecological quality of surface water setting general objectives to be fleshed out by national or regional authorities as the case may be. If this general approach is accepted, the existing directives on fish and shellfish waters and on surface water for the abstraction of drinking water can be repealed;
- a directive on the quality of bathing water. Parameters here need to be simplified and adapted to new scientific knowledge. Provision also needs to be made for subsequent revision, in the light of Community criteria and local realities, by a procedure that offers more flexibility than a Council decision requiring unanimity;
- a directive on freshwater management and groundwater protection which would replace the existing Directive on the protection of groundwater from pollution by certain dangerous substances. This would define guiding principles for the qualitative and quantitative protection of groundwater, integrating it into a general freshwater management policy.

These framework directives would replace existing texts on water quality.

(ii) Secondly, directives designed to control pollution at source:

- the Directive concerning urban waste water treatment imposing requirements as regards the collection, treatment and discharge of urban and industrial waste water;
- the Directive concerning the protection of waters against pollution by nitrates from agricultural sources.

These two Directives, adopted in 1991, comply with the subsidiarity principle in that they simply define an objective leaving Member States free to achieve it in their own way.

The Directives on the discharge of certain dangerous substances provide a general framework and define specific provisions for applying discharge standards and quality objectives for certain industrial sources.

The new proposal for a directive on the integrated prevention and reduction of industrial pollution is designed to supplement existing directives by requiring Member States to adapt minimum discharge standards to best practice. In line with the subsidiarity principle this adaptation will be a matter for the appropriate national authorities and will cover industries discharging the substances appearing on Lists I and II of the 1976 framework directive.

The consistency of this legislation could be boosted at a later stage with the drafting of a genuine Community code for water.

(b) Air

Unlike water, air is regulated on a wholly sectoral basis; only five air pollutants are currently regulated by specific, independent Council directives.

There is no definition of objectives or of harmonized monitoring criteria for Community air quality standards.

By contrast, there is a sizeable volume of legislation on source emissions (car and lorry exhaust gases, major combustion plants, fuel specifications), but they have the drawback of not being directly linked to enforcement of air quality standards.

The Commission's plan is therefore to work for an agreement on the definition of objectives before embarking on its review of existing legislation.

Air quality evaluation and monitoring procedures must first be established; only then will it be possible to simplify and rationalize a body of legislation that for the time being does not tackle the problem of air pollution in any general way.

Work in progress on the water and air directives is a good example of what can be done to streamline and simplify Community legislation without compromising the high level of existing standards.

The Commission is aware of the importance of those high standards on environmental matters. Application of the subsidiarity principle must not be allowed to lower these standards. The planned approach for air and water confirms that these principles will be observed, while efforts are made to achieve greater simplicity.

4. Recognition of the possibility of Member States negotiating settlements with individuals

In relation to the clearance of accounts, the conclusions of the Edinburgh European Council record the fact that "the Commission intends to give national authorities more responsibility for applying Community legislation by allowing them, under certain conditions, to negotiate settlements with individuals".

This is a particularly delicate matter. It is true that, to protect the Community's financial interests, Member States should be encouraged to detect frauds and secure rapid repayment of debts. But it is still necessary to proceed with caution in the matter of negotiated settlements with individuals, even if they can speed up repayments, and the Commission's prior approval should be sought where large sums are involved, since the Commission is responsible for the proper implementation of the budget.

The Commission is pursuing its reflections on this issue.

## 5. Animal welfare

The conclusions of the Edinburgh European Council state: "As to animal welfare, accession by all the Member States to the European Convention on the Protection of Animals kept for Farming Purposes means that there is no point in retaining the Council directives introducing very strict standards, at Parliament's request, for the protection of pigs, calves and laying hens. However, minimum Community rules on animal welfare will be needed to guarantee fair competition and freedom of movement."

The Commission has referred a communication on this matter to the Council and Parliament. Animal welfare is an area where application of the subsidiarity principle comes up against the concerns expressed by Parliament and various Member States, under pressure from public opinion, that very detailed basic legislation be maintained which guarantees swift and effective implementing measures.

Over the last twenty years or so a number of Community instruments have been adopted on the protection of animals on farms, during transport and at the time of slaughter. At the same time, the Council of Europe has concluded various conventions on the same subjects, to which the Community is or could easily become party. As a result there is a certain amount of overlap and, in some cases, inconsistencies.

The Commission has examined the matter in depth. Its aim is to arrive at a situation whereby conventions to which the Community is in fact party would be applied uniformly throughout the Community by transposing them into Community instruments. These instruments would also incorporate the recommendations adopted to implement the conventions and give them a similar legal effect to that of Community rules.

