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## **REPORT**

on Better lawmaking 2004: application of the principle of subsidiarity – 12th  
annual report  
(2005/2055(INI))

Committee on Legal Affairs

Rapporteur: Bert Doorn

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**on Better lawmaking 2004: application of the principle of subsidiarity – 12th annual report  
(2005/2055(INI))**

*The European Parliament,*

- having regard to the Commission communication of 5 June 2002 on impact assessment (COM(2002)0276),
- having regard to the Commission communication of 5 June 2002 on the Action plan ‘Simplifying and improving the regulatory environment’ (COM(2002)0278),
- having regard to the interinstitutional agreement of 16 December 2003 on better lawmaking<sup>1</sup> concluded between the European Parliament, the Council and the Commission,
- having regard to its resolution of 20 April 2004 on assessment of the impact of Community legislation and the consultation procedures<sup>2</sup>,
- having regard to the conclusions of the Competitiveness Council of 25-26 November 2004,
- having regard to the Commission communication entitled "Better Regulation for Growth and Jobs in the European Union" of 16 March 2005 (COM(2005)0097),
- having regard to the Commission report entitled “Better lawmaking 2004” of 21 March 2005 (COM(2005)0098),
- having regard to the Commission's Impact Assessment guidelines of 15 June 2005 and the annexes thereto (SEC(2005)0791),
- having regard to the Commission communication entitled "Outcome of the screening of legislative proposals pending before the Legislator" of 27 September 2005 (COM(2005)0462),
- having regard to the European Economic and Social Committee opinions on better implementation of EU legislation and better regulation of 28 September 2005,
- having regard to the Commission communication "on an EU common methodology for assessing administrative costs imposed by legislation" of 21 October 2005 (COM(2005)0518),
- having regard to its resolution of 15 December 2005 on the legislative and work

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<sup>1</sup> OJ C 321, 31.12.2003, p. 1.

<sup>2</sup> OJ C 104 E, 30.4.2004, p. 146.

programme of the Commission for 2006<sup>1</sup>,

- having regard to Rule 45 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A6-0082/2006),
- A. whereas, in its Communication on better regulation for growth and jobs in the European Union, the Commission establishes a clear link between achieving the Lisbon objectives and better regulation,
- B. whereas establishing a transparent, clear, effective and high-quality regulatory environment should be a priority objective of European Union policy,
- C. whereas the regulatory environment in which businesses operate is a determining factor for their competitiveness, for sustainable growth and, consequently, for their employment performance,
- D. whereas impact assessment in the context of new legislation and simplification of existing legislation could contribute to a better evaluation of its social, economic, environmental and health effects and could reduce the administrative burden that undermines the competitiveness of European businesses, in particular small and medium-sized enterprises (SMEs),
- E. whereas the reputation of the European legislature among citizens and businesses in the EU leaves much to be desired, notably because the legislation, being often a result of difficult political compromise, lacks clarity and Member States are unable or unwilling to implement it correctly,
- F. whereas, in the drafting of legislation, the Commission gives some interested parties the opportunity to react, through consultations and various working groups, but whereas there is insufficient transparency concerning the substance of those consultations, the participants and the manner in which the Commission takes the results thereof into account,
- G. whereas in its above-mentioned resolution of 20 April 2004 the European Parliament declared itself, by a large majority, in favour of the use of impact assessment in the EU in order to improve legislation, and whereas the Council and the Commission have underlined the importance of impact assessment in numerous documents,
- H. whereas the impact assessment carried out by the Commission does not consistently follow the same methodology and is therefore of varying quality, and whereas the impact assessment often resembles a justification of the proposal rather than an actual objective assessment,
- I. whereas a great deal of implementing (or secondary) legislation is adopted through the comitology procedure, without proper parliamentary control or impact assessment,

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<sup>1</sup> *Texts Adopted*, P6\_TA(2005)0524.

