



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 4 February 2008

6077/08

COMPET 44

COVER NOTE

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date of receipt: 4 February 2008

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Subject: Communication from the Commission to the European Parliament, the
Council, the European Economic and Social Committee and the Committee of
the Regions
Second strategic review of Better Regulation in the European Union

Delegations will find attached Commission document COM(2008) 32 final.

Encl.: COM(2008) 32 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.1.2008
COM(2008) 32 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Second strategic review of Better Regulation
in the European Union**

{COM(2008) 33 final}
{COM(2008) 35 final}
{SEC(2008) 120}

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
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**Second strategic review of Better Regulation
in the European Union**

I. INTRODUCTION

This Commission has given the highest priority to simplifying and improving the regulatory environment in Europe. This is part of its wider objective of delivering results to citizens and businesses. The Better Regulation Agenda, adopted in 2005, aims both to ensure that all new initiatives are of high quality, and to modernise and simplify the existing stock of legislation. In doing so, it is helping to stimulate entrepreneurship and innovation, to realise the full potential of the single market, and thereby promote growth and job creation. Better regulation is therefore a key element of the Lisbon Growth and Employment Strategy. The Better Regulation agenda also helps the EU to respond to globalisation, and to shape global regulation rather than to be shaped by it.

The Commission is making improvements at various stages of the policy cycle. Better regulation does not mean deregulation or holding back new European rules when they are needed. But policy and regulatory proposals are now systemically assessed, and a wide range of options - regulatory and non-regulatory - are examined for each initiative. The quality of these assessments is overseen by an independent Impact Assessment Board. Existing laws are being simplified and codified, and a concerted effort is being made to reduce the administrative costs of EU laws. Pending proposals are being screened and withdrawn if they are no longer relevant or consistent with Commission priorities. In partnership with the Member States, a more effective approach is being developed to handle difficulties in implementing and ensuring conformity with Community law.

The Better Regulation Agenda is already bringing concrete benefits for businesses and consumers. But the full benefits will only be obtained if all European Institutions and Member States work together. This Communication reviews progress and highlights areas where further efforts are needed, and is an input to the European Council's stock-taking on better regulation in March 2008.

II. MODERNISING THE STOCK OF EXISTING LEGISLATION

European legislation often simplifies matters for businesses, citizens and public administrations by replacing 27 sets of rules with just one. But in a rapidly changing world, legislation adopted over the last 50 years must be constantly reviewed and modernised.

1. *Simplifying existing legislation*

The Commission's Simplification Rolling Programme aims to simplify and modernise EU legislation. It covers 164 measures for 2005-2009 and is now part of the annual work

programme. The Commission has already proposed or adopted 91 of these, and will present 44 new measures in 2008.

The simplification exercise brings concrete benefits. Farmers and agricultural companies, for example, now face a much simplified regulatory framework: 21 Common Market Organisations have been brought into a single scheme. Businesses enjoy simpler packaging rules, as pre-packaging requirements on some 70 consumer products have been repealed. Reduced fees and administrative assistance for SMEs registering pharmaceuticals have been introduced. Simplified type approval will make it easier to register and sell motor vehicles while maintaining safety standards. A more efficient and competitive payments market will make any payments within the European Union as easy, cheap and secure as payments within a Member State are today. Businesses will benefit from simpler insurance rules once the revision of existing insurance law (Solvency II) is adopted in the near future. They will also benefit from a modernised customs code, and are already benefiting from the creation of a paperless environment for customs and trade.

This work on simplifying EU legislation has reached cruising speed. The Commission will maintain this momentum. It will finish screening all existing EU legislation to identify possible areas where future simplification activities might focus, and will integrate the results into the updated simplification rolling programme to be presented in early 2009. More simplification initiatives will be prepared with impact assessment¹. The Commission will give priority to simplification that benefits SMEs and will involve stakeholders more closely in the preparation. It will also use the impact assessment system to ensure that new legislative initiatives use every opportunity to simplify.

The Commission is increasingly recasting² legislation and is pressing ahead with codification³. Of some 400 acts that can be codified, the Commission has finalised 152: 87 have been adopted, and 65 are pending before the Council and Parliament. The codification programme should be completed in the next 18 months. The Commission is also identifying and repealing obsolete acts that no longer have real effect, but which are still in force. This work, which covers about 2 500 legal acts, could be speeded up if fast-track procedures for repealing obsolete legislation could be agreed by the European Parliament and the Council.