In so doing the Community would reserve the right to include any additional rules which were necessary to guarantee the free movement of goods and equal treatment of Community producers and also to disregard certain unnecessarily detailed aspects of international conventions, in keeping with the subsidiarity principle.

## 6. Social policy

The conclusions of the Edinburgh European Council state: "Turning to social policy, the Commission considers that the group of directives based on Article 118a of the Treaty is too recent to warrant re-examination. Instead its priority will be to supplement them by implementing all the provisions of the Charter of the Fundamental Social Rights of Workers. However, early steps will have to be taken to simplify and codify the body of older regulations on the free movement of workers."

The Commission has adopted a Green Paper on European Social Policy, the aim being to initiate a broad debate on the future options of the Union in this field. Contributions must be in by 31 March 1994.

The Commission has already set to work on the legislation concerning the free movement of workers: the consolidation of Regulations Nos 1408/71 and 574/72, which coordinate national legislation on social security, is included in its legislative programme for 1994.

The Commission is in the process of examining the operation of the "acquired rights" Directive, in consultation with national experts. Once its study is completed, which should be in the first quarter of 1994, the Commission will present a proposal for amending the Directive, in a bid to simplify its application and enhance its effectiveness.

B. Other rules and regulations which might be simplified

The Commission has identified several areas in which an effort might be made to simplify legislation, short of a wholesale revision which is not possible given the technical nature of the texts and the large number of derogations and special arrangements that have been allowed.

1. Indirect taxation

(a) VAT

The Council rules and regulations on VAT are extremely complicated. The harmonization of national legislation on the VAT base, highly technical by definition, includes numerous exemptions. Admittedly, the approximation of rates which took effect on 1 January 1993 has helped to simplify the European VAT system. This "transitional" system did away with tax controls at borders. Tax is still levied in the country of consumption pending the adoption of the simpler "definitive" system of taxation in the country of origin.

This being so the Commission sees little point in undertaking a general review of the latest rules since firms are just beginning to come to terms with them. However, measures are being drawn up to simplify specific points. With an eye to the introduction of the "definitive" system, the Commission will propose a fundamental recasting of all VAT legislation in 1995. This will involve the gradual abolition of derogations and special arrangements.

(b) Excise duties

Community legislation on excise duties is also very complex, both as regards structure (the base) and duties (rates). However, unlike VAT legislation, it already lays down a definitive system, with no need for transitional arrangements, since the basic principle is that tax is levied in the country of consumption.

However, the legislation on excise duties is on the whole more recent than that on VAT and it would be better to wait for a running-in period of two or three years before embarking on a simplification exercise. The Commission therefore takes the view that no simplification of the existing directives can be considered before 1995.

2. Company law

This field has already been covered by Community legislation (ten or so directives on minimum capital, annual accounts, mergers, etc.), but there are also serious gaps as several proposals, in particular those relating to the place of employees in company structures, are still before the Council. The proposals in question

often apply the subsidiarity principle by leaving Member States with a choice of options or even by presenting instruments to be applied on a voluntary basis, for example the Statute for a European Company. The legislation in force is very technical and contains many derogations, for example for company accounts. But until progress can be made in the Council on pending proposals, it seems premature to consider recasting or indeed consolidation.

However, the Commission has been proposing for several years that the legislation on small and medium-sized firms be simplified. At present this appears to be the most appropriate way of applying the subsidiarity principle in the field of company law, at least in terms of proportionality.

### 3. Common organization of agricultural markets

Legislation on the market organizations does not lend itself to application of the subsidiarity principle in that when a common organization is established for a given product, Member States may no longer legislate in the area covered by Community legislation. Moreover, to ensure equality between producers and certainty as to the law, the rules must be extremely detailed, often at the request of the Member States. The Commission has already embarked on a major consolidation exercise - included in its legislative programme for 1993 - covering the market organizations for around ten different products. At present, with reform of the common agricultural policy still under way, it hardly seems feasible to embark on a major recasting of the market organizations. In its new proposals under the reform, the Commission has endeavoured to apply subsidiarity by leaving it to the Member States to lay down the implementing rules relating to specific national or regional characteristics.

However, as part of its action to combat fraud, the Commission has begun the task of simplifying legislation to make it more accessible and hence to facilitate application of the rules by the Member States and recipients.

Moreover, this need was reaffirmed by the Council when it approved the reform of the common agricultural policy. The Commission has entrusted a group of experts with the task of examining the following areas, in particular from the subsidiarity point of view:

- problems encountered in administering and supervising the rules because of the complexity of the instruments concerned;
- instances in which legislation may be ill-adapted to commercial and technical realities.

Priority is being given to the sheepmeat and beef and veal sectors and to animal health legislation.

