

Opinion of the Committee of the Regions on 'Simplification of the Union's instruments'

(2003/C 73/18)

THE COMMITTEE OF THE REGIONS,

having regard to the decision of its Bureau of 14 May 2002, 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 this subject;

having regard to the presidency conclusions of the Laeken European Council of 14 and 15 December 2001, and in particular the Laeken Declaration on the future of the Union;

having regard to the White Paper on European governance of 25 July 2001 (COM(2001) 428 final);

having regard to the Communication of the European Commission on European governance: Better lawmaking (COM(2001) 275 final);

having regard to the Communication of the European Commission on an Action plan: Simplifying and improving the regulatory environment (COM(2002) 278 final);

having regard to the report of the European Commission to the European Council on Better lawmaking 2001 (COM(2001) 728 final);

having regard to the Communication of the European Commission on Impact assessment (COM(2002) 276 final);

having regard to the Communication of the European Commission: Consultation document: Towards a reinforced culture of consultation and dialogue: Proposal for general principles and minimum standards for consultation of interested parties by the Commission (COM(2002) 277 final);

having regard to the recommendations of the high-level group chaired by Mr Mandelkern;

having regard to the contributions by the general secretariat of the European Convention CONV 50/02 and CONV 162/02;

having regard to its contribution to the European Convention adopted on 4 July 2002 (CdR 127/2002 fin);

having regard to its previous opinions on the implementation of EU law (CdR 51/1999 fin)⁽¹⁾, the principle of subsidiarity (CdR 302/98 fin)⁽²⁾, and the reports of the European Commission on Better lawmaking 1998 and 1999 (CdR 50/1999 fin and CdR 18/2000 fin)⁽³⁾ ⁽⁴⁾;

having regard to its opinion of 13 March 2001 on the White Paper on European governance (CdR 103/2001 fin)⁽⁵⁾;

having regard to the draft opinion (CdR 121/2002 rev.) adopted on 4 October 2002 by its Commission for Constitutional Affairs and European Governance (rapporteur: Mr Guarischi (I-EPP), Councillor for the Lombardy Region),

unanimously adopted the following opinion at its 47th plenary session, held on 20 and 21 November 2002 (meeting of 21 November).

⁽¹⁾ OJ C 374, 23.12.1999, p. 25.

⁽²⁾ OJ C 198, 14.7.1999, p. 73.

⁽³⁾ OJ C 374, 23.12.1999, p. 11.

⁽⁴⁾ OJ C 226, 8.8.2000, p. 60.

⁽⁵⁾ OJ C 192, 12.8.2002, p. 24.

1. Views of the Committee of the Regions

1.1. *Simplification as an instrument for relevant, high-quality EU legislation*

1.1.1. The Commission suggests the adoption of simplification and rationalisation mechanisms such as co-regulation, self-regulation and voluntary cooperation, and the evaluation of existing acts. The CoR considers that these mechanisms should be geared to the principle of high-quality legislation. With a view to giving substance to democratic methods, which are a benchmark for simplification, introduction of the quality principle would open a path for bringing proceedings before the Court of Justice under Article 230 of the EC Treaty (or Article 232, in the event of proceedings for failure to act).

1.1.2. As regards the monitoring stage, the Commission has rightly raised the subject of 'comitology'. As well as complicating and protracting the decision-making process, this procedure is also criticised for being insufficiently transparent and too far removed from the grassroots, i.e. from the final users for whom simplification is specifically designed. The review of arrangements for monitoring Commission action should give more scope to the institutional advisory bodies.

1.1.3. The inclusion of a definition of legislative and executive power in the future constitutional treaty, and the consequent attribution of these powers to the institutions, could provide a starting point that will open up new opportunities for simplifying and improving the regulatory framework and enhance the conditions for applying the principles of subsidiarity and proportionality, and of proximity to local and regional situations.