Finally, the Commission regularly screens all proposals pending before the co-legislators to ensure they remain relevant and meet quality standards. 78 proposals have been withdrawn since 2005, and a further 30 have been identified in the Commission's Legal and Work Programme for 2008.

2. *Reducing administrative burdens*

In January 2007, the Commission presented an Action Programme to reduce administrative burdens on businesses in the EU by 25% by 2012⁴. The European Council endorsed the Action Programme in March 2007. It agreed with the target for administrative burdens of EU

¹ Nearly half of future Commission initiatives under the Rolling Simplification Programme (76) will be accompanied by an impact assessment, compared to some 10% in the past.

² Recasting combines an act and all previous amendments to it into one law when new amendments are adopted.

³ Codification combines existing acts with all subsequent amendments into one law, without any new amendments. This reduces the volume of legislation and provides legally clearer texts.

⁴ COM(2007) 23.

origin and called on Member States to set “national targets of comparable ambition within their spheres of competence by 2008”⁵. Twelve Member States have now done so⁶.

A key part of the Action Programme is measuring the administrative burdens for businesses of meeting obligations to provide information under EU legislation and national implementing legislation. The measurement exercise was launched in July 2007 and covers 43 pieces of legislation (in 13 priority areas) estimated to account for over 80% of the administrative burden of EU origin⁷.

Hundreds of obligations in EU legislation are being identified and mapped. The way national legislation has transposed EU requirements is also under review, with the support of Single Contact Points appointed by each Member State. Both processes are expected to be finalised early in 2008. The Commission will then assess the time and money businesses spend as a result of these requirements. This will show which obligations go beyond EU requirements and at what cost. A comparison on this scale is unprecedented and will help identify best practice in transposition. Recommendations for reducing administrative burdens should be ready by the end of 2008. The exercise is running ahead of schedule for company law, so the Commission will be in a position to table proposals in this field by summer 2008. Member State measurement exercises indicate that there are important burdens in this area: early action, therefore, would bring significant benefits.

The Commission is also reviewing suggestions sent by the Member States and by respondents to an online consultation on reducing administrative burdens⁸. It will also receive advice from the “High Level Group of Independent Stakeholders on Administrative Burdens” chaired by Dr Edmund Stoiber, which started work in January 2008. The members of the Group include the leaders of several bodies overseeing programmes to cut red tape in the Member States, and representatives from industry, small and medium-sized enterprises and environmental and consumer organisations, all with first hand experience of Better Regulation. The Commission will also continue to reduce unnecessary administrative burdens by promoting the use of information and communication technologies.

To produce quick results, the Action Programme also identified 10 ‘fast track actions’ intended to generate significant benefits (estimated at € 1.3 billion) through relatively minor changes in the underlying legislation. Four corresponding packages of legislative measures were adopted by the Commission in approximately six months. One proposal was agreed by co-decision in record time; the remaining five should be adopted in early 2008. The Commission will present a number of further fast track actions before the Spring Council⁹.

III. USING IMPACT ASSESSMENT IN THE POLICY PROCESS

The Commission’s integrated impact assessment system is helping the EU institutions design better policies and laws. Impact assessment facilitates better-informed decision making throughout the legislative process; it improves the quality of proposals; it promotes adherence

⁵ Presidency conclusions of the European Council (March 2007), p. 10.

⁶ See Commission Working Document, Reducing Administrative Burdens in the EU - COM(2008) 35.

⁷ http://ec.europa.eu/enterprise/admin-burdens-reduction/admin_burdens_en.htm. In addition, a study assessing the administrative burden on farms arising from the Common Agricultural Policy has already been carried out and published.

⁸ http://ec.europa.eu/enterprise/admin-burdens-reduction/index_en.htm.

⁹ See COM(2008) 35.

to the principles of subsidiarity and proportionality; and it ensures consistency with high level objectives such as the Lisbon and Sustainable Development strategies. It also enables the Commission to communicate policy more effectively. The Commission has completed and published 284 impact assessments since 2003. These assessments are public and a summary is available in all official languages¹⁰.

As part of a more general culture change, impact assessment has become embedded in the working practices and decision making of the Commission, and has changed how policy is shaped. Commission decisions on whether and how to proceed with an initiative are based on transparent evidence, stakeholder input and thorough analysis of options, including those of co- and self-regulation. In 2007, for example, the Commission stopped three planned initiatives on the basis of the impact assessments because they showed that EU action would not add sufficient value at this time¹¹: on the establishment of full proportionality between capital and control rights; on amending the 14th Company Law Directive concerning cross-border transfer of registered offices, and on witness protection. It is also the case that Commission services are taking the initiative to do impact assessments even when not formally required to do them¹². The Impact Assessment Board provides independent quality control and helps develop methodology.