### 4. Transport policy

Although the Commission recently launched several major initiatives on transport (White Paper, safety at sea), it was not until 1985 that Community legislation in this field took on substantial proportions. There is therefore little scope for large-scale revision.

However, there would appear to be a need to simplify certain old rules, in particular those concerning the weights and dimensions of road vehicles and roadworthiness testing, as soon as the last two instruments (on brake testing and speed-limiting devices) have been adopted.

#### 5. Common fisheries policy

Like agricultural legislation, fisheries legislation covers an area of exclusive competence, where application of the subsidiarity principle is limited by the requirements of equal treatment for operators and certainty as to the law.

Nevertheless, there are plans for considerable simplification and decentralization within the common policy. The first stage in this process was the adoption of the new basic regulation in December 1992, which spelled out the three principles of freedom, subsidiarity and comprehensiveness. Freedom, in the sense that once the balance between fishing effort and resources has been achieved within the Community fleet, the regulatory framework governing the common policy should give freer rein to market forces relaxing regulatory constraints. In fact, Member States are free to choose the criteria for allocating and using the allowable catches assigned them. Subsidiarity, in the sense that, subject to the constraints referred to above, responsibilities are properly shared between the Community, the Member States, the regions and the trade organizations, each of which enjoys a necessary and sufficient margin of manoeuvre in the choice of means and their application. It should be noted in this context that it is for Member States to issue and manage fishing licences for vessels flying their flag. Comprehensiveness, in the sense that the common policy covers the entire fishery-food sector, and an awareness of the interrelationships here may lead to significant synergic savings. It should be noted in this context that the new monitoring arrangements for fishing activities extend technical controls not only to conservation and resource management measures but also to structural measures and measures relating to the common organization of the market in fisheries products.

More specifically, certain areas of the common policy (such as structural intervention) are being recast in line with the principles set out above, while the provisions governing other aspects have been or are about to be consolidated (markets and technical measures respectively) to make them more accessible to those working in the field. In the case of external resources, the second generation of fisheries agreements with non-member countries are starting to appear (e.g. agreement with Argentina), reducing the extent of intervention by the Community and proportionately increasing the role of Community shipowners.

#### 6. Energy policy

It is important that the Commission should have official information about Member States' investments in the energy sector. However, Regulation No 1056/72 on the notification of projects of Community interest in the oil, natural gas and electricity sectors

could be substantially simplified, particularly as regards its technical annexes. The Commission will be making the appropriate proposal in the near future.

#### 7. Consumer protection

Community legislation on the pricing of food and non-food products is based on three directives:

- Directive 79/581 of 19 January 1979, amended by Directive 88/315 of 7 June 1988, which made it compulsory to indicate prices (selling price and unit price) for food products. Exceptions to the general rule are allowed for products prepackaged in pre-established quantities and Member States are also allowed to exempt small retailers;
- Directive 88/314 of 7 June 1988, which requires the unit prices of non-food products to be indicated; however, Member States may require individual pricing for certain categories of product.

The instruments adopted by the Council, which depart in many respects from the proposals made by the Commission at the time, have created a number of difficulties in practice. These can be summed up as follows:

- the provisions are extremely detailed and cumbersome to implement;
- industry and distribution, particularly in the food sector, are encountering serious problems in applying the legislation;
- a number of Member States have indicated that they would like to see the legislation revised before the end of the transitional period (June 1995);
- the options chosen have led in practice to the promotion of standard quantities, creating problems elsewhere.

The Council meeting (Consumers) on 2 March 1993 adopted a resolution on future action on product labelling in the interests of the consumer, inviting the Commission to consider informative labelling requirements. A working party representing suppliers and consumers has been set up to this end. In this context the Commission plans to propose a simplification of the three Directives mentioned above in the course of 1994, following consultations with the Member States and the parties involved.

III. Rules and regulations to be repealed

This list is selective and is largely influenced by what has been said above. It includes the main regulations which will be repealed but does not, at this stage, identify provisions which will be repealed in whole or in part as a result of the simplification of certain pieces of legislation.

A. As a result of recasting

- Customs

In addition to the repeal of over 100 regulations and directives recast in the Council Regulation of 12 October 1992, the Commission Regulation laying down provisions for the implementation of the Customs Code will result in the repeal of 77 regulations and directives.

- Right of residence

Ten or so Council Directives and Article 10 of Council Regulation 1612/68 on freedom of movement for workers within the Community could be repealed.

- Pharmaceutical products

Recasting would make it possible to repeal 20-odd Council and Commission Directives.

- Agriculture

Recasting the rules on trade mechanisms would lead to the repeal of a series of Council and Commission regulations.

- Foodstuffs

The possibility of recasting Community legislation will be considered following the adoption of a framework directive defining general objectives and a number of specific directives streamlining provisions on additives, labelling, etc. and repealing a series of existing directives.