1.1.4. As moves are made to simplify and improve the regulatory environment, questions will inevitably be raised, at the Convention, concerning reform of the Union's institutional architecture, not least with a view to enlargement. In this context, enlargement offers an opportunity to improve the institutional set-up and regulatory environment and adapt them to the changing situation.

1.2. *A culture of consultation*

1.2.1. The Commission's statement ⁽¹⁾ that 'implementation of the common policies must be as decentralised as possible' is to be welcomed, as are its explicit mention of 'taking greater account of the diversity of local situations' and the recognition that European rules suffer from a 'lack of proximity'. Proper application of the subsidiarity principle and optimum use of the special role of the Committee of the Regions — as institutional advisory body — are vital in order to address the needs explicitly recognised by the Commission.

1.2.2. When preparing and evaluating simplification measures, decisions must be constantly guided by the principles of subsidiarity and proportionality. The work currently being undertaken to simplify the EU's Structural Funds legislation ⁽¹⁾ — which has a particularly significant impact at regional/local level — is a case in point. Both in the monitoring committees and at the programming stage ('programme complements'), the application of the subsidiarity principle with regard to the joint management of the programmes (partnership) has been deemed unsatisfactory. The Commission's requirement that Member States be sent clear, unambiguous and definitive guidelines on programme management has not been met, nor has the requirement that Member States select the implementation arrangements which they deem most appropriate.

1.2.3. If the intention is to standardise and strengthen the consultation method as a key part of the Commission's commitment to simplifying and improving the quality of legislation — and this is a laudable intention — the first step must be to strengthen the role of the Committee of the Regions. The Commission should specify in its documents the steps it proposes to take to enhance the role of the Community's advisory bodies, and implement these steps in advance of the planned simplification exercise. For its part, the CoR puts forward specific practical requests in the present opinion.

1.2.4. This point is also relevant to the Commission's communication on a culture of consultation ⁽²⁾, in which the Committee of the Regions is asked, under the cooperation protocol, to organise consultations with regional and local authorities on behalf of the Commission. The communication also envisages direct consultation of these authorities by the Commission. The present opinion takes a firm line on this issue, on the principle that the CoR must not only be of assistance in the organisation of consultations, but must be the consulting body to which the Commission makes reference.

1.3. *Analysis based on the current treaty*

1.3.1. Some spheres of Community activity are obvious candidates for simplification, irrespective of the proposals which may subsequently be adopted by the Convention and hence included in the new constitutional treaty.

In almost fifty years, various spheres of Community activity have seen so many pieces of Community legislation that operators and other interested parties now recognise that 'de-legislation' is necessary in order to restore a satisfactory level of legal certainty by codifying, recasting and consolidating the texts concerned. Operators and interested parties often use

⁽¹⁾ COM(2002) 247 final.

⁽²⁾ COM(2002) 277 final.

unofficial consolidated versions which, although of practical use, are symptomatic of a democratic deficit. The Commission should commit itself to specific concrete initiatives that match the intentions voiced in the abovementioned documents, which the Committee endorses.

2. Recommendations of the Committee of the Regions

The Committee of the Regions

2.1. stresses the need to simplify the treaties and the decision-making and legislative processes of the Union, in particular with a view to making them more efficient and, by means of transparency, bringing the Union's citizens closer to their institutions;

2.2. suggests that in order to eliminate a proliferation of legislative instruments that could be detrimental to transparency and a source of legal uncertainty, the aim should be to approximate acts adopted under the first and third pillars and to found the Union's institutional system on a clear separation of powers;

2.3. considers that a clear distinction must be drawn between regulatory acts and implementing acts, and that the former should be limited to basic legislation which should subsequently be fleshed out by more technical implementing rules that respect the principles of subsidiarity and proportionality;

2.4. supports the establishment of a clear hierarchy of legislation to address questions concerning the consistency of procedures and the need for a clear distinction between legislative and implementing measures. The constitutional treaty should define the legislative and executive functions, specifying which institutions are called on to exercise the powers conferred;