The Commission is committed to improving the impact assessment system further. It is updating the methodology and consolidating impact assessment in the policy cycle, drawing on in-house expertise, suggestions from the other institutions, Member States and stakeholders, and the findings of the 2007 external evaluation¹³. The evaluation concluded that the Commission was making progress on its impact assessment objectives: improving the quality of proposals, providing effective aid to decision-making, and enhancing transparency. However, it also identified the need to clarify the concept of proportionate analysis (i.e. analysis in line with the significance of the proposal) and hence better identify the initiatives to be assessed. It recommended that impact assessments be prepared earlier in the policy development process and that quality support, including access to data sources, be improved. The evaluation pointed to a perception that too many impact assessments were carried out to justify a predetermined policy choice.

The Commission has responded by making the improvements outlined below. Other improvements will follow as part of the revision of the Commission's Impact Assessment Guidelines to be finalised after the European Council has reviewed progress on better regulation in March 2008.

¹⁰ It should also be noted that in 2007, the Commission reinforced its evaluation policy (Communication on "Responding to Strategic Needs: Reinforcing the use of evaluation" - SEC(2007) 213), and plans to evaluate legislation and other activities more systematically to verify the assumptions made at the stage of the impact assessment.

¹¹ These impact assessments have been published, see http://ec.europa.eu/governance/impact/cia_2007_en.htm and COM(2007) 693. As of 2008, the Commission will also publish impact assessments for initiatives in the CLWP that are discontinued as a result of the impact assessment.

¹² In 2006 and 2007, Commission departments carried out, respectively, about 10 and 15 "voluntary" impact assessments; for 2008, about 50 are planned.

¹³ This evaluation of the Commission's impact assessment system by The Evaluation Partnership is published on http://ec.europa.eu/governance/impact/key_en.htm The Commission discussed it at a public stakeholder conference in June 2007 and with its Group of High-Level National Regulatory Experts.

1. *Consolidate impact assessment in policy making*

The impact assessment system is sound and has proven its worth as an aid in decision making, primarily for the Commission itself but also for the other institutions. Moreover, the Commission has ensured that impact assessments and the corresponding opinions of the Impact Assessment Board are being used throughout the decision-making process. Building on this progress, there are areas where the system can be improved. One area is timing. Impact assessments need to be conducted earlier in the policy development process so that *alternative courses of action* can be thoroughly examined *before a proposal is tabled*. This means early selection of items for impact assessment and early advice from the Impact Assessment Board on the planned work. The Commission will continue to develop this 'up-stream' coordination and quality support of impact assessments of key initiatives.

2. *Focus resources where most value is added*

When the impact assessment system was launched, all items in the Commission Legislative and Work Programme were subject to impact assessment. Experience has shown that this approach needs to be refined. Impact assessments should be conducted on the most important proposals and on those having the most far-reaching impacts, irrespective of whether they are included in the CLWP. They should be proportionate to the significance of the corresponding initiative, meaning that impact assessment requirements for initiatives with limited or only general impacts will be scaled down or waived. In 2008 the Commission will carry out approximately 180 impact assessments compared to 130 in 2007. More than half of these concern initiatives which are not in the CLWP, including measures adopted through the comitology procedure.

3. *Provide more support*

Quality support and guidance needs to be strengthened, and the Commission will do this in particular through its Impact Assessment Guidelines and the Impact Assessment Board. Areas requiring attention include:

- Deciding on a *proportionate level of analysis* for each impact assessment, taking into account how significant the likely impacts are and how politically sensitive the initiative is.
- ***Subsidiarity and proportionality***: Deciding whether and how the EU should act is intrinsic to the process of impact assessment. The Commission recognises that regional and national impacts — often important for ensuring that the principles of subsidiarity and proportionality are respected — require more attention. New tools will be needed.
- ***Reinforcing analysis of specific impacts***: Commission departments will pay more attention to the analysis of certain areas such as social and distributional impacts, impacts on the internal market, on consumers and SMEs, on regions and local authorities, and international impacts. There is also a need to anticipate better transposition and implementation issues.
- ***Quantification***: Impact assessment should quantify impacts where this is feasible and proportionate — without glossing over underlying uncertainties. Despite progress (for example, administrative costs are systematically considered and, if

significant, measured with the EU Standard Cost Model), insufficient or unreliable data often prevents quantification. Better support and guidance means reinforcing cooperation with Member States, the Committee of the Regions, the European Economic and Social Committee and stakeholders on this point.

