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REPORT

on assessment of the impact of Community legislation and the consultation
procedures
2003/2079(INI))

Committee on Legal Affairs and the Internal Market

Rapporteur: Bert Doorn

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PROCEDURAL PAGE

At the sitting of 5 June 2003 the President of Parliament announced that the Committee on Legal Affairs and the Internal Market had been authorised to draw up an own-initiative report under Rule 163 on assessment of the impact of Community legislation and the consultation procedures.

The committee appointed Bert Doorn rapporteur at its meeting of 17 June 2003.

It considered the draft report at its meetings of 22 January 2004, 18 February 2004 and 17 March 2004.

At the last meeting it adopted the motion for a resolution unanimously.

The following were present for the vote: Willi Rothley and Ioannis Koukiadis (vice-chairmen), Bert Doorn (rapporteur), Paolo Bartolozzi, Maria Berger, Janelly Fourtou, Marie-Françoise Garaud, Malcolm Harbour, Manuel Medina Ortega, Angelika Niebler (for Rainer Wieland), Marianne L.P. Thyssen, Ian Twinn (for Lord Inglewood), Diana Wallis.

The report was tabled on 24 March 2004.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on assessment of the impact of Community legislation and the consultation procedures (2003/2079(INI))

The European Parliament,

- having regard to the Commission communication of 5 June 2002 on impact assessment (COM(2002) 276),
 - having regard to the Commission communication of 5 June 2002 on the Action plan ‘Simplifying and improving the regulatory environment’ (COM(2002) 278),
 - having regard to the interinstitutional agreement of 16. December 2003 on better lawmaking concluded between the Council, Commission and European Parliament ¹,
 - having regard to Rule 163 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0221/2004),
- A. whereas it is much costlier and more complicated to simplify and improve legislation after the event than to map out the consequences of legislation clearly from the outset and so take account of them when drawing up legislation,
- B. whereas effective democratic accountability is only possible if Parliament has sufficient information on the consequences of legislation on social, economic and environmental aspects,
- C. whereas legislative texts and their explanatory memoranda do frequently provide information on the intended policy objectives, but include no insight into the costs involved in implementing and applying the legislation; whereas that insight can result in a saving of billions of euros in the costs that businesses and individuals have to incur to comply with their statutory duty to supply information to governments, implementing agencies and others, what is known as the ‘administrative burden’; whereas reducing the administrative burden means making a significant contribution to employment in Europe and the Lisbon objectives,
- D. whereas the interinstitutional agreement on better lawmaking between the Council, Commission and European Parliament accords an important role to impact assessment in improving the quality of legislation, and on this point the agreement needs fleshing out in greater detail,
- E. whereas impact assessment should not be limited to quantitative elements such as the cost of the measures, but should also take account of qualitative factors, such as the need for the measures, social requirements, and the safety, health and personal development of individuals,
1. Notes that the method used at present, of impact notes, has supplied no information that has been helpful in assessing the consequences and costs of proposed European legislation; accordingly welcomes the Commission’s initiative to go over to systematic

¹ OJ N° C 321, 31.12.2003, p. 1

impact assessment of new legislation;

