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"Milestones on the way to Better Regulation at the European Union level"

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1. Introduction

Shortly before 1 January 2005, the Luxembourg Presidency had taken the initiative of carrying out an inventory of all working groups on “Better Regulation at the EU level”, and to have a report prepared on the development and current status of all recommendations since the Mandelkern Report from 2001.

We hereby submit that report. It is in the form of an overview report and can also be used as a reference for those working in the area of Better Regulation. The extensive collection of materials in the appendix is classified chronologically and by institution.

“Better Regulation”, as used in this report, comprises all measures intended to improve the quality of policy formulation and/or its implementation and application. It is a more comprehensive concept than “better lawmaking”, which refers only to the process of lawmaking (meaning the preparation, drafting and enactment of legal acts).

The report begins with a summary that focuses on placing in context the status of Better Regulation at the EU level during 2005. The summary makes it clear that the complexity of the material – both in theory and practice – has increased even more since the Mandelkern Report. This is also true of the trends in institutional development. Accordingly, an overview seems necessary in order to classify and strategically orient additional activities.

The main part of the report (Chapter 4) presents the activities of the different institutional levels of the EU. The part on the European Commission (Section 4.1) focuses on both the development and the implementation of the instruments for Better Regulation, while the sections on the other institutions primarily present their recommendations in their development over time.

As briefly presented in Chapter 5, the success of Better Regulation could very well depend on its organisation at the EU level. Better Regulation is organised at the interface of policy and administration, and therefore depends on the respective rationalities and the possibilities of harmonising them. Against this backdrop, the report indicates the developmental paths available to the “Directors and Experts of Better Regulation” group (DEBR Group) as an informal working unit of the “Ministers for Public Administration”. Of special note here are the continued development and implementation of the instruments and the changing environment.

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2. Summary: Milestones on the way to Better Regulation

The most important current approaches to Better Regulation are discussed under five major themes:

- optimisation of the lawmaking process
- simplification of legislation
- implementation of Community law in the Member States
- evaluation of the approaches to Better Regulation and
- effective structures (organisational development).

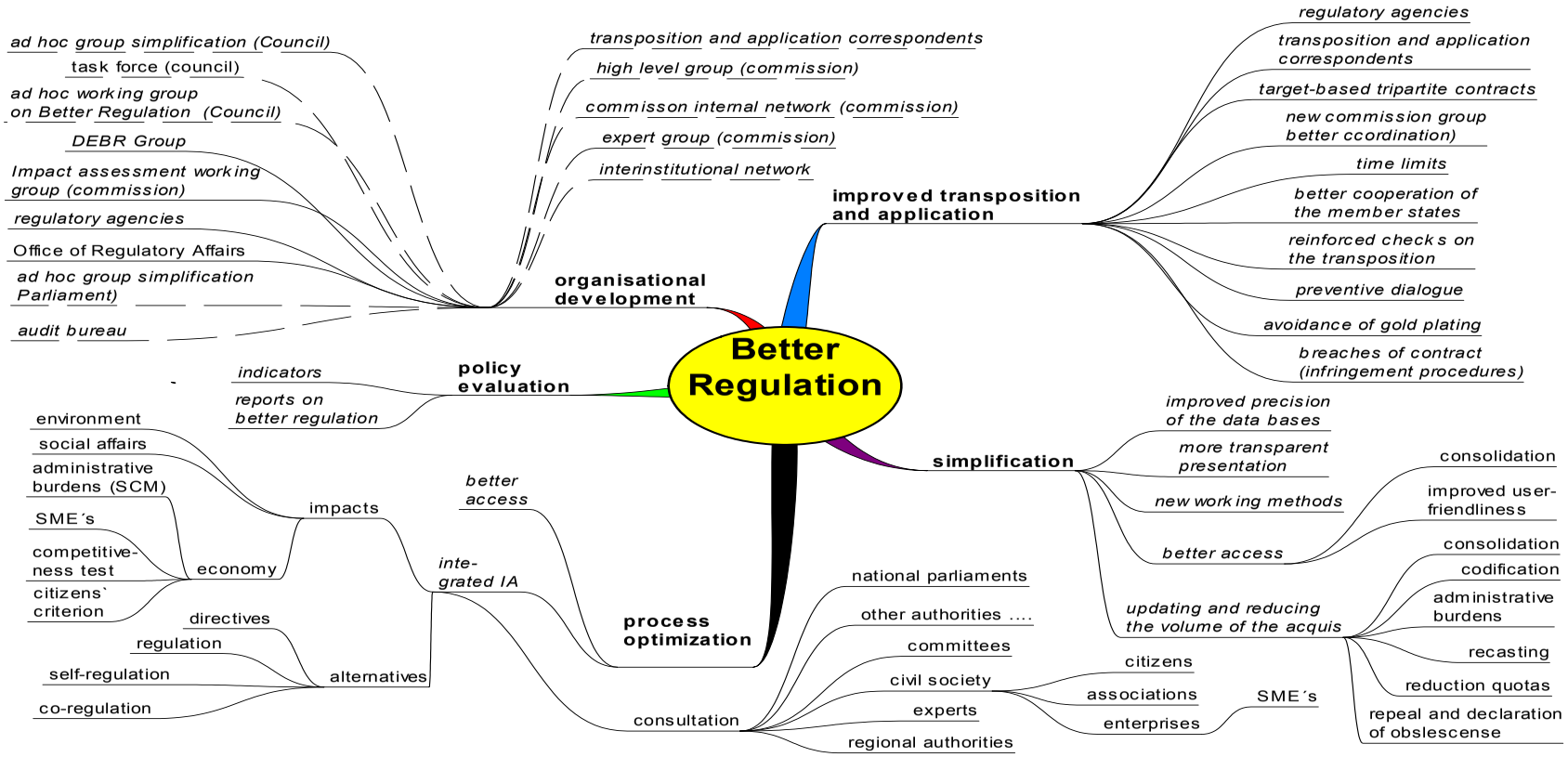
In this study, the general term “Better Regulation” is used – as it is in the Mandelkern Report – in contrast with “better lawmaking”. In practice, these expressions are not generally clearly defined and no clear distinction is usually made between them, which occasionally leads to misunderstandings.