- ***Stakeholder and expert input*** is indispensable. Consultation is now routine and stakeholders' views are taken into account from the beginning of the policy process. External experts are extensively involved. The Commission reviewed its minimum standards for external consultation in 2007. It confirmed the current rules and decided to apply them more effectively by improving feedback, ensuring plurality of views, etc.¹⁴. The Impact Assessment Board checks that the standards are correctly applied.

4. *Ensure rigorous quality control*

In late 2006, the Commission set up the Impact Assessment Board under the President's authority, and composed of high-level Commission officials who operate independently of proposing departments. It provides advice and control on methodology and quality, and draws on external expertise when necessary. The Board's opinions are used when the Commission is making its final decision, and are made public once the initiative has been adopted¹⁵.

The Commission has now assessed the first year's experience, based partly on the Board's own report¹⁶. It welcomes the Board's impartial authority and values its professional recommendations, which have in most cases led to real improvements in impact assessments. The Board has helped raise standards and provided useful guidance on methodology. Further improvements will be made to internal working methods and procedures. For example, ensuring that impact assessments prepared by services for certain proposals address the recommendations of the Board before the corresponding proposals are submitted for political decision to the College.

IV. SHARING RESPONSIBILITY

EU rules are proposed by the Commission, and adopted by the European Parliament and the Council. National governments and parliaments transpose them into national laws, and also adopt legislation under their own responsibility, often complementing it with regional and local rules. All these rules affect businesses and citizens. The Better Regulation agenda therefore must be pursued as a joint effort of the EU institutions and the Member States¹⁷. In this context, the Commission will continue its valuable exchanges with the Group of High Level National Regulatory Experts.

¹⁴ Communication on the Follow-up to the Green Paper 'European Transparency Initiative' - COM(2007) 127, 21.3.2007.

¹⁵ http://ec.europa.eu/governance/impact/cia_2007_en.htm.

¹⁶ See the attached 2007 Report.

¹⁷ For progress in the Member States, see the Second annual progress report on implementation of the Lisbon Strategy - COM(2006) 816.

1. Delivery throughout EU decision-making

The Better Regulation exercise will only produce tangible benefits when the legislative improvements proposed by the Commission are adopted and enter into force. The process takes time. Higher quality standards increase the time it takes to prepare Commission initiatives. It takes on average two years for adoption by the co-legislators. Together with the periods allowed for the transposition and entry into force of new directives¹⁸, some four years and often double that time elapses between conception and implementation of an EU initiative.

Against this background there is nevertheless a need to ensure that the Simplification Rolling Programme receives sustained support in all the European Institutions. Only 16 initiatives in the Rolling Programme have so far been adopted by the Council and Parliament. The Commission will continue to make simplification proposals in 2008, in the expectation that the co-legislators will give priority to ensuring adoption by spring 2009. Similarly in 2008 and early 2009, the Commission expects the co-legislators to give priority to adopting proposals to reduce administrative burdens.

Parliament and Council are making growing use of Commission impact assessments in examining proposals, but need to reinforce their efforts. They also need to produce their own impact assessments where they envisage significant amendments to a Commission proposal on issues which are not covered by the Commission impact assessment. The Commission will also try to ensure that impact assessments better anticipate issues that are likely to be raised in Council and Parliament, for example the choice of instrument for EU action. The Council and Parliament may also ask the Commission to expand on aspects of its original assessment. Although these assessments are intended primarily to guide Commission decision-making, the Commission will decide constructively how to respond to these requests on a case by case basis. The Review of the "Common Approach for Impact Assessment"¹⁹ by the three institutions in mid-2008 will be an occasion to make further progress on these issues.

2. Applying Community law

The Commission attaches high priority to correct application of Community law. In September 2007 it suggested ways in which it can work together with the Member States to improve on current problem-solving, producing quicker and better results²⁰. It also identifies ways for the Commission and the Member States to focus on preventive action, and for the Commission to manage infringements more efficiently and to provide more information. The Commission will develop and implement these initiatives in the coming months and evaluate the progress made in 2009.

V. SHAPING GLOBAL REGULATION

In an increasingly globalised world, and after many years of eliminating tariff barriers, non-tariff barriers such as regulatory divergence are increasingly identified as obstacles to

¹⁸ For example, the simplification initiative amending Directive 70/156/EEC on type approval and motor vehicles was published in the Official Journal in October 2007 but enters into force in April 2009. The Commission presented the proposal in July 2003 - COM(2003) 418.

¹⁹ Adopted under the 2003 Inter-institutional Agreement on Better Lawmaking.