2. Defines impact assessment as a straightforward mapping out of the consequences on social, economic and environmental aspects, and also a mapping out of the policy alternatives that are available to the legislator in that scenario;
3. Points out that impact assessment is a way of improving legislation; considers that an impact assessment is in no way a substitute for the democratic decision-making process; notes further that experience in countries where impact assessment is carried out shows that it results in better law and simplifies scrutiny by Parliament;
4. Proposes to allow impact assessment to be carried out on initiatives that the Commission presents in its annual policy strategy or its work programme and on amendments by the European Parliament and the European Council that will have a substantial impact on social, economic and environmental aspects;
5. Proposes the following procedure to that end:
 - (a) any legislative proposal by the Commission should be accompanied by a global estimate of the costs of that legislation on social, economic and environmental aspects. The estimate will be drawn up by the officials responsible, in consultation with an audit reporting directly to the President of the Commission;
 - (b) the global cost estimate will be monitored by the audit;
 - (c) the Commission, Council and Parliament will lay down, in the context of implementation of the interinstitutional agreement, a cost threshold above which an extended impact assessment should be carried out;
 - (d) if it is established that a legislative proposal exceeds the threshold, the Commission officials responsible will assess the impact of the proposed legislation on social, economic and environmental aspects, together with the policy alternatives available to the legislator in that scenario. The process must be monitored by the audit; the result of the investigation will be reported with the legislative proposal;
 - (e) the results of cost assessments and impact assessments will be added to the proposal and published in a central place accessible to all;
 - (f) The Commission will only send proposals to Parliament accompanied by a cost assessment and an impact assessment;
 - (g) amendments by Parliament that will have an impact on the environment, society and industry will be submitted for cost assessment to an audit set up with whatever reasonable means Parliament has at its disposal. If it transpires that the amendment exceeds the cost threshold referred to in paragraph (c), the audit will carry out an impact assessment on the amendment. The results of the cost assessment and the impact assessment will be made available to the parliamentary committee responsible and also published in the place referred to in paragraph (e);
 - (h) the Council will follow a comparable procedure, as described in subparagraph (g) and

set up an audit in the Council Secretariat;

6. Points out that the proposed procedure complies with practical experience in countries where impact assessment has been carried out for some considerable time;
7. Points out further that a European impact assessment only makes sense if the Commission, Council and Parliament operate in accordance with the same system and with the same standards; urges the Commission and Council accordingly to extend the interinstitutional consultation procedure with the aim of reaching agreement before the end of the year on the procedure proposed in paragraph 5;
8. With the aim of limiting the costs of the impact assessment system, calls on the Commission and Council to develop, jointly with Parliament, Community criteria for quantifying the expenditure that legislative proposals generate, both in the EU as a whole and within the Member States;
9. Takes note of the first report by the Commission on the implementation of the action programme 'Simplifying and improving the regulatory environment'; notes with satisfaction that the Commission is making progress with the simplification of Community legislation; voices the hope that the problems that the Commission has identified can be put right in future; points out that simplification after the event could have been avoided by consistent application of a proper impact assessment beforehand;
10. Instructs its President to forward this resolution to the Council and Commission.

EXPLANATORY STATEMENT

General points

Administrative burdens, meaning the costs that businesses and individuals incur to comply with legislation, greatly restrict the dynamism and competitiveness of the European economy. The IMF has estimated that improving legislation in the short term could result in economic growth of 7 % and a rise in productivity of 3 %. This makes the reduction of administrative burdens an essential element in the Lisbon strategy of European Union.

It is of great importance that the total administrative burden on individuals and businesses in Europe is substantially reduced. This will require mapping out the total European administrative burden. The rapporteur welcomes the interest taken by the present and forthcoming Council presidencies. He calls on the Council to look into the possibilities for quantifying the administrative burdens that are the consequence of European law.

In the European Union the improvement of legislation has become a priority. The interinstitutional agreement concluded in June 2003 shows that the Commission, Council and Parliament are aware of their responsibility for ensuring sound and transparent legislation. The Commission has since made a start on a comprehensive operation in which existing European legislation is reduced and where possible simplified. The rapporteur recognises the value of this operation but points out that quality control is more efficient and cost-effective when new legislation is being created than is simplification later on.

An important aid in creating better legislation is the analysis of its financial and administrative consequences by means of impact assessment. The Interinstitutional agreement describes an impact assessment as a valuable instrument for identifying the effects of legislation on society. The Commission has announced it will be going over to systematic impact assessment of new legislation. It is regrettable that in 2003 the Commission only succeeded in carrying out an impact assessment in a few cases, instead of the 42 it had in mind. The rapporteur hopes that in 2004 the commission will succeed in achieving its target of 41 impact assessments.

The democratic process depends on accurate and complete information. Impact assessment is an aid to help the Commission, Council and Parliament reach a properly considered decision. It is in no sense a substitute for the democratic process.