“Better lawmaking” refers only to those measures whose purpose is to support the process of lawmaking with a view to improved output (meaning the preparation, drafting and enactment of legal acts). The production of administrative provisions (i.e. regulations) issued within an administrative organisation by higher administrative bodies or superiors to subordinate authorities, administrative units or employees are a separate legal concept. Administrative provisions are not legal instruments (legal acts) and so are not part of “lawmaking”. In practice, however, it is precisely the flood of administrative provisions (guidelines, decrees, internal notices, provisions for implementation, etc.) that follow directives, laws and legal regulations that are of special importance in the objective of simplifying and improving the regulatory environment and for this reason their inclusion is essential (Jann, i.a. 2005).

“Better Regulation”, in contrast, is a substantially broader term, which does include the area of lawmaking, but is not limited to that area. In the terminology of Baldwin and Cave (1999), the acts and political programmes on the European level are based on two different understandings: On the one hand regulation is understood in the narrow sense to be the enactment and specification of government regulations, on the other hand it is also understood to be government guidance and programmes as a whole. The common denominator is that regulation in any case encompasses more than just legal acts, and that "Better Regulation" does not refer just to the process of policy formulation, but also to the implementation and application of policies.

Fig. 1 below provides an overview of the most important aspects of Better Regulation and how it is understood today. It also shows the overall complexity of this subject, with a trend towards an increasing number of elements at both the institutional level and in the instruments.

Figure 1: Aspects of Better Regulation (- - - -: under consideration)



2.1. Optimisation of the lawmaking process

Two aspects are of particular importance in the optimisation of the lawmaking process at the EU level: one is “integrated impact assessment” and the other is “improved access” to current information during all phases of the lawmaking process.

Integrated impact assessment includes the key areas specified in the Mandelkern Report: “selection of instruments" (review of alternatives) and "consultation". The integrated impact assessment process was introduced in the area of the Commission at the beginning of 2003, replacing all sectoral assessment processes. Since 2005 it has been used as the standard for all policy-defining drafts of the legislative and working programme of the Commission.

The process has two steps. In the first step, a so-called roadmap is produced. The need for an extended impact assessment is reviewed, which is then introduced in the second step, if necessary. The Parliament’s suggestion to carry out an extended impact assessment for amounts over a certain monetary threshold (quantification of impact costs) was not included in this form by the Commission.

The Commission understands integrated impact assessment to be a comprehensive process of analysis which answers the following questions:

1. Which problem should be solved?
2. What are the objectives?
3. What regulatory alternatives (options) are there?
4. What are the consequences associated with the respective regulatory alternatives?
5. What are the advantages and disadvantages of the alternatives?

In this process, the impacts in the environmental, social and economic areas are examined. In the re-launch of the Lisbon Strategy economic aspects and assessment of bureaucratic burdens for companies should be given increased consideration. This does not mean, however, that environmental and social aspects will be neglected – the Commission continues to place emphasis on an integrated approach.

In addition, the Commission emphasises the joint responsibility of the institutions. That means that both Council and Parliament (when substantial changes are made to legislative proposals) as well as the Member States should carry out their own impact assessments.

The other institutions examined have the following positions in relation to impact assessments:

- *Council of the European Union:* The focus of Council in its latest documents is the assessment of bureaucratic burdens (standard cost model), the competition test and the quantification of regulatory impact. Less emphasis is placed on the social and environmental effects.
- *European Parliament:* The Parliament approves of the comprehensive impact assessment approach of the Commission, but emphasises that it should not give rise to any additional bureaucracy or to an "expertocracy". The democratic-parliamentary process should not be undermined, which is why alternative instruments (primarily self-regulation) should be viewed with caution. The quantification of impacts is viewed as a positive. The inclusion of bureaucratic burdens (“administrative costs”) in the integrated impact assessment has long been called for.
- *European Economic and Social Committee (EESC):* EESC largely agrees with the position of the Commission and places particular emphasis on the impact on small and medium-sized enterprises (SMEs), including their ex post consultation. Regulations should also be reviewed for practicability.
- *Committee of the Regions (CoR):* The CoR considers that the competence of the EU should be reviewed during impact assessments, and that the impacts on the regional and local levels should be given greater consideration.

Consultations are an important element in gaining information during the Commission's integrated impact assessment procedure. To be able to rapidly consult with a representative group of companies, a European company test panel was set up. In addition, a specific SME panel should be established to better take into account the particular characteristics of SMEs during policy development and in analysing impact. Openness, transparency and the number of consultations carried out (including online consultation) has been considerably improved in the past few years. The "minimum standards for consultations" approved at the end of 2002 played a special role in this.

The Commission considers that, when decisions are made as to the number and level of detail of consultations, more consideration should be given the fact that stakeholders (especially smaller organisations such as SMEs) have only limited resources, which should primarily be made use of as regards particularly important regulations. For the same reason, EESC calls for strengthened execution of ex post impact assessments. Because of their limited resources, SMEs are often not in a position to participate in consultations prospectively. Many problems do not become clear until a regulation actually comes into force and is applied. In connection with the rising number of consultation procedures, the European Parliament had made reference in 2001 to a risk of "consultation inflation" which could further slow down the regulatory process.

In its current documents, the Commission takes the view that transparency should be further improved as to who presents information on what subjects. The preparation of a register of all expert groups is a measure planned for reaching this goal.

The Council of the European Union is of the opinion that improving pre-legislative consultations requires further attention, whereby input from companies in particular should be strengthened.

In summary, it should be noted that the focus of integrated impact assessment of the EU is in the ex ante area – that is, in the optimisation of the lawmaking process. In this process, the basic regulatory options are reviewed through consultations with different groups for their environmental, social and economic impact. While a subsequent evaluation of the actual effects of interventions in the form of an ex post impact assessment has occasionally been called for, it is seldom actually carried out. The development of a common impact assessment methodology for the three EU institutions is considered to be an important task for the future.

To optimise the lawmaking process, access to the current status of legislation should be improved for entrepreneurs, citizens and other interested parties. This access provides these groups with the opportunity to express their opinions on planned legislation and different options in a timely manner. This could help in the early recognition of unnecessary administrative burdens and other impacts. To improve documentation on the status of legislation and to create opportunities for participation, it is planned for each Directorate-General of the Commission to set up web pages.

2.2. Simplification of legislation

The simplification of legislation can be divided into the areas "accelerated procedures", "better access to legislation" and "reduction of legislation".

European institutions are of the opinion that legislation must be simplified. This point of view has gained strength with the re-launch of the Lisbon strategy. Simplification is seen as an important condition for investment in Europe.

