

# **Implementation of the Commission's White Paper**

## **State of Play**

### **I. PRELIMINARY REMARKS**

Some scholars and political analysts have criticised the 2001 White Paper on European governance on the grounds that Commission would have neglected basic principles of democratic legitimacy in favour of the concept of an output legitimacy based only on the efficiency of the decision-making process. In fact, the European Commission has presented its proposals for the reform of European governance within the existing framework of the Treaties.

Therefore, it would have been very difficult for the Commission to increase the democratic legitimacy of the Union without bringing any changes in the current Treaties, like the ones provided by the Lisbon Treaty (such as, for instance, the citizens' right of legislative initiative, the election of the Commission's President by the European Parliament, the involvement of National Parliaments in the European Union's legislative process, etc.).

### **II. MAIN ACHIEVEMENTS**

Following publication of the White Paper, the Commission has implemented its main ideas through several packages or specific measures:

- a) the Better Law Making Action plan of June 2002;
- b) the Framework for Action "Updating and simplifying the Community acquis" of March 2003;
- c) the Communication of May 2002 on impact assessment and follow-up measures.

These packages have led to some significant achievements:

- 1) Consolidation of best practices for the consultations of the stakeholders (general principles and minimum standards providing for minimum period of eight weeks, feedback, etc.). External stakeholder and expert input is now embedded practice from the beginning of the policy process. The minimum standards were reviewed in 2007 and the Commission resolved to apply them more effectively by improving feedback and better ensuring plurality of views.
- 2) The Commission's impact assessment system became the bedrock for the exercise of the Commission's right of initiative. Impact assessments have consistently accompanied the Commission's main proposals since 2006:

- overall, more than 300 impact assessments (IA) completed and published since 2003. In 2008, the Commission will carry out approximately 200 impact assessments compared to 130 in 2007. These assessments are public and, since 2007, a summary is made available in all official languages;
  - the Commission's Impact Assessment Guidelines were published in the JO and progressively improved from June 2005; in 2006 a *Common Approach to Impact Assessment* was agreed with other institutions; an external evaluation of its impact assessment system was carried out by the Commission in 2007;
  - at the end of 2006, the Commission reinforced its impact assessment system significantly by creating the *Impact Assessment Board* (IAB). This is an independent body under the authority of the President of the Commission, composed of high-level Commission officials operating independently of the departments they come from. 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 adopted;
  - on the basis of experience with the work of the IAB over the last year, recommendations from the external evaluation and stakeholder consultation, the Commission is currently revising its impact assessment Guidelines. In particular, subsidiarity and proportionality, which is intrinsic to the process of impact assessment and certain special impacts such as regional and national impacts, require more attention.
- 3) Improved implementation of the "subsidiarity and proportionality principles" through new mechanisms (namely the IAB) <sup>(1)</sup>.
- 4) A strategy for better Law-Making throughout the EU legislative process has been applied since the conclusion of the Inter-institutional Agreement on the "Better Law-Making" between the European Parliament, the Council and the Commission in 2003.
- 5) An ambitious strategy for simplification of Community legislation was adopted by the Commission in 2005, which beyond merely reducing the size of the Community acquis,

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<sup>1</sup> In 2007 for instance, 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 time:

- On the establishment of full proportionality between capital and control rights in listed companies, as existing measures appear to contribute directly or indirectly to reducing the risk of private benefit extraction by insiders.
- On amending the 14th Company Law Directive concerning cross-border transfer of registered offices, as it is appropriate to wait until the practical effect of the cross-border merger directive become clearer and the issue of the transfer of the registered office be clarified by the Court of Justice.
- On the framework decision on the protection of witnesses, as the assessment is that at present Member States would be reluctant to accept binding legislation to regulate their ongoing informal cooperation.

Furthermore, the Commission has limited its proposal on facilitating cross-border enforcement in the field of road safety, as for reasons of subsidiarity and overlap with the Council Framework Decision on the application of the principle of mutual recognition to financial penalties, to simply setting up an EU electronic data exchange network to identify the holder of the vehicle.

aims to provide European companies and citizens with a regulatory environment that meets the highest standards of law making. The related Simplification Rolling Programme has been yearly reviewed and updated<sup>2)</sup>. This strategy also included the resolve to speed up completion of the codification programme, making Community law more readable and helping reduce its volume <sup>(3)</sup>.

