

EUROPEAN PARLIAMENT

2004



2009

Committee on Legal Affairs

PROVISIONAL
2006/2006(INI)

8.2.2006

DRAFT REPORT

on a strategy for the simplification of the regulatory environment
(2006/2006(INI))

Committee on Legal Affairs

Rapporteur: Giuseppe Gargani

Draftswoman (*):

Marie-Line Reynaud, Committee on Constitutional Affairs

(*): Enhanced cooperation between committees – Rule 47 of the Rules of Procedure

CONTENTS

	Page
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION	3
EXPLANATORY STATEMENT	6

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on a strategy for the simplification of the regulatory environment (2006/2006(INI))

The European Parliament,

- having regard to its resolution of 26 October 2000 on the Commission report to the European Council: Better lawmaking 1998 – A shared responsibility ... and Better lawmaking 1999¹,
 - having regard to its resolution of 29 November 2001 on the Commission White Paper on European governance²,
 - having regard to its resolution of 8 April 2003 on the Commission reports on better lawmaking 2000 and better lawmaking 2001³,
 - having regard to its resolution of 26 February 2004 on the Commission report ‘Better Lawmaking 2002’⁴,
 - having regard to its resolution of 9 March 2004 on the Commission communication on simplifying and improving the Community’s regulatory activity⁵,
 - having regard to its resolution of 20 April 2004 on assessment of the impact of Community legislation and the consultation procedures⁶,
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Constitutional Affairs, the Committee on Budgets, the Committee on Budgetary Control, the Committee on Economic and Monetary Affairs, the Committee on the Environment, Public Health and Food Safety, the Committee on the Internal Market and Consumer Protection, the Committee on Civil Liberties, Justice and Home Affairs, and the Committee on Petitions (A6-0000/2006),
- A. whereas simplification of the legislative environment is one of the key stages in the aim of better lawmaking, which itself constitutes a priority for the Union within the broader objective of boosting growth and employment,
- B. having regard to the obligations and aims laid down in the Interinstitutional Agreement on better law-making, especially those intended to simplify, and reduce the volume of, Community legislation and those relating to the impact of Community legislation, in the Member States,
- C. having regard to the unstinting efforts by the Commission, the Council, and Parliament in

¹ OJ C 197, 12.7.2001, p. 433.

² OJ C 153 E, 27.6.2002, p. 314.

³ OJ C 64 E, 12.3.2004, p. 135.

⁴ OJ C 98 E, 23.4.2004, p. 155.

⁵ OJ C 102 E, 28.4.2004, p. 512.

⁶ OJ C 104 E, 30.4.2004, p. 146.

recent years to bring about, define, and improve the application of legislative simplification tools,

- D. having regard to the experience acquired in the implementation of the interinstitutional agreements on codification and recasting, and considering those instruments to be essential in order to simplify the *acquis communautaire*,
- E. whereas since the Interinstitutional Agreement on recasting entered into force, only 12 recasting proposals have been submitted, of which 2 led ultimately to publication of the resulting acts, 2 have been withdrawn, and 8 are still pending; and whereas, compared to somewhere in the region of 2 400 families of legislative acts to which the procedure might be applicable, only 49 codification proposals have to date been submitted to Parliament,
1. Welcomes the Commission communication on simplification of the regulatory environment, the commitment to submitting a programme to simplify legislative acts, and the methods and targets laid down for translating that programme into reality;
 2. Welcomes the fact that the Commission intends to include major simplification initiatives in its annual legislative programmes and the announcement that the Commission will submit additional communications to cover the different sectors of the Community economy;
 3. Takes the view that the repeal of irrelevant and obsolete acts is a priority requirement with which the Commission must comply without delay; considers, however, that when Community legislation is repealed on those grounds, a Community act must be put in place at the same time to prevent Member States regulating matters that have been deregulated at Community level;
 4. Proposes that the Commission constantly monitor such national legislation as might remain in force after the Community legislation that gave rise to it has been repealed; considers that the Commission should add appropriate review clauses to its proposals;
 5. Considers codification and recasting to be the primary means of simplifying the *acquis communautaire* and urges that they be used more widely; believes that recasting has been used only to a limited extent and that this is due to a failure to gear Parliament's Rules of Procedure closely enough to the Interinstitutional Agreement governing recasting;
 6. Applauds the results achieved so far through codification of Community legislation and hopes that the Commission units concerned will draw up wider ranging new codification proposals, extending also to sectors other than those covered to date, in particular company law, intellectual property, and consumer protection;
 7. Considers that if the institutions genuinely wish to simplify legislation and employ recasting to that end, the Interinstitutional Agreement on recasting should be applied more systematically;
 8. Understands that, if the intention is to make recasting effective, Parliament and the Council will, as a matter of principle, have to refrain from amending the codified parts of acts; believes that, if the institutions genuinely wish to simplify legislation and employ recasting to that end, the codified parts of an act should, as a rule, be subject to the

provisions laid down in the Interinstitutional Agreement on codification; recognises, however, that there should be a special procedure to enable the codified part to be amended whenever this is essential in order to make it consistent with, or link it to, the part that can be altered;