There is also a consensus – in the documents evaluated – that the only significant successes seen so far have come in the area of better access to legislation. One such success is the opening of the new EUR-Lex, an Internet database that provides simple and free access to legal documents.

But despite agreements calling for “accelerated procedures” for quicker decision-making on suggestions for simplification in Council and Parliament, none have been introduced.

There have also been few successes in the principle area of simplification, the reduction of legislation. These consist largely in the consolidation of laws, that is, in the non-legally binding summary of regulations to make them easier for to understand for those affected by the regulations. In spite of various approaches such as the setting of reduction targets and an ambitious Commission programme for the updating and simplification of the acquis, deficits continue to exist in the codification and repeal of obsolete regulations. The acquis communitaire, for example, is now around 85,000 pages long. Because of this limited success, organisational arrangements, instruments and procedures are being sought for these objectives and all institutions are making proposals.

The Commission has stated clearly that simplification is a key part of Better Regulation and it recognises that the co-operation of all EU institutions and Member States is necessary for successful simplification. In addition to the new simplification programme that the Commission announced this year, an Internet site is being created in each Directorate-General that is intended to allow companies, non-governmental organisations and citizens to register complaints about unnecessary and burdensome regulations. This feedback mechanism may help identify excessive administrative burdens and stimulate new simplification initiatives.

The focal points of the current positioning of other institutions regarding simplification are as follows:

- *Council of the European Union:* The Council also emphasises the necessity of codification, but sees the duty as falling to the Commission, while the Commission blames a lack of political commitment. Differences of opinion exist within Council regarding the question of the areas in which codification and updating of the acquis communitaire should begin. A priority list was drawn up at the end of 2004, but Parliament deemed it “unambitious”.
- *European Parliament:* Parliament has also emphasised the significance of the Commission - and the Member States - in simplification policy. Simplification, updating and consolidation of existing legal provisions should be pushed forward to make EU law more coherent and to reduce the number of regulations in selected areas.
- *EESC:* A special feature of the EESC’s simplification proposals is the call for simplified regulations for SMEs. That means that SMEs should be freed from selected conditions through regulations if they particularly burden them. The EESC considers a simplification policy necessary at all European levels, and sees a special problem in so-called “gold plating” (the introduction of procedures that are not automatically required by a directive). For this reason it calls for binding, uniform regulations for all Member States. In weighing the advantages and disadvantages, it thus calls for – in contrast to the CoR – using regulations instead of directives. The EESC emphasises that the joint efforts of all institutions and the responsible leadership of a high-ranking political personality are essential for a successful simplification policy.
- *CoR:* In addition to calling for governing with as much help as possible from directives, and thus from decentralised responsibility for implementation, the CoR emphasises that the simplification of EU legislation should be achieved through a review of the competencies of the EU. The question must then be asked, whether regulations could not also be implemented below the European level.

Overall, it should be emphasised that to date there have been significant deficits by all institutions as regards simplification policy. As before, it remains open as to which processes, instruments and organisational forms are suitable for a consistent and rapid implementation of the intention to simplify them.

2.3. Implementation of Community law in the Member States

Measures for improving the implementation of EU law in the Member States help raise the quality of regulations and particularly the optimisation of guidance. Both the delayed, incomplete or non-implementation of EU law by the Member States as well as the heaping on of additional regulations and gold plating of the intent at European level are considered to be implementation deficits. The instrumental proposals for overcoming these deficits can be classified into preventive (e.g. through discussions) and sanctioning (e.g. procedures for the breach of contracts) measures. The importance of clear deadlines for implementation is also mentioned. The individual institutions have the following views:

- *European Commission:* The Commission primarily favours preventive measures for improving implementation guidance. One of these preventive measures is the target-based tripartite agreements and contracts, with the signing of a contractual implementation agreement between the European, national and regional/municipal levels. Pilot projects have been initiated in this area. Increased application of the instrument calls for a more sustained commitment by the regions. The Commission also favours the optimisation of implementation through discussions with the Member States and the regions, as well as through an exchange and the co-ordinated co-operation of the Member States and regions with each other (e.g. studies of best practice). Organisationally, the Commission proposed the nomination of implementation correspondents in the Member States. They would ensure the flow of information between the Commission and the administrative authorities of the Member States and guarantee better co-operation and more feedback. Regulatory agencies should also be established. Within the Commission, a new group of high-level lawmaking experts will support the improvement in the quality of the implementation of EU law in the Member States. An examination of “gold plating” is planned in this regard. The group is also intended to foster co-ordination between the Member States.
- *Council of the European Union:* Because the primary responsibility in this area is with the Commission, Council makes very little reference to the implementation of EU law in the Member States.
- *European Parliament:* Parliament places, in addition to preventive measures such as the establishment of regulatory agencies (under the political control of Parliament) and target-based tripartite agreements and contracts, more emphasis than the Commission on the importance of strict sanctions in cases of infringement of EU law by the Member States, and corresponding infringement procedures are to be introduced. Parliament also underscores the need for an ambitious concept by the Commission to ensure timely implementation in the Member States, and emphasises the role of the Petitions Committee as a source of information on the poor implementation of EU law.
- *EESC:* The EESC and the CoR have significantly different attitudes towards the implementation of EU law. The EESC primarily makes reference to “gold plating” below the European level and calls for a uniform implementation of EU regulations as an important condition for providing companies with a level competitive playing field. In weighing the advantages and disadvantages, it thus calls for giving preference to regulations over directives.
- *CoR:* In contrast, the CoR calls for more responsibility at the regional level, and for increased use of directives at the European level. Directives allow decentralised institutions more freedom for an appropriate regional implementation of EU law. In addition, the EU level should only govern when it is absolutely necessary for functional reasons (e.g. globalisation) or there are contractual agreements in this regard. Otherwise, the principle of subsidiarity should be observed.

2.4. Evaluation of the approaches to Better Regulation

The evaluation of the approaches to Better Regulation is a new subject for the EU. In this connection, it is considered especially important to develop (systems of) indicators and indices for measuring the quality of regulation. The Enterprise Directorate-General released a final report on a project in this area at the beginning of 2005. The report calls for three systems of indicators to be a central instrument for the measurement of the quality of regulation in the EU and Member States:

- System No. 1 is intended for those Member States that are still in an experimental pilot phase (simple macro ex ante system of quality indicators).
- System No. 2 could be used by the group of Member States in which consultations, simplification and the measurement of administrative burdens are already firmly in place. This system also includes indicators of “real world" outcomes and calls for the examination and ex post measurement of the quality of impact assessments and other instruments, including surveys of those affected by the regulations.
- System No. 3 can be applied by the Commission and the Member States with highly developed quality assurance systems. It creates a bridge between the measurement of the quality of regulation and the systematic evaluation of Better Regulation.