- J. whereas legislation is partly a learning process in which it is possible to learn from mistakes made; whereas the impact of legislation is not made sufficiently transparent and whereas reports by the Commission on the implementation of Community legislation are confined to implementation in the Member States and do not give an insight into whether, in practice, the legislation has met the objectives set,
1. Stresses the need for any Community legislation adopted to comply fully with the principles of subsidiarity and proportionality;
  2. Supports the ambition of improving European legislation with a view to enhancing growth and jobs, and stresses the need for an integrated and consistent approach to initiatives on "better regulation", supporting the three Lisbon pillars in case the market fails; stresses that initiatives on "better regulation" must be implemented in a transparent and democratic way;
  3. Promotes legislation based on principles and focused on quality rather than quantity; sees the "better regulation" debate as an occasion for reflection on legislation as a process designed to achieve clearly defined policy goals by committing and involving all stakeholders during all phases of the process, from preparation to enforcement;
  4. Recommends that the "better regulation" programme be piloted in certain fields and be carefully assessed before wider use; considers the experience with the Lamfalussy procedure in financial markets legislation, and the dialogue between regulators and market participants, in particular, to be a valuable test case for a dynamic legislative process;
  5. Is of the opinion that the Lamfalussy procedure is a useful mechanism; regards the convergence of supervisory practices as crucial; welcomes the work of the Level 3 committees in this respect and supports the call for an adequate toolbox; believes that, where supervisors are given room for manoeuvre, this removes much of the need for technical detail in legislation and is likely to produce more appropriate rules for a dynamic market; stresses, however, that this can never erode political responsibility for the final objectives of the legislation in question; insists that legislators should carefully monitor the process and reiterates that the legislative rights of Parliament should be fully respected;
  6. Notes the need for every legislative proposal to be accompanied by an impact assessment, which is defined in its above-mentioned resolution of 20 April 2004 as a straightforward mapping-out of the consequences in social, economic and environmental terms, as well as a mapping-out of the policy alternatives that are available to the legislature in that scenario;
  7. Is of the opinion that, when a draft proposal is presented by the Commission at the request of one or more Member States, this should be mentioned;

8. Believes that it is also essential for impact assessments to consider the interaction and consistency with existing legislation of every new legislative proposal and the overall cost to the economic sector concerned in terms of its cumulative effects;
9. Stresses the need for the clear guidelines and structures for impact assessment, published by the Commission in June 2005, to be implemented uniformly in all DGs without delay;
10. Welcomes the development of impact assessments in the preparatory phase but warns that they cannot replace political debates about the advantages and disadvantages of laws; emphasises that the interests of consumers, companies and citizens cannot be reduced to a mere cost-benefit analysis; is of the opinion that laws should be executed under the full responsibility of the institutions themselves, in accordance with their political priorities; asks for full transparency during the preparatory phase, for justifications based on the results sought, and for further precision where necessary; insists on the importance of common guidelines in full respect of the three Lisbon pillars; and insists on a proper budget;
11. Stresses that the Commission should include in the impact assessment, in a more precise way and in accordance with precise guidelines, the consequences of an absence of legislation in terms of lost benefits, notably as regards health, welfare and sustainability; insists that it must also put into operation as quickly as possible the method it has developed for calculating administrative burdens in quantitative terms as part of the impact assessment; notes that such a method is needed in order to gain an understanding of the costs associated with applying and implementing legislation; considers that a definitive methodology must be incorporated into the impact assessment by 2006 at the latest;
12. Considers it essential, in the interests of a uniform application by the Commission of the impact assessment, that the quality of the latter be submitted to independent scrutiny; the European Parliament will not consider any proposals without their being accompanied by an independently scrutinised and approved impact assessment 13. Wants "better regulation" to follow a global approach, fully involving the Parliament, the Council and the Commission as well as the Member States, and consulting all stakeholders in order to involve citizens who have recently shown, in some Member States, their lack of trust in the European project; recommends an increase in the input and involvement of consumers and workers' representatives in the consultation processes;
14. Stresses that consulting stakeholders during the preparatory phase is distinct from negotiating with stakeholders during the legislative process, and expresses its concern about the Commission's tendency to hold bilateral negotiations with individual Member States before presenting legislative proposals, which sometimes leads to odd, inconsistent or contradictory provisions, opt-outs or exemptions in favour of particular Member States, distorting the level playing field;
15. Considers it necessary that, during the preparation of legislation and the impact

assessment, interested parties should be given the opportunity, and adequate time, to make their reactions known, and that the Commission should inform interested parties in what way their reactions have been processed in the proposal; takes the view that, in this connection, the Commission must observe maximum transparency by publishing the reactions of interested parties and the impact assessment in a publicly accessible register;

