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signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Javier SOLANA, Secretary-General/High Representative

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

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

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

Executive summary

Laws and regulations are fundamental to ensuring a fair and competitive market place, citizen's welfare and the effective protection of public health and the environment. Better Regulation is about doing this in ways that maximise benefits whilst minimising costs. Better Regulation can boost productivity and employment significantly, thus contributing to growth and jobs. In Europe, the regulatory environment is developed both by the Union and the Member States in an international context – Better Regulation is, therefore, a joint responsibility.

This Strategic Review, accompanied by separate documents on simplification and administrative costs, analyses progress achieved and maps out the main challenges ahead.

Better Regulation covers policy making, from its initial conception through to implementation and enforcement starting with the careful application of the principle of subsidiarity. In developing policies, extensive consultation now guarantees that views of stakeholders are systematically taken into account. Over 160 impact assessments have been prepared in line with comprehensive guidelines, to inform and facilitate Commission decisions. Administrative costs are being measured. The Commission has screened the proposals which were pending when it took office in 2004 and has withdrawn 68, with a further 10 withdrawals foreseen for 2007.

Laws already on the statute books matter most to citizens and business. This is why the Commission launched a major simplification programme for 2005-2008 with over 100 initiatives. By end-2006, around 50 proposals will have been adopted. More than 20 of these are pending with the Council and European Parliament. These proposals need to be given higher priority.

The EP and the Council have signed the Interinstitutional Agreement on Better Lawmaking and are taking steps to apply Better Regulation in practice (e.g. conducting a few impact assessments on important amendments to Commission proposals). More can be done.

Progress at Member State level has accelerated significantly since the adoption of the Integrated Guidelines for Growth and Jobs – with 19 Member States having introduced or about to develop a Better Regulation Strategy and 17 Member States having measured or in the process of measuring administrative costs. Several have set global targets for reduction of administrative burdens. Impact assessments are being conducted more widely, although they are often partial. Nine Member States have simplification programmes, with eight having ad-hoc simplification initiatives. Consultation is obligatory in only nine Member States.

The picture that emerges is encouraging: there has been major progress, both at European and national level. But the development of Better Regulation is a process, not an event and major challenges remain. The Commission identifies the priorities for the different parties as follows:

European Commission:

- An updated simplification programme, aimed at generating tangible economic benefits, particularly through reducing administrative burdens and integrated in the Commission's legislative and work programme. For 2007, 47 initiatives are planned¹;
- Reinforced scrutiny of impact assessments through the creation of an independent Impact Assessment Board under the authority of the President;
- Strengthening the enforcement of Community law.

Council and European Parliament:

- More systematic impact assessments of major amendments to Commission proposals;
- High priority to pending simplification proposals, to codification and to repeal of obsolete legislation.

Member States:

- Development and enforcement of consultation mechanisms, where missing;
- More systematic assessment of economic, social and environmental impacts through adequate guidelines and resources, and more transparency on the results;
- Development of simplification programmes, where missing;
- Improved application of Community law.

EU and Member States:

The Commission proposes the launch of an ambitious strategy for reducing administrative burdens. Given that administrative burdens originate both in European and national legislation, the Commission proposes that the Spring 2007 European Council fix a joint reduction target for administrative burdens of 25%, to be achieved by 2012.

Member States should, in the meanwhile, take similar actions at national level and should deliver on clear commitments to administrative burden reduction during the same period. Progress in such efforts should be reported in the National Reform Programmes and will be evaluated in the context of the Annual Progress Reports to the Spring European Council.

¹ Commission Legislative and Work Programme 2007 - COM(2006) 629, 24.10.2006.

I. THE BETTER REGULATION PROGRAMME

The European Union aims at fostering a regulatory environment which protects citizens while supporting European businesses to compete more effectively and be more innovative in a highly competitive global environment. Much of European legislation was developed to make the single market work. It covers other policy areas where EU Member States have agreed on common policies (e.g. agriculture, fisheries, trade, customs) or on the added value of European level action (e.g. environment, health and consumer protection). These policies need agreed rules that are applied consistently.

Legislating at European level has reduced much red tape. One common rule to apply in all Member States is much simpler and more efficient than a complex web of varying rules at national and regional level. European legislation has been effective in removing harmful barriers to competition and conflicting national rules.

The development of EU laws has been a progressive, incremental process with new rules being added to an existing base. In most mature policy areas, it is time to look at this stock of legislation to see if it can be simplified – to ease burdens on operators and citizens and to ensure it is clear, up-to-date, efficient and user-friendly. Laws need to be kept under constant review and adapted to keep pace with technological developments and global markets.