9. Considers that the institutions might usefully determine whether a third type of operation might be provided for, alongside codification and recasting, so as to afford appropriate means of simplifying Community legal acts;
10. Considers that the Interinstitutional Agreement on recasting should spell out the procedure to follow in cases where, during a legislative procedure, it proves necessary to alter the codified parts of the act;
11. Calls on the Commission, taking into account the guidelines set out above, to submit a proposal without delay with a view to recasting the interinstitutional agreements governing the quality of Union legislation;
12. Instructs the Committee on Constitutional Affairs to determine what amendments might be made to the Rules of Procedure to enable the agreement on recasting to be actually implemented, not least with a view to making greater use of the simplified procedures laid down in the Rules of Procedure;
13. Supports the practices of co-regulation and self-regulation, but points out that the Commission has to lay down the conditions and limits which the parties must observe when employing the above practices and that these should in any event be used only where strictly necessary, under Commission supervision and without prejudice to Parliament's right to object to their use;
14. Instructs its President to forward this resolution to the Council and Commission, and the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

I. Introduction

1. Communication COM(2005)0535 follows on from the initiatives which the Commission has long been pursuing with the aim of improving the quality of Community legislation. The overarching objective is to help create a European regulatory environment to meet legislative criteria of certainty and rigour. Accordingly, the Lisbon strategy is designed to improve those elements of the *acquis communautaire* which affect industrial competitiveness.

The recent efforts in this area have produced the Interinstitutional Agreement (IIA) on better law-making, signed on 16 December 2003¹, which covers various aspects of the question ranging from better coordination of the legislative process to greater transparency and accessibility, impact analysis and transposition of Community law, codification and simplification techniques and comitology, and alternative regulation methods and reducing the volume of legislation.

More generally, the Commission has, over the past few years, submitted many communications and proposals on the above subjects². Parliament, for its part, has stated its position several times on the problems related to the quality of Community legislation³.

2. The Council too has dealt with the matter at length. In a wide-ranging discussion at the meeting of 28 and 29 November 2005 it welcomed the communication on simplification and reaffirmed the importance of the efforts to bring it about. In particular, it acknowledged that in certain circumstances regulations could prove to be more appropriate instruments than directives to the extent that they might make for greater legal certainty and facilitate the smooth running of the internal market. At all events, the Council maintains that the right legal approach has to be determined on a case-by-case basis, while invariably paying heed to the principles of subsidiarity and proportionality.

On other occasions the Council has observed that comprehensible legal texts are vitally important for citizens and business circles, and has pointed to the importance of the role assigned to codification and impact analysis.

¹ OJ C 321, 31.12.2003, p. 1.

² In addition to the general communications, the Commission has recently submitted specific communications linked to this broad topic covering the agricultural, fisheries, and environment sectors.

³ Witness the following resolutions:

- resolution of 26 October 2000 on the Commission report ...: Better lawmaking 1998 – A shared responsibility,
- resolution of 29 November 2001 on the Commission White Paper on European governance,
- resolution of 8 April 2003 on the Commission reports on better lawmaking 2000 and better lawmaking 2001,
- resolution of 26 February 2004 on the Commission report 'Better Lawmaking 2002',
- resolution of 9 March 2004 on the Commission communication on simplifying and improving the Community's regulatory activity,
- resolution of 20 April 2004 on assessment of the impact of Community legislation and the consultation procedures.

II. The Commission communication

1. Bearing in mind that simplification is intended to make Community and national legislation less cumbersome, easy to enforce, and hence more effective in achieving its appointed aims, the Commission is seeking through communication COM(2005)0535 to progress further on its chosen road and build on the principles established previously, in order to flesh out the simplification process.

As regards the basic ideas, the communication is divided into two parts. The first consists of the ‘Simplification Rolling Programme’ and indicates which legislative acts the Commission intends to review in the next three years for the purpose of simplification. The programme is described in detail in Annex 2 to the communication and will be periodically reviewed and updated.

The Commission will, moreover, incorporate all the main simplification initiatives in its annual work programmes and intends to publish a number of additional communications to cover agriculture, the environment, and other sectors.

2. The second part of the communication, which is more general, lays down the aims, methods, and procedures regarding simplification.