16. Notes that much implementing legislation comes into being via the comitology procedure; considers that such legislation must meet the same quality requirements as implemented legislation and will therefore be subject to impact assessment, once the necessary know-how and tools have been developed;
17. Proposes an interinstitutional agreement addressing the different legislative procedures and the Parliament's involvement in each of them and, in particular, recognising the Parliament as an equal co-legislator in the follow-up to comitology decisions; calls for similar arrangements with respect to international standardisation such as provided by the International Accounting Standards Board;
18. Is convinced that, if the Parliament's legislative powers are respected in the context of comitology, it will be more willing to focus on general principles and support legislative simplification and innovation; calls, therefore, once more, for an interinstitutional agreement on improved comitology to definitively clarify and guarantee respect of the Parliament as a co-legislator;
19. Considers that, in the context of quality assurance for European legislation, Parliament should have a call-back right to subject comitology legislation to Parliamentary approval, if an impact assessment suggests the need for this; calls on the Council and the Commission to enshrine such a call-back right in an interinstitutional agreement before 1 April 2008;
20. Reiterates that Parliament and the Council also make their significant amendments to Commission proposals subject to an impact assessment and stresses that such an impact assessment makes sense only if the same methodology is used as in the case of the Commission;
21. Calls on the Council and the Commission, in the context of interinstitutional consultation, to develop in the near future a Community method and procedure for the application of impact assessment within the European policy process, and to arrive at concrete agreements by September 2006;
22. Warns that "better regulation" methods should respect the balance of power between and the respective roles of the Parliament, the Council and the Commission; wants the Parliament to make a wise and integrated contribution, building on previous experience; stresses the need for the political endorsement of innovations in the legislative process;
23. Opines that highly technical legislation should not lead to the disengagement of co-legislators from the democratic process of lawmaking but should rather encourage them to concentrate on core political principles and objectives and on how to apply the process of putting them into practice, changing from a prescriptive to a responsive and participative approach and making use of the technical know-how and capacities of the

regulatory authorities that have to apply the law;

24. Calls on the Member States to exchange experiences in the use of impact assessment, and also to apply such assessments to national legislation;
25. Welcomes the increased involvement of national parliaments in the work programme of the Commission, but warns against random cherry-picking of proposals on the basis of subsidiarity and proportionality; asks that all new proposals contain a summary of existing legislation in the relevant field and an explanation as to how the new legislation is to fit into the scheme; asks for different options to be proposed to the Council and Parliament, with a sound analysis of their respective implications as regards citizens' expectations, the three Lisbon pillars, costs, and the administrative burden, especially for SMEs;
26. In order to guarantee an EU-wide uniform lawmaking framework, urges the Commission to ensure that this framework is not undermined by the Council through a proliferation of derogatory provisions in favour of individual Member States;
27. Calls on the Commission to report to Parliament, no later than three years after the entry into force of new legislation, on the impact of the legislation in practice; is above all interested in the question whether the legislation has fulfilled the original purpose, what effects it has had on the international competitiveness of the relevant sector, not least in the light of different regulations (or the absence of regulation) in competing countries, and how the legislation is complied with in practice; also calls on the Commission to subject the quantitative results of the impact assessment to a regular critical analysis with a view to ascertaining whether the methodology used produces reliable predictions, and to report to Parliament on the results;
28. Stresses the need for Parliament, and in particular the rapporteur responsible, to play a more active role in monitoring the implementation of European legislation in the Member States, and to make use of the network between the European Parliament and the national and/or regional parliaments;
29. Is of the opinion that transposition of EC legislation should be monitored seriously and proactively in order to avoid diverging interpretations and gold-plating; wants the Commission to play an active role in transposition, together with supervisors and expert groups, at both EU and national level, since early analysis of potential pitfalls may prevent delays and unnecessary burdens on companies; suggests that Parliament should set up a proper transposition-monitoring procedure in close cooperation with its national partners;
30. Recalls the interesting perspectives afforded by the "open method of coordination" in the context of the Lisbon Strategy; stresses the interest of the European Parliament in being fully informed on the development of this practice; calls on the Commission to submit a report on the progress accomplished to date by this method and insists that the open method of coordination must not evolve into a parallel, but covert, legislative procedure which subverts the procedures laid down in the EC Treaty;



31. Instructs its President to forward this resolution to the Council and the Commission.

## EXPLANATORY STATEMENT

Since the report on Better lawmaking /impact assessment was adopted by the European Parliament in March 2004, your rapporteur is pleased to note a great deal of activity on this issue. The publication by the Commission of its communication 'Better regulation for growth and jobs in the European Union', the publication of the impact assessment guidelines, and the Commission's and Council's initiatives on the measurement of administrative burdens and the simplification of existing legislation, all show which way the wind is blowing. In your rapporteur's view it is now time to ensure the proper implementation of all the initiatives for better lawmaking. This is very important with a view to the Lisbon strategy and the credibility of European legislation in the eyes of European citizens and businesses.