This Commission has given top priority to simplifying and improving the regulatory environment. Building on earlier initiatives, it launched a 'Better Regulation' programme in 2005 to deliver quality initiatives and to modernise and simplify the stock of existing legislation. This programme applies to all stages of the policy cycle:

- For existing legislation, efforts are being made to simplify and modernise the acquis through legislative techniques such as recast, repeal, codification or revision. Ways to reduce administrative burdens are being examined. Priority is being granted to ensuring that laws are implemented correctly, on-time.
- For new proposals, a comprehensive system for assessing impacts – economic, social and environmental – and for consulting stakeholders² and experts has been put in place to improve the quality of policy design and coherence. Care is taken to ensure that proposals are proportionate to the problem at hand and that any action be taken at the right level, respecting subsidiarity.
- The Commission is also screening proposals pending before the co-legislator, to see if the delays in adoption are due to the quality and relevance of the proposals and hence whether they should be withdrawn.

These actions are mutually reinforcing. Before simplifying laws, impacts are assessed and ways to reduce administrative burdens examined. Overlaps and inconsistencies are detected and remedied. Implementation issues are being more carefully looked at in the design of

² The Commission will report on the outcome of the public consultation concerning its minimum standards for public consultation in a forthcoming communication on the European Transparency Initiative.

policies and laws as well as in their review and possible amendment. This exercise is about delivering high quality regulation in the best way possible, not deregulation.

Better Regulation is a shared responsibility. The Commission submits proposals for adoption to the European Parliament and the Council. The EU laws are transposed into national law by national governments and parliaments and often applied at regional and local level. There is a risk that laws are progressively “embellished” along this chain from conception to implementation. The responsibility for regulating well is hence a shared one. The Commission relies on the close cooperation of the other European institutions, the Member State and local administrations to achieve Better Regulation goals. In the 2003 Inter-institutional Agreement on Better Lawmaking, together with several supplementary agreements, the institutions set down on paper how they can work together to legislate better.

II. PROGRESS TO DATE AND CHALLENGES AHEAD

1. Modernising the stock of existing legislation

While European legislation in itself represents simplification (“one in, 25 out”), it is essential, in a rapidly changing world, to review laws, streamline, remove overlaps and take advantage of the rapidly evolving technology.

Simplification of existing legislation

The Commission has reinforced its efforts to modernise and simplify EU legislation. Of the 100 proposals originally planned for 2005-2008 in the rolling simplification programme³, about 50 will have been adopted by end 2006. These include important proposals for business such as one on the customs code which facilitates data exchange, streamlines and simplifies procedures; one on waste which clears up definitions and will stimulate the recycling market and one on payment services which simplifies procedures.

The Commission has now up-dated its rolling simplification programme⁴ which foresees further initiatives e.g. in agriculture, fisheries, labelling, and statistics. The Commission is maintaining its high level of ambition, adjusting its time frame to allow for quality preparation (e.g. impact assessment, consultation and ex-post evaluation of existing legislation).

As simplification means change and adjustment, it requires consultation at sector level. The Commission is actively consulting those most affected, examining problems and finding practical solutions. The international context (e.g. for accounting, public procurement and intellectual property rights) is important.

Simplification proposals need to be given higher priority by the co-legislator. More than 20 simplification proposals are currently pending. Procedures to facilitate a more timely adoption of simplification proposals should be considered.

Member States need to develop their own national simplification programmes to ensure that the advantages of a lighter Community regulatory environment are not cancelled out by new

³ COM(2005) 535, 25.10.2005.

⁴ First progress report on the strategy for the simplification of the regulatory environment - COM(2006) 690.

national rules. It is often at the stage of transposition of directives into national law that refinements, not prescribed by EU law, are introduced. These, sometimes referred to as 'gold plating' can go well beyond the requirements set out in EU law.

Reducing administrative burdens

Most of the costs created by legislation relate to the investment (e.g. installation of safety equipment) needed to comply with the law. But there are other costs of an administrative nature, such as those incurred in meeting reporting requirements. These should be reduced where this can be done without compromising the achievement of the objectives of the legislation. Member State experience demonstrates that public authorities can do a lot to reduce unwarranted administrative burdens of legislation - economic benefits from such action are estimated at an increase in the level of GDP of up to 1.5% of GDP or up to € 150 billion⁵.

The Commission has developed a common methodology for assessing administrative costs and applies this in its own *ex ante* impact assessments for new legislation.