B. As a result of simplification under the "new approach"

- 'Vertical' Directive on chocolate products, jam, coffee and chicory extracts, preserved milk, fruit juice, honey:

Simplification is being considered to eliminate inconsistencies and overlapping with existing horizontal legislation and to limit the effect of these directives to essential requirements.

- Electrical equipment, lifting equipment and lifts, pressure equipment, metrology

Application of the "new approach" in these sectors will lead to the repeal of 50 detailed technical directives thanks to recourse to directives defining essential safety requirements and referring to European standards for technical details.



C. As a result of the extension of mutual recognition

- Professional qualifications

Phased repeal of directives on the recognition of professional experience following entry into force of Directive 92/51/EEC of 18 June 1992.

D. To take account of scientific knowledge

- Environment:

Four or five directives on water quality could be repealed.

E. As a result of the case law of the Court of Justice

- Freedom of establishment

In the light of the case law of the Court of Justice on the direct applicability of Articles 52 and 59 of the Treaty, provisions on the abolition of restrictions will be repealed. In some cases this will allow for the repeal of directives on establishment and freedom to supply services. Various provisions on proof of good conduct and financial capacity will be replaced by a standard clause, and a number of definitions contained in obsolete directives will be taken over in the directives containing the provisions referred to above.

## Memo on the June 1993 "Franco-British" document

The Franco-British document covers both existing legislation and proposals for Community instruments. The Commission report to the European Council to which this memo is attached, on the other hand, relates only to the adaptation of existing legislation to the principle of subsidiarity. The Commission wishes, however, to comment on all the cases listed in the Franco-British document.

### A. Existing legislation

#### 1. Instruments already identified by the Commission as suitable for revision

Some of the Franco-British suggestions concern instruments already regarded as requiring revision. These are the groups of instruments referred to in the Conclusions of the Edinburgh European Council:

- Foodstuffs (7, 8 and 9)<sup>1</sup> - certain specific directives should be simplified and preference given to basic directives laying down general rules on labelling, additives, etc.;
- Professional qualifications (10) - the Commission is planning to simplify a number of relatively old directives concerning specific professions;
- Drinking water and bathing water (11 and 12) - the Commission is planning to repeal these directives and incorporate them into framework instruments giving the Member States more room for manoeuvre in defining certain parameters;
- Quality of water for shellfish and freshwater fish (5 and 6) - to be incorporated in the framework instruments referred to in the previous item.

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1 The figures are those appearing in the Franco-British list.

2. Instruments which the Commission is also planning to revise

These are old instruments which do not appear to be operating properly:

- Notification of projects of interest to the EC in the petroleum, natural gas and electricity sectors (1) - this instrument has been overtaken by market developments; to be simplified;
- Acquired rights (3) - this directive will be amended after consultations with the Member States on its operation;

3. Instruments deemed not to require revision

- Minimum stocks in thermal power stations (2) - there is still a need for this instrument in connection with the evaluation of strategic requirements;
- Marketing of vegetable seeds (4) - this is one of a much larger set of instruments and could not be amended easily in isolation;
- Air quality (13) - these Directives should not be revised until joint evaluation and monitoring procedures have been adopted.

B. Proposals

1. Instruments already on the Edinburgh list and now being withdrawn or amended

- Miriam - European network of agricultural information centres (14) - withdrawal;
- Liability of suppliers of services (15) - probable withdrawal and replacement by a recommendation and, if necessary, individual instruments;
- Taxes on transactions in shares and securities (19) - withdrawal;
- Taxes on raising of capital (20) - withdrawal.

2. Proposals which should not be withdrawn

- Community system of monitoring and control of fisheries regulations (18) - the instrument has now been adopted by the Council;
- Corporate taxation (21 and 22) - these proposals are designed to help achieve the objective of terminating cross-frontier double taxation.
- Zoos (16) - withdrawal and replacement by a recommendation may be envisaged later after Parliament has been consulted again;
- Community participation in the International Whaling Commission (17) - although the ban on whaling and on the marketing of whale products is imposed by other international agreements and Community instruments (Washington Convention - endangered species), withdrawal is not advisable as it would give the wrong political signal.

C. Proposals not yet adopted by the Commission

The Commission takes the view that in the case of simple projects or studies, the question of subsidiarity does not arise in the same terms.

The items on the Franco-British list are:

- Used machinery (23) - the Commission has already stated that it will not be taking any further initiatives;
- Pharmaceutical pricing transparency (24) - the Commission no longer has the intention of making a proposal in the form initially planned.

Conclusion

The Commission agrees that sixteen of the twenty-two instruments or proposals on the Franco-British list should in fact be withdrawn or amended.

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