It is recommended that the systems be introduced gradually. The new group of high-level lawmaking experts set up by the Commission is expected to discuss the development of a coherent set of common indicators. The Commission and Council insist that the indicators be developed and introduced in agreement with the Member States. In the other institutions of the EU, the evaluation of regulatory policy has not been a focus as yet.

2.5. Effective structures (organisational development)

The organisation of Better Regulation is an important factor in success. For this reason, in addition to the thematic focal points, recurring questions of organisation and competencies for individual tasks in Better Regulation are raised. As the competencies in the Commission, Council and Parliament are divided across many organisational units, this summary does not document them (cf. Chapter 5). Instead, it briefly presents new organisational proposals.

- *European Commission:* For 2005 two new groups were proposed within the Commission. One of these proposals is the establishment of a group of high-level lawmaking experts from the Member States. This group is charged with advising the Commission on questions of Better Regulation, especially simplification and impact assessment. It should also focus on questions of implementation and enforcement and the co-operation of the Member States in these areas. In addition, this group should examine the legislation of the EU and the individual States and discuss the development of a coherent approach to common indicators for the evaluation of the quality of regulation. The second proposal is for the installation of a network of experts for questions of better lawmaking. This network should include academics and experts in the economic, social and environmental areas. They should also contribute to the improvement of the scientific rigour of the impact assessment. This group should not, however, be an additional review level, such as for individual legislative acts. In addition to these two bodies, the Commission proposes ad-hoc groups on questions of simplification to be based in Council and Parliament.
- *European Parliament:* Parliament proposes that integrated impact assessments be dealt with via an audit board.
- *EESC:* The EESC calls for the creation of an independent body, modelled on the Office of Regulatory Affairs in the US, in connection with impact assessments.
- *Council of the European Union:* In the bodies of Council, two new forms of organisational institutionalisation are called for. One is the establishment of a task force to address questions of consultation (especially with enterprises), simplification and impact assessment. This unit would present an annual report to Council, Parliament and the Commission. In addition, the establishment of a “horizontal group” that would address questions of Better Regulation is being discussed.

In Chapter 5, against this backdrop, the additional developmental possibilities available to the informal group “Directors and Experts of Better Regulation” group (DEBR Group) are outlined. Three options are presented for this, based on the current discussions on how the group should see itself:

- a “rational” step model for implementation, with "development", "testing" and "introduction" steps
- the optimisation of “muddling through” and
- integration with the Commission’s new bodies for Better Regulation.

Table 1 below summarises the positions of the different areas of Better Regulation on the EU level.

Table 1: Overview of positions on Better Regulation at the EU level

Area Institution	Process optimisation	Simplification	Implementation	Evaluation	Organisation (new suggestions)
Commission	• comprehensive, integrated RIA as core element • joint responsibility of the institutions • RIA also for substantial changes by Council and Parliament	• after RIA, simplification is the second core element of Better Regulation • calls for more political commitment • new programme planned, as success has been too limited to date	• preference given to preventive measures for controlling implementation (target-based tripartite agreements and contracts, preventive discussions, new Commission group for supporting Member States) • better co-operation among the Member States • regulatory agencies	• development of indicators to measure quality of regulations at the EU level and the Member States	• establishment of two new groups (high-level lawmaking experts and network of experts) • ad-hoc group for simplification at Council and Parliament
Council	• impact assessment with focus on administrative burdens, quantification and competition test	• emphasises responsibility of the Commission in codification • conflicts in the selection of areas for simplification • accelerated working procedures have not yet been introduced	*very little reference*	• introduction of indicators in agreement with the Member States	• Task Force (for evaluation of processes) • horizontal group in Council
Parliament	• quantification of regulatory impact, esp. administrative burdens • danger of expertocracy and additional bureaucracy • scepticism about self-regulation on account of democratic control	• in favour of simplification • accelerated working procedures have not yet been introduced	• stricter sanctioning of infringements (infringement proceedings) • target-based tripartite agreements and contracts • regulatory agencies	*very little reference*	• audit boards for impact assessment
EESC	• integrated RIA with special consideration of SMEs and practicability review • joint responsibility of the institutions • ex post consultations	• simplification necessary at all levels • introduce exceptions for SMEs • regulations preferred to directives to avoid “gold plating”	• problem is primarily with the Member States (90% of regulations below the EU level) • the standardised implementation of EU regulations in the Member states and avoiding “gold plating” are important	*very little reference*	• call for independent body (model: Office of Regulatory Affairs in the US)
CoR	• RIA with subsidiarity review and impact for the regional and municipal level	• review of the competencies of the EU • regulations preferred to directives (subsidiarity)	• regulation at the lowest possible level (subsidiarity) • increased use of target-based tripartite agreements • more commitment by the Commission	*very little reference*	• no concrete proposal for organisation, but call for intensive participation by regions and municipalities

3. The Mandelkern Report - On the way to Better Regulation

3.1. Elements of Better Regulation in the Mandelkern Report (2001)

The European Council introduced the Lisbon process in March 2000. The goal was to make the EU the most competitive and dynamic knowledge-based economy in the world by 2010. Achievement of this goal depends, among other things, on a clear, simple, functioning and effective regulatory environment. To prepare the corresponding recommendations in this area, the European Ministers for Public Administration appointed an expert group consisting of representatives of the Member States and the European Commission and chaired by Dieudonné Mandelkern. The Mandelkern Report, presented in November 2001, contains a bundle of proposals with deadlines for qualitatively better and simpler laws and for measures for lasting legal reform. The European Council in Laeken welcomed the Mandelkern Report in December 2001. The Member States and the European Union were asked to implement the operational measures in the report as quickly as possible.

In reference to the European institutions, the recommendations in the action plan provided for the following[1]:

- As of 2003, the Commission should produce an annual report to the European Parliament and to the European Council on developments in better European lawmaking by the EU and each Member State.
- The Commission, European Parliament, Council and Member States should establish new or improve existing joint training programmes at European level for officials on all aspects of better lawmaking, such as impact assessment, consideration of alternatives to regulation, consultation, simplification and codification (and other forms of consolidation).
- Within their respective responsibilities, the Commission, European Parliament, Council and Member States should take further practical steps to ensure their internal co-ordination and the coherence between European regulatory policies at different levels by June 2002.
- The Commission to propose by June 2002 a set of indicators of better lawmaking.