The priority is now to reduce the administrative burdens imposed by existing legislation. Together with the Member States, the Commission is working to develop an approach for joint measurement of the burdens of existing legislation in the EU. The issues that the Commission is examining (e.g. comparability of measurements, identification of the origin of obligations, reduction targets and burden-sharing etc) and lessons learned from a pilot project are set out in more detail in the Commission Working Document.

The Commission is also looking at how best to set quantitative reduction targets for the existing stock of legislation. Several Member States have already carried out such a measurement and concluded that a 25% reduction of the administrative burden is ambitious but feasible. Experience in some Member States suggests that such targets have functioned well in providing a framework and generating the necessary urgency and momentum. Such targets should be differentiated according to where the burdens exist. In certain areas (e.g. agriculture and customs) actions taken at European level can directly reduce burdens; in others, actions of Member States will contribute significantly more to the reduction of burdens. Member States and the Commission will need to agree an 'across the board' baseline measurement in priority areas and reduction targets, shared between the Community and the Member States in function of the origins of administrative burdens.

The Commission will present an Action Plan for Administrative Cost Measurement and Reduction of Administrative Burdens in early 2007. The Action Plan will propose immediate actions as well as a coordinated longer term approach for joint EU and Member State measurement and reduction targets. The Commission will invite the institutions to consider a fast track approval procedure for the immediate actions.

The Spring 2007 European Council will be asked to endorse:

- an overall 25% joint reduction target for administrative burdens of EU and national legislation to be achieved by 2012 as well as possible intermediate

⁵ See "Measuring administrative costs and reducing administrative burdens in the European Union" - COM(2006) 691.

targets. This is a shared responsibility and therefore requires a joint effort on the part of European Institutions and Member States alike;

- priority areas for action – at European and national level, both immediate and longer term;
- the measurement exercise and the methodology.

Codification and the repeal of obsolete legislation

European law has developed progressively, with laws being amended over the course of time. These amendments have not been systematically integrated back into the original law. Codification is the process that brings together the provisions of existing acts with all of their subsequent amendments into one law. This contributes to the reduction in volume of EU legislation, providing more transparent and legally clear texts which help SMEs in particular and facilitate enforcement. The Commission's codification programme involves about 500⁶ acts in all sectors. 85 acts have been finalised by the Commission: 52 have been adopted and published in the Official Journal. 33 acts are pending before the Council and Parliament. These 85 acts replace 300 current acts. The 500 codification acts would replace around 2 000 acts in total.

The Commission aims to finalise the programme in 2008. Translation is being accelerated and a 'standstill' on substantial amendments will be applied where possible. The Commission invites the other institutions to make a concerted effort to complete the codification programme by adoption of the relevant acts as quickly as possible.

For the future, to avoid recurrence of codification backlogs, it will be important to more systematically ensure, through recasting⁷, the integration of amendments into the existing law at the same time as such amendments are adopted.

Obsolete acts that no longer have real effect, but which formally remain in force because they have not been expressly repealed should be removed. In 2003 the Commission launched a screening process to identify these acts and set up simplified procedures for their removal. This should be continued and could be speeded up if dedicated fast-track procedures were to be agreed between the European Parliament and the Council.

2. *Improving the Preparation of Proposals*

Impact Assessment

An important part of making better laws is having a full picture of their economic, social and environmental impacts, including the international context. In addition to consulting stakeholders, the Commission has set up an integrated system for impact assessment, issued guidelines and applied them to major policy proposals. Since 2003 the Commission has completed over 160 impact assessments. Since September 2006, a summary of the

⁶ Of the 940 acts originally identified as codifiable in 2001, 198 have been repealed, 16 have expired, 8 are amended too frequently to permit codification and 152 are obsolete or do not merit codification because of the minimal nature of the amendment made to them.

⁷ Recasting is the process whereby a new legally binding act, repealing the acts which it replaces, combines both the amendment of the substance of the legislation and the codification of the remainder which is intended to remain unchanged.

Commission's impact assessment reports is translated into all official languages. Commission decisions on whether and how to proceed with an initiative are based on a thorough analysis of options. The option of no EU action together with alternatives to legally binding legislation (self- and co-regulation) is routinely examined. As a result, some planned measures have been significantly adjusted: impact assessments on biomass, the urban environment, and copyright in the online music sector led to the conclusion that binding measures were not necessary.