In the Commission, care needs to be taken that the impact assessment instrument is uniformly applied. Only in this way can a clear improvement in European lawmaking be achieved. In this connection, it is essential that there should be checks on the quality and uniformity of the impact assessment. Your rapporteur proposes that this should be the responsibility of an independent agency. It is also of the greatest importance that impact assessments are published in good time, so that interested parties can exercise an influence on the final impact assessment.

Another important thing is to ensure that legislation adopted under the comitology procedure is submitted to an impact assessment. This both guarantees the quality of legislation and creates greater transparency in this process, which is not subject to parliamentary control.

The Council and the European Parliament must also shoulder their responsibility and submit their 'significant' amendments to an impact assessment.

The proper implementation of European legislation also forms a part of the strategy for better lawmaking. The European Parliament, and in particular its rapporteur responsible for a given legislative text, must be more closely involved in the implementation of European legislation.

20.2.2006

## **OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS**

for the Committee on Legal Affairs

on Better lawmaking 2004: application of the principle of subsidiarity - 12th annual report (2005/2055(INI))

Draftswoman: Ieke van den Burg

### **SUGGESTIONS**

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Supports the ambition to improve European legislation with a view to enhancing growth and jobs and stresses the need for an integrated and consistent approach to initiatives on "better regulation", supporting the three Lisbon pillars in case the market fails; stresses that initiatives on "better regulation" must be implemented in a transparent and democratic way;
2. Promotes legislation based on principles and focused on quality rather than quantity; sees the "better regulation" debate as an occasion on which to reflect on legislation as a process designed to achieve clearly defined policy goals by committing and involving all stakeholders during all phases of the process from preparation to enforcement;
3. Wants "better regulation" to follow a global approach, fully involving the Parliament, the Council and the Commission as well as the Member States, and consulting all stakeholders in order to involve citizens who have recently shown, in some Member States, their lack of trust in the European project; recommends an increase in the input and involvement of consumers and workers' representatives in the consultation processes;
4. Stresses that consulting stakeholders during the preparatory phase is distinct from negotiating with stakeholders during the legislative process, and expresses its concern about the Commission's tendency to hold bilateral negotiations with individual Member States before presenting legislative proposals, which sometimes leads to odd, inconsistent or contradictory provisions, opt-outs or exemptions in favour of particular Member States, distorting the level playing field;

5. Recommends that the "better regulation" programme be piloted in certain fields and be carefully assessed before wider use; considers the experience with the Lamfalussy procedure in financial markets legislation, and the dialogue between regulators and market participants, in particular, to be a valuable test case for a dynamic legislative process;
6. Warns that "better regulation" methods should respect the balance of power between and the respective roles of the Parliament, the Council and the Commission; wants the Parliament to make a wise and integrated contribution, building on previous experience; stresses the need for the political endorsement of innovations in the legislative process;
7. Opines that highly technical legislation should not lead to the disengagement of co-legislators from the democratic process of lawmaking but should rather encourage them to concentrate on core political principles and objectives and on how to apply the process of putting them into practice, changing from a prescriptive to a responsive and participative approach and making use of the technical know-how and capacities of the regulatory authorities that have to apply the law;
8. Welcomes the development of impact assessments in the preparatory phase but warns that they cannot replace political debates about the advantages and disadvantages of laws; underlines that the interests of consumers, companies and citizens cannot be reduced to a mere cost-benefit analysis; is of the opinion that laws should be executed under the full responsibility of the institutions themselves, according to their political priorities; asks for full transparency during the preparatory phase, for justifications based on the results sought, and for further precision if needed; insists on the importance of common guidelines in full respect of the three Lisbon pillars; and insists on a proper budget;
9. Welcomes the increased involvement of national parliaments in the work programme of the Commission, but warns against random cherry-picking of proposals on the basis of subsidiarity and proportionality; asks that all new proposals contain a summary of existing legislation in the relevant field and an explanation on how the new legislation is to fit into the scheme; asks for different options to be proposed to the Council and Parliament, with a sound analysis of their respective implications as regards citizens' expectations, the three Lisbon pillars, costs, and the administrative burden, especially for SMEs;
10. In order to guarantee an EU-wide uniform lawmaking framework, urges the Commission to ensure that this framework is not undermined by the Council through a proliferation of derogatory provisions in favour of individual Member States;
11. Regrets the inadequate procedure followed by the Commission when withdrawing or simplifying legislation without debating priorities with its two co-legislators; asks for clear case-by-case justifications and alternative proposals where appropriate;
12. Recalls that simplification is not simply a technical matter; is in favour of the reorientation of the *acquis* towards the three Lisbon pillars provided that this is done transparently and democratically and not merely as an administrative act; asks therefore for a full assessment of the Commission's strategy;