The most important proposals of the Mandelkern Group for the EU level are outlined below. The classification by topic corresponds to the key areas for Better Regulation set out in the Mandelkern Report.

Choice of instrument: Regulation or Directive

- A typical question relevant to the European level is the choice – in those cases where the Treaty allows it – between using a regulation or a directive to introduce new laws.
- In those cases where the choice remains open, the protocol to the Treaty of Amsterdam on Subsidiarity and Proportionality is clear – directives are to be preferred to regulations, other things being equal.
- The Group is not convinced that the case for generally preferring regulations to directives is a strong one. Instead, it emphasises that more attention needs to be paid, on a case-by-case basis, to which instrument is better suited.

Applying impact assessment to the EU level

- The Commission should continue to move rapidly towards a new, comprehensive and suitably resourced impact assessment system. This system should include an initial screening process followed by a reasonable impact assessment in appropriate cases: 1) Commission services should produce and make public a preliminary assessment before a proposal is included in the Annual Work Programme. 2) Commission services should produce a detailed assessment

[1] The following remarks refer to *The Mandelkern Report on Better Regulation. Final Report,* 13 November 2001, pp. 1-42 and 65-85. http://www.staat-modern.de (as at: 06.01.2005).

before adoption of a policy proposal unless the preliminary assessment has clearly demonstrated that the proposal has no significant impact.

- The Council and Parliament should not consider proposals unless they are accompanied by a more detailed impact assessment (or, if appropriate, the preliminary assessment demonstrating there is no need for a detailed assessment), except in cases of urgency. This should be set out formally by each institution and be part of an overall agreement on better lawmaking.
- To maintain the integrity of the process, Council and Parliament should have an assessment of the impact of significant and substantial proposed amendments before it to inform its decision-making. For these significant and substantial amendments, where possible the person or body making the proposal should indicate the likely impact, where appropriate in co-operation with the Commission.
- Member States and the Commission should promote the exchange of best practice in this field between themselves and with other administrations.
- The EU should, in line with the Cardiff process, develop robust indicators of better lawmaking.

Consultation in the EU

- More dialogue at an early stage between the Commission and the interested parties and Member States in order to ensure transparency and democratic openness.
- Uniform minimum standards for consultation (for example minimum time periods) should be established.
- A web-based register should record all ongoing EU consultations.
- Networks for specific consultation processes should be built up.
- European citizens and national parliaments (for example, through their specialised European affairs committees) should play a more active role in the European consultation process.
- No new legal rules are recommended. Instead a code of conduct (e.g. in the form of an Inter-Institutional Agreement) that sets minimum standards, focusing on „what to consult on, when, whom and how to consult“ is recommended (opening of the consultation process).
- In some policy sectors the Commission could develop more extensive partnership arrangements. This would entail consultations in addition to those on minimum standards. In return, the partner organisations would furnish guarantees of openness and representativeness, tighten up their internal structures and relay information to the Member States.

Simplification of legal regulations

- Simplifying lawmaking means making it more “user-friendly” and making the associated procedures easier to follow (and not ignoring the complexity of reality).
- Simplification does not mean deregulation: Deregulation simply refers to the abolition of rules in a certain sector, whereas simplification - a more advanced stage in lawmaking - is aimed at preserving the existence of rules in a certain sector, while making them more effective, less burdensome, and easier to understand and to comply with.
- Establishment of a systematic simplification programme by the Commission. This programme should include European regulation in all areas, be articulated into annual steps and set out clear priorities and targets.
- Fast-track procedure for acceptance of simplification proposals in Council and Parliament.

Access to European lawmaking

- Through codification or updating, the coherence, clarity and the quality of drafting of legislation should be improved.

- Practical access to legislation and legal information should be improved through the further development and use of new technologies.
- The understanding of the rule of law by the user or the beneficiary of the regulation should also be improved. This presupposes the existence of appropriate intermediaries and agencies.

Effective structures and a culture of better European lawmaking

- The organisational implementation of the instruments for better lawmaking is crucial if efforts are to be successful. Precise organisational and procedural structures that guarantee that the spirit of rules governing better lawmaking will be complied with must be fixed.
- Achieving high quality of lawmaking (as an important and central part of public welfare) requires an alliance of politicians, administration and civil society aimed at creating awareness (a new culture) of the urgent need for Better Regulation.
- The Member States and the EU Institutions need to make better lawmaking a strategic issue and a common priority, with an emphasis on the question of organisational structure.
- The Commission and the Member States should consider establishing special working groups to examine joint training, recommendations regarding model structures, and deepened co-operation between the legislative and the executive.
- A network for better lawmaking across all Member States and the Commission (and, where possible, other EU institutions) should be established, to help share best practice and expertise.
- Within their respective responsibilities, the Commission, European Parliament and Council should take further practical steps to ensure their internal co-ordination and the coherence between European lawmaking policies.

National implementation of European lawmaking

- Member States should be provided with more certainty as to whether they have transposed a European directive correctly and fully, for example by confirmation by means of an interpretative declaration by the Commission on the transposition and/or arranging meetings during the transposition process to exchange experiences between Member States.
- The Commission should facilitate mutual learning and sharing of best practices between Member States.
- The Commission should create a free online database on lawmaking requiring implementation at national level and the current state of play in each Member State.
- Improving the quality of European lawmaking can make a contribution to better application, compliance and enforcement. In particular, there should be better preparation of European lawmaking through better consultation between administrative and enforcing institutions in the Member States and the Commission and inclusion in impact assessments of systematic and early consideration of administrative and enforcement effects. Review of European lawmaking should include specific consideration of its administrability and enforceability.

3.2. Further developments

In addition to the recommendations presented in the previous section, there are a number of additional topics that have played an important role in the discussion on better lawmaking in the past few years but were either not mentioned or addressed only briefly in the Mandelkern Report. The text below provides a brief introduction to three additional areas relevant in the context of this report: collection and use of expertise, the creation of European regulatory agencies and the reduction of administrative burdens for enterprises. These subjects have been expounded upon, including in a White Paper on European governance that appeared in the same year as the Mandelkern Report.