The Commission is proposing five ways to simplify legislation: repeal, codification, recasting, a change of regulatory approach, and greater use of information technology.

3. More specifically, **repeal** involves doing away with those legislative acts adopted since 1957 which over the years have been rendered irrelevant or obsolete by technical or technological advances, developments in Union policies, changes in the enforcement of general Treaty rules, or international rule-making or standard-setting.

4. **Codification** means the procedure whereby the acts to be codified are revoked and replaced by a single act entailing no changes in terms of their substance. The consolidated text is thus reworked into a single legal act, a coherent and comprehensible new text that formally replaces the initial act and all subsequent amendments thereto.

At the practical level, codification operates with the aid of the Consultative Working Party staffed by the three institutions’ Legal Services, which has the task of screening the Commission proposals and guaranteeing to Parliament and the Council that they amount to codification in the true sense and that the Commission has not fundamentally altered the texts.

Completely removing obsolete provisions, harmonising the terminology used in the new act, and drafting its preamble all fall under the heading of codification, which makes it possible to reduce the volume of legislation while leaving its substance intact.

5. **Recasting** is a process whereby a legally binding new act, repealing the acts that it replaces, on the one hand amends the substantive policy element of the legislation and secondly codifies the other provisions intended to remain unchanged.

Not only does the recasting technique enable legislative acts to be updated by amending them as regards their substance, but it can also be used to codify at times sprawling legislative texts: it thus helps to simplify legislation and makes it easier to understand.

Recasting is governed by the Interinstitutional Agreement of 28 November 2001¹.

6. **Changing the regulatory approach** works in two directions. In the first place, it affords wider scope for alternative regulation methods such as co-regulation and self-regulation.

Co-regulation, as defined in the IIA on better law-making (point 18), is the ‘mechanism whereby a Community legislative act entrusts the attainment of the objectives defined by the legislative authority to parties which are recognised in the field (such as economic operators, the social partners, non-governmental organisations, or associations)’.

Self-regulation, by contrast, denotes ‘the possibility for economic operators, the social partners, non-governmental organisations or associations to adopt amongst themselves and for themselves common guidelines at European level (particularly codes of practice or sectoral agreements)’ (point 22 of the above-mentioned IIA).

Secondly, the change of regulatory approach applies to the choice of the right legislative instrument in that **directives are to be replaced by regulations**.

It is common knowledge that a regulation is directly applicable, without the distortions caused by transposition, without the discrepancies arising from the choice of implementing measure, and without need to add to the body of national legislation.

That being the case, regulations have an essential role to play in simplification. Directives should be proposed only when the subsidiarity and proportionality principles suggest that the Member States should be allowed wider-ranging discretion.

7. If greater use is made of **information technology**, its potential can be tapped more effectively. Secure integrated e-government can help to lighten unwieldy bureaucracy by speeding up procedures, stemming the flow of paper, making for more uniform enforcement of legislation, and reducing the risk of errors.

8. The Commission concludes by asking the institutions and the Member States to support the work of simplification.

III. The rapporteur’s view

1. This draft report on simplification seeks to respond to the Commission communication and, wherever possible, put forward suggestions for improving the effectiveness of the simplification methods proposed.

2. In particular, your rapporteur can only approve of the **repeal** technique.

It seems logical not just to give support, but indeed to demand that the Commission propose the repeal of legal acts which have become irrelevant or obsolete.

The Commission’s attention should, however, be drawn to the fact that in such cases it will be necessary not only to repeal the Community legislation, but also to adopt a new Community legal act, which, operating according to the theory of pre-emption, would serve to prevent the Member States from regulating matters that had been deregulated at Community level. The

¹ OJ C 77, 28.3.2002, p. 1.

Commission ought, therefore, to take the steps required to that end.

The Commission's idea of incorporating review clauses in its legislative proposals seems interesting and initial consideration suggests that Parliament could endorse it.

3. Your rapporteur likewise strongly favours **codification**, since this method produces intelligible and legally certain texts and is consequently one of the principal simplification tools.

There are some 2 400 families of legislative acts which might lend themselves to this method, but, that notwithstanding, Parliament has dealt to date with only 49 codification proposals, relating mainly to the agricultural sector or other highly specialised policies. It is to be hoped that in the next two years codification will make itself felt in key economic areas such as company law, intellectual property, and consumer protection. The Commission deserves criticism for its lack of ambition in employing this technique. It needs to take the lead politically so that the codification of matters central to industrial competitiveness and citizens' interests can be treated as a priority.

4. **Recasting** is probably the most significant simplification tool and its use should be comprehensively encouraged. The Commission's legislative initiatives relating to, for example, the internal market or the environment could take the form of recasting proposals.