13. Proposes an inter-institutional agreement addressing the different legislative procedures and the Parliament's involvement in each and, in particular, recognising the Parliament as an equal co-legislator in the follow-up to comitology decisions; and for similar arrangements with respect to international standardisation such as provided by the IASB;
14. Is of the opinion that transposition of EC legislation should be monitored seriously and proactively in order to avoid diverging interpretations and gold-plating; wants the Commission to play an active role in transposition, together with supervisors and expert groups, both at EU and national level, since early analysis of potential pitfalls may prevent delays and unnecessary burdens on companies; suggests that Parliament sets up a proper transposition-monitoring procedure in close cooperation with its national partners;
15. Is of the opinion that the Lamfalussy procedure is a useful mechanism; considers the convergence of supervisory practices to be crucial; welcomes the work of the Level 3 committees in this respect and supports its call for an adequate toolbox; believes that where supervisors are given room for manoeuvre, this removes much of the need for technical detail in legislation and is likely to produce more appropriate rules for a dynamic market; but stresses that this can never erode political responsibility for the final objectives of the legislation in question; insists that legislators should carefully monitor the process and reiterates that the legislative rights of Parliament should be fully respected;
16. Is convinced that if the Parliament's legislative powers are respected in the context of comitology, it would be more willing to focus on general principles and support legislative simplification and innovation; calls, therefore, once more, for an inter-institutional agreement on improved comitology to definitively clarify and guarantee the respect of the Parliament as a co-legislator.

## PROCEDURE

<b>Title</b>	Better lawmaking 2004: application of the principle of subsidiarity - 12th annual report			
<b>Procedure number</b>	2005/2055(INI)			
<b>Committee responsible</b>	JURI			
<b>Opinion by</b> Date announced in plenary	ECON 29.9.2005			
<b>Enhanced cooperation – date announced in plenary</b>				
<b>Drafts(wo)man</b> Date appointed	Ieke van den Burg 4.7.2005			
<b>Previous drafts(wo)man</b>				
<b>Discussed in committee</b>	11.10.2005	28.11.2005	24.1.2006	13.2.2006
<b>Date adopted</b>	20.2.2006			
<b>Result of final vote</b>	+: -: 0:	27 0 0		
<b>Members present for the final vote</b>	Zsolt László Becsey, Pervenche Berès, Sharon Bowles, Udo Bullmann, Ieke van den Burg, David Casa, Jonathan Evans, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Robert Goebbels, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Wolf Klinz, Guntars Krasts, Astrid Lulling, Cristobal Montoro Romero, John Purvis, Karin Riis-Jørgensen, Dariusz Rosati, Peter Skinner, Margarita Starkevičiūtė, Sahra Wagenknecht			
<b>Substitute(s) present for the final vote</b>	Harald Ettl, Klaus-Heiner Lehne, Thomas Mann, Corien Wortmann-Kool			
<b>Substitute(s) under Rule 178(2) present for the final vote</b>				
<b>Comments (available in one language only)</b>				

## PROCEDURE

<b>Title</b>	Better lawmaking 2004: application of the principle of subsidiarity – 12th annual report
<b>Procedure number</b>	2005/2055(INI)
<b>Committee responsible</b> Date authorisation announced in plenary	JURI 14.4.2005
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	ECON 29.9.2005
<b>Not delivering opinion(s)</b> Date of decision	
<b>Enhanced cooperation</b> Date announced in plenary	
<b>Rapporteur(s)</b> Date appointed	Bert Doorn 24.11.2004
<b>Previous rapporteur(s)</b>	
<b>Discussed in committee</b>	5.10.2005      22.11.2005      30.1.2006      23.2.2006      21.3.2006
<b>Date adopted</b>	21.3.2006
<b>Result of final vote</b>	+    12 -    0 0    7
<b>Members present for the final vote</b>	Maria Berger, Rosa Díez González, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Piiia-Noora Kauppi, Klaus-Heiner Lehne, Katalin Lévai, Alain Lipietz, Hans-Peter Mayer, Aloyzas Sakalas, Francesco Enrico Speroni, Gabriele Hildegard Stauner, Andrzej Jan Szejna, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka
<b>Substitute(s) present for the final vote</b>	Jean-Paul Gauzès, Marie Panayotopoulos-Cassiotou
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	
<b>Date tabled</b>	23.3.2006
<b>Comments</b> (available in one language only)	