2.5. stresses, therefore, the need to make more systematic use of (a) the regulatory instrument of the directive, which is more in keeping with the spirit of subsidiarity, particularly for the application of those policies where there are competing competences; and (b) framework legislation, as this can guarantee the flexibility which the Member States need to ensure that particular local and regional situations are respected, in the light of the proportionality principle;

2.6. calls for consolidation of the trend towards generalised qualified majority voting in the Council;

2.7. considers that simplification and improvement of the Community acquis is desirable, particularly if it is conducted in a manner which respects the quality of the legislative acts concerned and is not dictated solely by quantitative considerations;

2.8. considers that the quality of legislation is greatly influenced by prior consultation (Committee of the Regions and Economic and Social Committee as the institutional interfaces for regional and local stakeholders and economic and social stakeholders), and by a series of instruments such as the open coordination method, self-regulation and co-regulation, to be included in the constitutional treaty alongside the legislative acts already used, only in spheres in which the European Union has competence;

2.9. deems ill-advised the Commission's proposal that it should be able to decide independently, without the agreement of the European Parliament or the Council, to withdraw long-standing legislative proposals for which it has not yet been possible to complete the institutional procedures laid down in the Treaties, even if the aim of the proposal is ultimately to streamline the European legislative procedure; furthermore, clauses setting a deadline for the revision of acts ('sunset clauses') should in all cases be applied with the agreement of the Union's two legislative arms;

2.10. welcomes the proposal for a detailed impact assessment to identify the most appropriate regulatory instruments for adoption, and proposes involving the Committee of the Regions in the assessment procedures regarding matters of local and regional importance; the impact assessment should also cover the impact on the administrations and budgets of regional and local authorities;

2.11. proposes a considerable semantic simplification of all the Union's legislative processes, as the current institutional vocabulary is a real obstacle to transparency and thus to closeness to the Union's citizens who would like, wherever possible, to see the Union following the example of the Member States, at least in terms of semantics;

2.12. notes with interest the Commission's proposal to set up an internal network for better lawmaking, coordinated by its secretary-general and involving all the directorates-general which have regulatory responsibilities, with a view to ensuring that texts are mutually consistent and respect subsidiarity and proportionality from the drafting stage of the regulatory proposal;

2.13. proposes that during the transposition of EU legislative acts by the Member States, and in the implementing stage of legislation, the Commission should not consider solely the role of the Member States, but that the role of the regional and local authorities should also be taken into account;

2.14. proposes that the institutional role of the CoR be recognised and that all the Union's forms of governance be involved in decision-making processes, including the regional and local authorities of the Member States as they are democratically elected and responsible for the implementation of a large proportion of legislation;

2.15. asks the European Commission to implement the cooperation protocol which it signed with the CoR; and urges the European Parliament to make the fullest possible use of its right to consult the CoR, especially on those matters which require co-decision, and which in any event have a specific impact on local situations;

2.16. deems it necessary to stress the usefulness and necessity of the CoR exploiting its ability to initiate a legislative proposal (outlook reports);

2.17. proposes that it be considered as an active participant in 'comitology' procedures, in cases where existing committees within the Commission already deal with matters on which the CoR is required to issue a mandatory opinion;

2.18. proposes that the CoR be placed in a position to establish a permanent, real-time link with regional and local authorities; and to this end, considers it necessary that the staffing of the CoR be increased, more specifically with persons possessing a regional culture and training;

2.19. proposes that the CoR, suitably equipped with the requisite instruments and staff, become a body for monitoring and guaranteeing the application of the subsidiarity principle; and that in this context, the CoR should also check on the uniform application of EU rules in the light of local and regional situations;

2.20. instructs its president to forward this opinion to the European Convention, the EU Presidency, the Council, the European Parliament and the European Commission.

Brussels, 21 November 2002.

The President
of the Committee of the Regions
Albert BORE