- 6) An Action Programme was launched by the Commission in January 2007 setting the ambitious objective of cutting the administrative burdens stemming from EU legislation by 25% by 2012 (this aim has been endorsed by the European Council) <sup>(4)</sup>.
- 7) The Commission regularly screens all legislative proposals pending before the legislature to ensure they remain relevant and meet required quality standards. Since 2005 <sup>(5)</sup>, 108 pending proposals have been withdrawn this way.
- 8) The Commission is also routinely repealing obsolete acts that no longer have real effect, but which are still on the statute book. Up to now, this work has involved about 2500 legal acts <sup>(6)</sup>.

### III. OTHER PROPOSALS

On the opposite side, a package of measures for "Better implementation" presented in December 2002 has received less support and produced few results:

- 7) The Council gave no follow-up to the draft Agreement for the adoption of a common framework and rationalisation of "Regulatory Agencies". In these circumstances, the Commission recently decided to withdraw its draft and to maintain a "*moratoire*" for the establishment of new Agencies by end 2009.

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<sup>2</sup> . The Commission's Simplification Programme covering the period 2005-2009 has so far resulted in 100 initiatives being adopted by the Commission out of a total of 162 measures planned.  
 . The programme uses legislative techniques such as repeal, codification and recasting.  
 . Overall, the Commission has already put forward about 400 legal acts for repeal, modification or replacement. As a result, about 300 legal acts will be deleted from the Community statute book.  
 . 45 new simplification initiatives are foreseen for adoption in 2008.

<sup>3</sup> A total of 348 instruments have gone through this process, being replaced by only 87 codified instruments which have been adopted and published in the Official Journal.

<sup>4</sup> . So far the Action Programme has identified 21 'fast track actions' intended to generate significant benefits through relatively minor changes in the underlying legislation. Five of these have been adopted by the legislative authority so far. The total estimated reduction will be around EUR 1.3 billion.  
 . A High Level Group of Independent Stakeholders was set up to offer advice on the implementation of the Action Programme under the Chairmanship of Mr. Stoiber, ex-Prime Minister of Bavaria, which has already taken up its work.  
 . The Commission has launched an online consultation, giving businesses the possibility to directly propose administrative reduction measures.

<sup>5</sup> COM(2005) 462, COM(2006) 621 and COM(2007) 640

<sup>6</sup> Source EUR-Lex, [http://europa.eu.int/eur-lex/lex/RECH\\_date.do](http://europa.eu.int/eur-lex/lex/RECH_date.do) → select "Type of query:" "End of validity". Documents with end of validity 15/11/2004 – 30/11/2007 Legislation including Regulations, Directives, and Decisions of the Council, of the Council and the European Parliament and of the Commission.

- 8) The Member States gave no support to the conclusion of *tripartite agreements* between the Commission, national and regional or local authorities. After the conclusion of only one *tripartite agreement* with Italy and the Lombardia region, the Commission has thrown in the sponge!
- 9) Only the reform of Comitology has been successful. The European Parliament has obtained a right to veto on the *quasi-legislative* measures proposed by the Commission and has been placed on an equal footing with the Council. This improvement of the democratic legitimacy will be reinforced by the entry into force of the new provisions of the Lisbon Treaty.
- 10) Another innovative side of the White Paper's proposals (for instance the partnership agreements with the civil society, already watered down within the Commission internal process) has not been pursued by the Commission, especially for the following reasons:
  - a) the reluctance of the European Parliament to a strengthening participatory democracy against the representative one (see Kaufmann's report);
  - b) the difficulties in identifying the civil society's organisations more representative at the European level.

However, the Lisbon Treaty has integrated some proposals of the White Paper for a strengthening of participative democracy, including the innovative citizens' right for a legislative initiative (which exists only in some Member States).

#### **IV. CONCLUSION**

The European Commission has taken a very large number of initiatives in order to reinforce the efficiency of the European Union decision-making process and, therefore, the output legitimacy of the Union. Furthermore, the Lisbon Treaty – once ratified – will increase to some extent the democratic legitimacy of the European Union. If the improvement of the European governance has not been achieved yet, we are on the right track!