3.2.1. Collection and use of expertise [2]

The White Paper on European governance of July 2001, under the heading "Better policies, better regulation and better results", emphasises that confidence in political consulting must be strengthened through the use of experts [3] in order to improve the acceptance and implementation of European regulations: “Scientific and other experts play an increasingly significant role in preparing and monitoring decisions. In many areas (…) Institutions rely on specialist expertise to (…) identify the nature of the problems and uncertainties, to take decisions and to explain (…) to the public.”[4]

However, there is increasing doubt about both the content and the objectivity of expert recommendations. The lack of transparency in the system of EU expert committees and about their work and how decisions are taken support this trend.

The White Paper suggests, then, that guidelines for expert policy advice be drawn up to “provide for the accountability, plurality and integrity of the expertise used. This should include the publication of the advice given.”[5] The objective is, then, to democratise the system of experts in the EU by increasing public control and debate.

3.2.2. European regulatory agencies[6]

Another proposal for better lawmaking (in particular, for the better application of Community law) that is also addressed in detail in the White Paper is the creation of European regulatory agencies. In 2001 there were already 12 such independent agencies with widely divergent areas of responsibility and powers (e.g. the European Environmental Agency in Copenhagen as an information clearinghouse; the European Training Foundation in Turin charged with implementing EU programmes; and the Office for Harmonisation in the Internal Market in Alicante, which carries out regulatory tasks).

The White Paper holds the view that the creation of additional European Regulatory Agencies can improve the application and implementation of rules in the EU as a whole. The primary advantages of agencies are considered to be that they can often make use of highly specialised sectoral expertise and that they reduce the Commission's workload by actively participating in the exercise of the executive function in certain areas at the Community level.

The balance of power between the institutions must be taken into consideration when regulatory agencies are created. Agencies may not enact general rules, but they should be granted the power to take individual decisions based on regulatory measures. This is especially true for areas in which "a single public interest predominates and the tasks to be carried out require particular technical expertise.”[7] The regulatory agencies may have additional tasks which consist of providing the Commission, and in some cases the Member States, with direct support in the form of technical or scientific assessments and/or inspection reports or organising co-operation of the responsible national authorities in the interest of the Community.[8] Agencies should have a certain degree of independence and carry out their tasks within a clearly defined legal framework. The must be subject to effective supervision and control.[9]

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[2] The question of the improved collection and use of expertise is not discussed as a separate point in Chapter 4 (Analysis of the EU Documents pertaining to Better Regulation since 2001). Instead, it is addressed under the keyword “Consultations”, as this subject is a special problem area of including external (i.e. not belonging to the political-administrative system) people in policy formation.

[3] COM (2001) 428 final, July 2001, p. 5,25.

[4] COM (2001) 428 final, July 2001, p. 25.

[5] COM (2001) 428 final, July 2001, p. 26.

[6] The question of European regulatory agencies is not discussed as a separate point in Chapter 4 (Analysis of the EU Documents pertaining to Better Regulation since 2001). Instead, it is addressed under the keyword “Implementation of Community Law”, as this is a measure for improving the implementation and application of EU regulations.

[7] COM (2001) 428 final, July 2001, p. 31.

[8] COM (2005) 59 final/ Council of the European Union 7032/05, February 2005.

[9] COM (2001) 428 final, July 2001, p. 31.

3.2.3. Reduction of administrative burdens

The reduction of unnecessary bureaucratic burdens is considered by both the White Paper on European Governance and the Mandelkern Report to be an important objective of the policy of simplifying Community law. However, no concrete definitions, targets or measurement procedures are mentioned. Recently the assessment of administrative burdens on enterprises arising from regulations and the setting of quantitative objectives for reduction has, however, been given higher priority on the political agenda.

Administrative burdens are defined as "the costs imposed on businesses, when complying with information obligations stemming from government regulation. (…). An information obligation is a duty to procure or prepare information and subsequently make it available to either a public authority or a third party. It is an obligation businesses cannot decline without coming into conflict with the law. Each information obligation consists of a number of required pieces of data – or messages – that businesses have to report. (…) Information obligations do not necessarily imply that enterprises have to send information to a public authority and/or a third party. Sometimes enterprises are required to keep information in stock so that it can be sent or presented upon request."[10]

An important instrument for measuring administrative burdens is the Standard Cost Model (SCM)[11], which was developed in the Netherlands in the 1990s. It is now in use in several European countries and is being tested in pilot projects at the EU level (cf. Section 4.1.7.). In the application of SCMs, the costs that arise in the economy through administrative activities resulting from regulations (e.g. completing forms, collecting authorisations, record keeping) are estimated on the basis of surveys of enterprises. The procedure can be employed both ex ante (estimation of the expected bureaucratic costs for the economy from planned regulation) and ex post (monitoring of the development of burdens on enterprises). It also makes possible the formulation and evaluation of quantitative objectives for reduction ("reduction targets", as in the Netherlands, Belgium and Denmark).

[10] OECD (publisher), The Standard Cost Model. A framework for defining and quantifying administrative burdens for businesses, August 2004, p. 8f.

[11] The Standard Cost Model is based on the Dutch measurement instrument MISTRAL.

4. Analysis of the EU Documents pertaining to Better Regulation since 2001

4.1. The Commission: Analysis of the documents pertaining to Better Regulation

4.1.1. Lawmaking alternatives

The subject of the increased use of lawmaking alternatives was taken up in the White Paper on European Governance,[12] prior to the Mandelkern Report. The White Paper on European Governance emphasises that the issues of the necessity of political action and the correct level (compliance with the subsidiarity principle) for decisions concerning instrument selection should be given primary consideration. When a legal regulation is necessary, the correct instrument should be used: Framework directives allow more flexible implementation and can frequently be approved more rapidly; regulations are appropriate when uniform application and legal security within the Union are important. It is recommended that framework directives be used more frequently than regulations [13] and that all draft laws be limited to the essential elements. The increased application and the combination of various policy instruments (regulations, framework directives, guidelines and recommendations, co-regulation, where necessary supplemented by the open co-ordination method) are recommended.

The recommendations of the White Paper and the Mandelkern Report regarding the selection of forms of regulation were covered in the communication of the Commission "Simplifying and improving the regulatory environment" [14] of December 2001. This communication also emphasises that the existing lawmaking instruments should be used better. It is especially important to distinguish between directives and regulations, as defined in the treaties: Regulations are only used when uniform implementation in the Member States is necessary; directives are to be preferred in all other cases. According to Article 249 of the EC Treaty, a directive is "…binding (…) upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods." In the opinion of the Commission, more flexibility in implementation and greater effectiveness can be achieved through the use of alternative regulatory forms not defined precisely in the Treaty, such as co-regulation and self-regulation (soft law). The Commission announced that it would increase the use of these instruments in appropriate cases.