Carrying out impact assessments

In many EU Member States impact assessments are already an established and valued institution in the creation of better legislation. Indeed, the rapporteur is grateful to have been able to draw on the wealth of knowledge already available in the European Union and has been in touch with impact assessment units in a number of EU Member States.

An impact assessment for new legislation may be defined as the straightforward mapping out of any social or environmental consequences and an analysis of the likely costs, together with the policy alternative is available to the legislator in that scenario. It forces civil servants to question the purpose of legislation. Is the legislation necessary, and are there are no other ways of achieving the desired result? The largest common denominator in the assessment of legislation are the costs that have to be incurred to implement it. Costs provide an objective

yardstick.

Impact assessments do not need to be carried out in on every single legislative proposal as a matter of course. The legislation must be expected to make a substantial impact and this can generally be easily expressed in money terms. Any legislative proposal must be accompanied by an estimate, supplied by the civil servants concerned, of the costs of implementing it, what is known as a 'cost assessment'. By means of a threshold value, which will need to be more closely defined, it is possible to use the cost assessment to determine whether a more extended impact assessment is required. Amendments by Parliament and the Council that will have substantial implications for society, the environment and the economy must be subjected to a procedure of this kind.

Monitoring the implementation of the cost assessment and impact assessment is of great importance. The civil servants must be assisted and monitored by an independent audit. This will guarantee that quality of the cost assessment and impact assessment. The results of the assessments must be subsequently published.

The rapporteur is gratified by the interest that the Commission has shown in reducing administrative burdens. Although the number of impact assessments is still limited and their quality leaves something to be desired, it is clearly the Commission's intention to take impact assessment seriously. The rapporteur hopes with regard to the practical implementation of impact assessment that the Commission will take this report to heart.

Specifically, any legislation should be subject to an impact assessment if it involves a substantial financial burden for European companies. At the end of the day it is businesses that pay the cost of environmental, social and economic legislation. This applies to legislation originating with the Commission, Parliament and Council. Any legislative proposal should be accompanied by an estimate, drawn up by the civil servants responsible in consultation with an independent audit reporting to the General Secretariat of the Commission. Parliamentarians should be able to submit far-reaching amendments that are likely to constitute a substantial burden to industry to the parliamentary audit office for an administrative cost assessment. An independent institution will verify the estimate and consider whether the expected administrative costs might not be reduced by modifying the proposal or seeking alternatives. On the basis of the estimate it can be decided whether legislative proposal must be subjected to an extended impact assessment. To this end the Commission must establish a figure for administrative costs, the substantial burden, above which the proposal is submitted to an impact assessment. If it established that legislation by the Commission and Parliament will cause administrative burdens that will exceed the defined limit an impact assessment should be carried out. Council proposals should be assessed by the national impact assessment authorities.

The great advantage of the above selection criteria is that the procedure is based on objective and quantifiable data. It is also best for the estimate to be made public, so that those concerned have a chance to respond.

If it is clear that the legislation will create a substantial burden the proposal must be assessed for its impact on the social, economic and environmental aspects. If possible this operation should draw on the widest possible range of quantifiable data. This will increase objectivity and reduce the risk of personal interpretation. It must be emphasised that the Commission will

remain ultimately responsible for legislation.

The place of assessment

In an ideal situation the impact assessment would be carried out by the civil servants responsible, under strict supervision by an independent institution that ensures that the impact assessment is conducted properly and on the basis of data that is as objective as possible. An impact assessment could easily be turned into an instrument for opposing undesired legislation in an undemocratic manner. To prevent this, the implementation of an impact assessment must be monitored by an institution that is as independent as possible and does not belong to the implementing authority. Unfortunately the Commission proposal does not mention any such independent institution. Amendments by the European Parliament could be assessed by a body coming under the President of Parliament. Parliamentary impact assessments should also be monitored by the same independent institution.

Apart from safeguarding the reliability of an impact assessment, an independent institution is able to collect experience of the implementation of impact assessments. The resulting know-how in such an organisation could make a real contribution to ensuring that impact assessments run smoothly in practice.