An important new element to improve the Commission's decision-making is the creation of an Impact Assessment Board (IAB), which will offer advice and support in developing a culture of impact assessment inside the Commission. It will provide widespread quality advice and control whilst ensuring that the responsibility for preparing assessments and the relevant proposals remains with the relevant departments and Commissioners. The IAB, composed of high level officials, acts independently of the policy making departments and reports directly to the President. It issues opinions on the quality of Impact Assessments. The IAB contributes to ensure that impact assessments are of high quality, that they examine different policy options and that they can be used throughout the legislative process. To assist its work the IAB may have recourse to external expertise. The Commission expects the IAB to develop into a centre of excellence.

Other important on-going actions include an external evaluation of the Commission's impact assessment system. The Commission will also adopt an action plan⁸ to improve the use of ex-post evaluation in the policy development process.

The other institutions should also systematically assess the impacts of their major amendments to Commission proposals, as far as possible following the same methodology as the Commission. In the area of Title VI of the TEU (police and judicial cooperation in criminal matters), proposals made by the Council/Member States should be accompanied by impact assessments.

Screening and Withdrawal of pending proposals

In some Member States the legislative programmes of the government and parliament automatically fall at the end of each legislature. This kind of legislative discontinuity is not provided for in the EU Treaties. Given the specific challenges of the European integration and the character of the European institutional framework, the blanket application of such a practice could significantly alter the current balance between the main institutions and lead to excessively long interruptions in the flow of work.

This being said, regular assessments of pending legislation by the Commission throughout the political cycle from its beginning to its end can contribute to reinforcing political ownership and the overall coherence of the EU's strategic political agenda.

That is why, upon taking office at the end of 2004, this Commission decided to screen proposals adopted by the previous Commission, pending before the Council and the European Parliament to see if they aligned with the Growth and Jobs priority, and met better regulation standards. 68 pending proposals were withdrawn in early 2006. A further 10 proposals will be withdrawn in 2007 and the Commission will continue to regularly monitor pending legislation to make sure that it is relevant and up to date.

⁸ Forthcoming Communication to the Commission from Ms Grybauskaitė in agreement with the President "Responding to Strategic Needs: Reinforcing the use of evaluation".

Without prejudice to its prerogative to withdraw pending proposals at any given moment, the present Commission is making a regular screening of pending proposals in the context of preparing work programmes in order to verify that the draft legislation on the table of the legislator is in line with its political priorities and to remove those which are not or those which are obsolete. It believes that any new Commission should carry out a similar exercise in principle within the first six months of taking office.

3. *Applying EU law*

Efforts made by the Commission to simplify and improve the regulatory environment will not deliver the desired results unless European laws are applied correctly and effectively in the Member States. Moreover, if problems do occur, businesses, consumers and citizens must be able to exercise their rights swiftly and effectively. The Commission will continue to ensure the correct application of European laws. However, it is essential that Member States assume their responsibility in this respect. Much European law takes the form of directives which set out general rules and objectives but leave Member States certain choice as to how to produce required results in line with the EC-Treaty and the principle of subsidiarity. The Member States are required to transpose the directives into national law and are responsible for applying the law. Failure to meet obligations can result in legal action, including before the Court of Justice. The number of infringement cases against Member States shows that too often the objective of correct application of European laws is not achieved. Moreover, the infringement procedure is not always the most effective way to remedy problems of citizens and businesses. Improvements are called for.

The Commission will take more preventive action, following-up with Member States at an early stage so as to facilitate the correct transposition of key directives. It will seek a commitment from Member States to produce correlation tables, linking provisions in directives and national rules to facilitate assessment of transposition, transparency and judicial review. Moreover, the administrative burden of applying EU directives can vary considerably between Member States. The Commission will work with the Member States to identify and disseminate good practices in this area.

Where prevention fails, the Commission will seek swift correction. Where appropriate, and taking due account of its role as guardian of the Treaty, the Commission will focus on key categories of cases such as non-communication of national measures transposing directives, breaches of European law having a particularly far-reaching negative impact for citizens or business, non-compliance with Court judgments. At the same time, it will step up work with Member States to develop complementary problem-solving mechanisms, building on best practices in Member States and successful mechanisms such as SOLVIT⁹, so as to respond in a rapid, efficient and measurable way to questions and problems of citizens and business. It will provide systematic information on the application¹⁰ of the European law. These initiatives will be detailed in an upcoming communication on the application of European law and will form an important component in the up-coming Single Market Review.

⁹ SOLVIT is an alternative dispute resolution mechanism set up by the Commission to help EU citizens and businesses who have been denied the possibility to exercise their European Internal Market rights because a public administration in another Member State has misapplied Internal Market legislation, <http://europa.eu.int/solvit/site/index.htm>.