²⁰ Communication on "A Europe of Results – Applying Community Law" - COM(2007) 502.

international trade and investment. Many regulatory differences reflect legitimate policy choices, and comply with WTO and other international agreements. Some, however, occur as unintended side-effects of the way each party regulates, and may be unnecessary or harmful to business and consumers.

In drawing up initiatives, the Commission already benefits from input from third countries to its consultation process. In addition, the impact assessment system requires that external impacts be taken into account. The Commission will ensure that these external impacts, for example, on trade and investment and on developing countries are examined thoroughly. Where international standards exist, impact assessments will assess the option of relying on these rather than taking a specific European initiative.

The Commission has a long-standing practice of dialogue on regulatory issues in multilateral organisations such as the OECD and UN and with key trading partners. To project the Lisbon strategy abroad, the Commission will use international dialogue to address horizontal and systemic barriers and facilitate convergence where possible. The EU's better regulation approach may provide inspiration abroad and vice versa.

VI. NEXT STEPS

This review shows that the EU is delivering on its commitment to regulate well. However, more can be done by the Commission, the Parliament, the Council and the Member States, acting together:

Simplifying legislation

- The Commission plans to present 45 initiatives in the **Simplification Rolling Programme** as part of its work programme for 2008, and 8 initiatives for 2009. The codification programme will be completed in the next 18 months.
- The **Council and Parliament should ensure speedy adoption** of pending simplification proposals, of which there are now about 45, and ensure that the simplifications are maintained in the process.
- The Commission calls on Council and Parliament to examine jointly options for **fast-track procedures to repeal obsolete legislation**.
- The Commission continues to **screen the EU *acquis***, as this has delivered a steady flow of new initiatives. It will complete the screening exercise before the end of its term of office.
- The Commission continues to **screen pending proposals** as part of its annual work programme. It reiterates its recommendation that **future Commissions screen** pending proposals on taking office to ensure that draft legislation is in line with political priorities.

Reducing administrative costs

- Given that only a joint effort will deliver reductions of bureaucracy, the Commission proposes that Member States which have not done so adopt or

announce their reduction targets by March 2008 so that the Spring Council can take stock and give further guidance.

- The Commission calls on the Council and the European Parliament to adopt the outstanding **fast track proposals** before the European Council and to give priority to the fast track proposals which the Commission will make in 2008.
- The Commission will work with Member States and give assistance.
- The Commission will present the results of the measurement exercise by the end of the year, together with a number of additional measures to meet the 25% target. Proposals on reducing burdens in company law will be made before summer. The information obtained from this exercise will help Member States reduce burdens flowing from the transposition and implementation of EU legislation.

Using impact assessment to draft initiatives

- In 2008 the Commission expects to carry out more than 180 impact assessments.
- In spring 2008 the Commission will **revise its impact assessment Guidelines** and develop guidance and support in line with this communication.
- The Commission will strengthen the role of the **Impact Assessment Board**.
- Council and Parliament should reinforce the use of **impact assessment in the legislative process**, by examining Commission impact assessments and by producing impact assessments of substantive amendments. The Commission calls on the other institutions to be more transparent about their own impact assessment work, as foreseen in the Common Approach to Impact Assessment.
- In the review of the Common Approach to Impact Assessment, the Commission expects a commitment to conducting impact assessments on **Member State initiatives** in the area of Title VI of the TEU (**police and judicial cooperation in criminal matters**).

Sharing responsibility

- In 2008, the **European Council will review progress on better regulation** and the Parliament, Council and the Commission will jointly review the “**Common Approach to Impact Assessment**”.

Applying Community Law

- The Commission calls on Member States to work with it to ensure correct **application of Community Law**.

Helping to shape global regulation

- The Commission will reinforce assessment, where relevant, of the **international impacts of EU action** so as to facilitate international trade and investment, and to support developing countries.

- The Commission will work closely with **international organisations and third countries** to develop respective approaches to rulemaking and, where possible, promote convergence.

VII. CONCLUSION

Much has been achieved in developing better regulation in the EU. Improving regulation and delivering benefits to citizens and business needs time, financial and human resources, and adjustment of institutional and administrative structures. This cannot be achieved without sustained political support.

The Commission is strongly committed to playing its part, investing heavily in its Rolling Simplification Programme and its Action Programme for reducing administrative burdens, and continuously strengthening its impact assessment system. Ultimately success will depend on the commitment of the other European institutions, the Member States, local/regional authorities, and stakeholders, and the Commission calls on them to join this collective effort.