Often, however, the dual nature of recasting – the earlier act is codified and amended, and then repealed by a new legal act – makes it a particularly complex technique. This explains why the Commission rarely employs it and indeed has shown a preference for more traditional types of initiatives such as mere amendments or additions to acts in force.

Only twelve recasts are known to have been submitted in accordance with the 2002 IIA on recasting: two were eventually published, two have been withdrawn, and eight are still pending. It is difficult to understand why the main simplification tool is used so rarely. This is one of the points on which Parliament could take action.

Your rapporteur considers that recasting has been used only to a limited extent and that this is due to a failure to gear Parliament's Rules of Procedure closely enough to the relevant Interinstitutional Agreement.

Parliament could also call on the Commission to apply the IIA on recasting more systematically, especially with a view to differentiating more clearly between the codified part of an act, to which the 1994 IIA on codification¹ should obviously apply, substantive amendments, and 'purely formal or editorial changes' (point 4, third indent, of the IIA on recasting).

As well as distinguishing between the parts amended in terms of their substance and the codified parts, it might be possible to provide for operations in a third category, existing alongside codification and recasting, so as to afford appropriate means of simplifying Community legal acts. This third category could include the formal or editorial changes referred to in the third indent of point 4 of the IIA mentioned in the preceding paragraph. Formal alterations or adjustments of this kind would be examined by the Consultative

¹ OJ C 102, 4.4.1996, p. 2.

Working Party (point 4 of the IIA on codification), which would ascertain that they were politically neutral, following the practice already applied to codification procedures.

It would in addition be desirable to determine whether Parliament and the Council might introduce a fast-track procedure for recasts, without of course undermining the normal Community legislative process, but providing instead for a procedure in which, say, recasts would be considered by a single parliamentary committee or stipulating that the committee responsible would in the first place have to decide whether the simplified procedure (as provided for in the Rules of Procedure) should be applied to a recasting proposal.

Point 36 of the IIA on better law-making calls on the legislative authorities to modify their working methods by setting up ad hoc machinery for legislative simplification. Revision of the IIA on recasting (or a new IIA or amendment of the IIA on better law-making) could cover such ad hoc procedures.

At all events, given that recasting is such an important simplification tool, Parliament should consider the IIA and the reasons why it is applied so rarely, and the institutions should shoulder their responsibilities.

In particular, if there is a genuine desire to make recasting effective, Parliament and the Council should accept the limitations deriving from application of the IIA on codification and refrain from amending the codified provisions when an act is recast (this is the inference to be drawn from point 8 of the IIA on recasting). A commitment to that effect could go hand in hand with a special procedure for amending the codified part of an act, where it was necessary to do so in order to ensure consistency with the amendable part. This would naturally entail amendment of point 8 of the IIA on recasting, which, as it stands, prohibits such a procedure.

5. As regards **changing the regulatory approach** and **co-regulation**, Parliament openly stated its view in the resolution of 9 March 2004 on the Commission communication on simplifying and improving the Community's regulatory activity and affirmed its right to object to the entry into force of a voluntary agreement adopted by a co-regulation procedure.

The Commission clearly needs to exercise great caution when resorting to co-regulation and self-regulation and should invariably keep within the frame of reference provided by the IIA on better law-making, which, in any case, stipulates that draft agreements must be sent to the legislative authority.

The Commission's proposal to extend co-regulation to encompass key economic sectors (services, for example) seems entirely reasonable. It is essential that the Commission implement the IIA on better law-making and above all commit itself to specifying in its legislative proposals under what conditions and within what limits the parties concerned might conclude voluntary agreements.

6. The replacement of **directives by regulations** is vitally important for the simplification of legislation, since it will eliminate transposition problems and greatly help to reduce the volume of legislative instruments, provided that the procedure is used with caution and without encroaching on the powers of the Member States.

7. Your rapporteur has no objection to the Commission's proposal to exploit the potential of **information technology** to the full. Parliament can support both the forthcoming e-

government action plan and the legislative proposals to open up procedures to new technologies.

8. In short, the Commission should be applauded for its commitment to pursuing its strategy to simplify the legislative environment in order – and this should never be forgotten – to further the interests of citizens and make the institutions more efficient and legislative instruments more effective.

However, it ought to pay heed to the comments above and should try to be more precise regarding the improvements to be made to simplification methods without infringing the legislative procedures laid down in the Treaties. As has been mentioned several times, revision of the IIA on recasting might give a powerful fillip to simplification in terms of both the tools and the outcome.

Finally, your rapporteur thinks it right to call on the Commission, taking into account the guidelines set out above, to submit a proposal without delay with a view to recasting the interinstitutional agreements governing the quality of Union legislation.