¹⁰ The Commission already presents an annual report on monitoring the application of Community law, see COM(2006) 416.

III. PROGRESS WITH BETTER REGULATION IN MEMBER STATES

Improving the regulatory environment in Europe depends on Member States' contribution. This affects the transposition and implementation of EU law as well as the quality of national and regional regulation. There has been a marked increase in efforts to regulate better since the adoption of the Integrated Guidelines of Growth and Jobs¹¹ in March 2005¹² as reflected in the National Reform Programmes and Progress Reports.

Most have a Better Regulation strategy and an institutional structure in place to support it. Most progress is being made with regard to the measurement of administrative costs and reduction of burdens where a majority of Member States have opted for the same model for measuring administrative costs and a number have already adopted percentage reduction targets. Many Member States now carry out Impact Assessments and some have developed guidelines. However, only a relatively small number of countries systematically carry out integrated impact assessments for new legislative proposals and the results are often not available to outside scrutiny.

While about half of Member States have developed a comprehensive simplification programme, many ad-hoc initiatives (e.g. on e-government, one-stop shops and central registration offices), are being launched. Stakeholder consultation is increasing in many Member States but there is still significant room for improvement.

It is clear that the improving the regulation process requires time, financial and human resources, as well as adjustment of current institutional structures. This cannot be achieved without strong and sustained political support.

IV. NEXT STEPS

The review demonstrates 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:

Simplification of legislation

- Putting simplification at the heart of the Commission's Work Programme through integration of the rolling simplification programme into the **Commission's Legislative and Work Programme**.
- Strengthening the **rolling simplification programme** with more than 40 additional simplification initiatives to be delivered in coming years, across a broad spectrum of policy domains.
- Quicker adoption by the **co-legislator** of pending simplification proposals and reinforcement of inter-institutional cooperation.

¹¹ COM(2005) 141, 12.4.2005.

¹² A detailed overview of Member States experiences with the introduction of Better Regulation principles is provided in the 2006 Competitiveness Report (forthcoming) and *Note for the Economic Policy Committee - Promoting Better Regulation*, Brussels, 18 October 2006.

Reducing administrative burdens

- The Commission will propose an **Action Plan on Measuring Administrative Costs and Reducing Administrative Burdens** and launch a **large measurement and burden reduction study**.
- On this basis, the Spring 2007 European Council will be asked to endorse a **joint 25% reduction target** and priority areas for action at both EU and national level including a first set of concrete actions where significant progress can be achieved rapidly and the measurement exercise and the methodology to be used.

Impact assessments

- A new **Impact Assessment Board (IAB)** will start to systematically review Commission impact assessments.
- The results of the **external evaluation of the current impact assessment system** will be implemented, as appropriate.
- Under the 2008 review of the “Common Approach to Impact Assessment”, the Commission expects that the institutions will agree to conduct impact assessments on **Member State initiatives** in the area of Title VI of the TEU (**police and judicial cooperation in criminal matters**).

Screening and Withdrawal of pending proposals

- This Commission considers that **any future Commission should carry out a screening** of pending proposals in principle within the first six months of its mandate in order to verify that the draft legislation on the table of the legislator is in line with political priorities.
- The present Commission will continue to **screen pending proposals** regularly in the context of preparing the annual work programme and remove proposals where appropriate.

Transposition and application of EU Law

- During 2007, the **Commission** will propose a new initiative to reinforce its efforts to anticipate and prevent transposition problems, through enhanced cooperation with Member States, accelerate progress on key categories of cases and enhance information on enforcement.
- **Member States** need to build on progress on improved transposition of directives, improved information-provision and problem-solving for citizens and business and more widespread communication of correlation tables.

Codification and repeal

- The Commission will present around 350 **codification initiatives** before end-2008, recommending Council and Parliament adoption by 2009.

- Applying **improved ways of codifying legislation**.
- Continued identification of **obsolete acts to be repealed**. The Commission also invites the Council and the European Parliament to develop fast-track procedures for the repeal of obsolete legislation.

V. CONCLUSION

Much has been achieved in developing Better Regulation in the EU, but the agenda now needs to be taken forward in a determined manner to achieve the full benefits. The Commission is strongly committed to play its part and is taking major new initiatives to strengthen its Impact Assessment system and its Simplification Programme – and to communicate its better regulation efforts. It is also proposing to launch an unprecedented drive to cut administrative burdens. But the Commission cannot succeed alone. It, therefore, calls on the European Council, the EU co-legislator and the Member States, to endorse the priorities outlined in this Communication as a common agenda for Better Regulation in the European Union.