In June 2002, the Commission published an action plan for the simplification and improvement of the regulatory environment.[15]. The action plan recommended the following measures in questions as to the regulatory instrument:

- limitation of directives to essential aspects (i.e. setting the legal framework and goals), while questions of detail and technical arrangements are transferred to implementation measures (Transposition 2002);
- greater use of co-regulation based on a legal act, the objectives, deadlines and mechanisms for implementation, methods of monitoring, and if applicable, sets sanctions (Transposition 2002)
- strengthening the structural basis of legislative proposals, including the justification of the choice of instrument as regards subsidiarity and proportionality (Transposition from 2003).

Since 1992, the Commission has published an annual report on better lawmaking. This report describes the measures implemented to improve the quality of legislation and facilitate access to Community law. It also addresses the application by the Commission of the principles of subsidiarity and proportionality. In the 2002 report, no reference was made to the transposition of

[12] COM (2001) 428 final, July 2001.
[13] The Mandelkern Group holds a different opinion on this. It takes the position that no form of regulation (regulation or directive) has priority. Closer attention should be paid to which instrument is better suited on a case-by-case basis.
[14] COM (2001) 726 final, December 2001.
[15] COM (2002) 278 final, June 2002.

the measures of the action plan mentioned above. However, this subject was taken up in the 2003 report:[16]

- The most important progress in relation to the implementation of soft law is the initial establishment of a common definition and of conditions for the use of co-regulation and self-regulation in the framework of the interinstitutional agreement on "Better lawmaking"[17].
- On the use of alternative instruments, it reports that recent Commission proposals in this regard have been questioned by or rejected by the European Parliament and/or Council. Conversely, the legislative bodies have requested of the Commission in other cases to distance itself from a directive in favour of a soft law instrument.
- It does not address the subject of whether directives are restricted to essential aspects in practice (as called for in the action plan).

The report "Better lawmaking 2004"[18] states that the Commission has prepared an inventory of the co-regulation mechanisms used by the Union and the forms of self-regulation with an EU dimension. This inventory will be the basis for an initial report on the possibilities of strengthened use of these regulatory alternatives, which should be presented in 2005.

In March 2005, a new initiative of the Commission on Better Regulation was introduced.[19] Greater use of Lawmaking alternatives is not a focus of this initiative. It does, however, emphasise that there should be careful analysis prior to the enactment of regulations as to which regulatory approach is appropriate. In particular, there should be reflection on whether a legal regulation is to be preferred for the sector or the subject matter in question, or if alternatives such as co-regulation or self-regulation should be considered.

4.1.2. Impact assessment

The White Book on European Governance[20] of July 2001 calls for the use of impact assessments to increase the effectiveness of political measures. The Mandelkern Report took up the subject again and examined it in much greater detail. According to the report, impact assessments are the most important key measure for better legislative preparation. Different elements of consultation of those affected[21] (cf. section 4.1.3.) and the consideration of lawmaking alternatives (cf. section 4.1.1.) are integrated into their implementation process.

The Commission accepted these recommendations in its communication "Simplification and Improvement of the Regulatory Environment" in December 2001.[22] In this communication, the Commission undertakes to establish a coherent method for impact assessments which ensures that all the important proposals are evaluated for their effects on the economy, on social aspects and on the environment.

This objective was made concrete in 2002 with the action plan for simplification and improvement of the regulatory environment.[23] Four measures are mentioned in connection with impact assessments (two for the Commission, one each for Parliament and Council):

- *Commission*: Impact assessments will be systematically carried out for important legislative and political initiatives: To this end, an integrated and adjusted process of analysis should be developed that replaces all the existing partial instruments and methods of the Commission (e.g. Business Impact Assessment, Regulatory Impact Assessment, Sustainable Impact Assessment, etc.) and includes both social and environmental impacts, treats the question of the right regulatory level and evaluates alternative forms of regulation.

[16] COM (2003) 770 final, December 2003.
[17] The Interinstitutional Agreement on "Better lawmaking" came into force on 16 December 2003, (OJ C 321 of 31.12.2003, pp. 1-5).
[18] COM (2005) 98 final, March 2005.
[19] COM (2005) 97 final, March 2005.
[20] COM (2001) 428 final, July 2001.
[21] Those affected are understood here in a broader sense to be all individuals, groups and institutions to which the legislation is addressed. Cf. Böhret/Konzendorf, 2001, p. 347.
[22] COM (2001) 726 final, December 2001.
[23] COM (2002) 278 final, June 2002.

- *Commission*: The structural basis of legislative proposals should be strengthened. Beginning in 2003, the results of the impact assessment carried out, the results of consultation, the choice of instruments as regards subsidiarity and proportionality and the effects on the budget will be presented in the basis for the proposals of the Commission.
- *Council and Parliament:* It is suggested that the institutions evaluate the effects of significant changes to the proposals after the first reading as part of an impact assessment.
- *Member States:* The Member States should develop standards for impact assessments and systematically perform corresponding analyses.

At the same time as the action plan, the Commission released a communication on impact assessments[24], in which it describes in detail the step-by-step implementation of the procedure. In the appendix to the document, the principal components of the impact assessment method are presented. It also announces the intention of publishing an implementation guide in September 2002. The most important content of the communication is summarised below in key words:

- All Commission initiatives which 1) are presented in the annual strategy planning and/or in the working programme, 2) have potential economic, social and/or environmental impacts, 3) require regulatory measures of any type for their implementation and 4) are in the appropriate form (legislative proposals, white papers, spending programmes, etc., but normally no green papers, regular reports or similar items) will be subjected to an impact assessment.
- The new method integrates all existing sectoral evaluation procedures in relation to direct and indirect impacts of draft regulations into a global instrument. The specific aspects of a (budgetary) ex ante evaluation[25] are added to the complete impact assessment, if applicable.
- A common set of basic questions, analytical minimum standards and a uniform reporting template are provided; nevertheless, the method is sufficiently flexible to handle the special characteristics of the different policy areas.
- The reviewing framework and method used for impact assessments are different for each initiative.
- The impact assessment procedure will be introduced gradually and should be fully functional by 2004/2005.
- As a comprehensive impact assessment is not appropriate for all projects, a two-step procedure consisting of a preliminary assessment (step 1) and an extended impact assessment (step 2) was developed.
- Step 1 - Preliminary Assessment: In the framework of the Commission's annual strategic planning in February, there is first a rough analysis of the problem, the available solutions and the expected regulatory impact for all suggested drafts. The results of the preliminary assessment in the form of a short declaration (1-2 pages)[26] should be submitted to the Commission no later than at the time the working programme is completed (in November) and are published together with the working programme. In this declaration, statements are made on the following content: 1) Identification of problem and objective, desired outcome; 2) Identification of the most important policy alternatives for reaching the goal (incl. consideration of proportionality and subsidiarity as well as the initial indications of the expected effects); 3) Description of the planned working steps and those already undertaken in the preparation of the regulation (consultations, studies) and a statement as to whether a extended impact assessment is necessary.
- Step 2 – Extended Impact Assessment Based on the results of the preliminary assessment, the Commission decides on the proposal of the administrative unit in the annual strategic planning,

[24] COM (2002) 276 final, June 2002.
[25] Art. 28 (1) Financial Regulation: "any proposal submitted to the legislative authority which may have an impact on the budget, including changes in the number of posts, must be accompanied by a financial statement and the evaluation provided for in the article 27(4)".
[26] For this declaration on the results of the preliminary assessment, a uniform format was developed. It is included in the communication of the Commission on impact assessment (COM (2002) 276 final, June 2002) as Appendix 1.

or at the latest in the working programme, which projects should be subjected to an extended impact assessment. There are two criteria for this: 1) whether the proposal will lead to substantial economic, environmental and/or social effects in one or more specific sectors and whether it will have significant effects on larger interest groups and/or 2) whether the proposal represents a larger policy reform in one or more sectors.

- The purpose of the extended impact assessment is a more in-depth analysis of the potential effects on the economy, society and the environment and a consultation with the interest groups and relevant experts as set forth in the minimum standards for consultation.
- If it is not possible to collect all the relevant data to answer the key questions[27] in a reasonable period of time, qualitative or partial data are used; in such cases, a mid-term review or an ex post evaluation must be explicitly provided for.
- The assessment should be completed no later than when the draft enters into interdepartmental consultation. The results of the extended impact assessment are presented in a report, which is part of the interdepartmental consultation on the proposal in question and is also provided to the other institutions as a working basis; a summary of the most important results of the pre-review and the main review should be included in the explanatory memorandum.
- In the impact assessment report, it should be clearly explained why one strategy option was preferred and which alternative instruments were considered and reviewed.
- The depth of the analysis depends on the significance of the expected impact (significant impacts or secondary impacts or a group in society is especially affected = deeper analysis). The driver for this process is the principle of proportionate analysis.
- The impact assessment is usually carried out by the responsible Directorate-General. For especially significant drafts, the responsible Directorate-General may be supported by an interdepartmental working group consisting of the most affected Directorates-General and the Secretariat-General.
- The Secretariat-General co-ordinates the underlying support structure for a new impact assessment procedure through the programme planning cycle for the Strategic Planning and Programming Cycle (SPP)/Activity-Based Management (ABM) and its network. It also organises the exchange of good practices, the issuance of guidance documents, organisation of training and monitors the quality of the impact assessments carried out.

At the end of 2003 the Commission published its annual report on “Better lawmaking”[28]. This report states that within the Commission approx. half of the originally planned extended impact assessments in 2003 had been completed by the end of the year. This relatively low rate of implementation has several causes (optimistic planning by the Commission, insufficient resources, political difficulties). The overall effects of the introduction of impact assessments is positive. More balanced solutions have been found and services were better co-ordinated. The following aspects were criticised and requests were made:

- Economic effects are given excessive consideration in the impact assessments. The social and environmental impacts should be studied in more detail.
- Adherence to the principles of subsidiarity and proportionality should be explained in more detail.
- The analysis mostly focuses on a single strategy option. Alternative regulatory possibilities must be reviewed more closely.
- To date, there has been only limited quantification and/or costing of impacts.
- Impact assessments should be made more widely accessible to the general public.

The Commission has planned a number of additional initiatives to expand the impact assessment system and to correct the qualitative and quantitative defects:

[27] Appendix 3 of the communication of the Commission on impact assessment (COM (2002) 276 final, June 2002).
[28] COM (2003) 770 final, December 2003.

- The Secretariat-General will continue to advise and provide guidance to the services that carry out impact assessments;
- Continuation of the quality control of impact assessments (Have all strategy options been evaluated? Have all aspects been covered in a balanced way?);
- Assignment of up to 400 Commission officials to the preparation of impact assessments;
- External development of indicators and quantitative instruments that should be made available to the officials.

In 2004, the direction of the discussion about impact assessments changed in that more emphasis was placed on observing certain regulatory impacts. For example, in the framework of the action plan on "The European Agenda for Entrepreneurship" (February 2004)[29], an improvement in the assessment of the effects of EU proposals on SMEs was initiated as part of the process of impact assessment. Two additional aspects were also given increased weighting: the effects of policies on competitiveness and the administrative burdens of regulations. For example, the European Council in Spring 2004[30], the Competitiveness Council[31], the "Competitiveness and Growth" High-Level Group[32] and Council of Economic and Finance Ministers of the European Union requested that the Commission integrate questions of competitiveness and administrative burdens more clearly into the impact assessment procedure and to work out a method for measuring the administrative burdens on business in co-operation with Council.

The Commission responded to these requests with the publication of a working paper on impact assessment [33] (October 2004), which both provides an overview of the status of implementation and presents the next steps in the implementation of the method. To prepare this paper, in April 2004 an interdepartmental working group on impact assessment was used. Its objective was to review the experiences to date and suggest improvements. Regarding the status of the implementation of impact assessments at the Commission, the information in the working paper essentially agrees with that of the report on better lawmaking dated December 2003. The development to date is considered positive and should continue through an expanded exchange of experiences to disseminate best practices both within the Commission and between the institutions and the Member States. The methodology developed is considered appropriate but would have to be applied more systematically in the impact assessment practice in the different services so that all aspects of impact are analysed to the same degree and make the instrument meet the comprehensive demands made on it. It is therefore assumed that the critical points made by Council and Parliament (more consideration of the consequences for competitiveness, bureaucratic burdens and the effects on SMEs) can essentially be attributed to insufficient implementation and do not reflect a basic defect in the methodology. It is also noted that the impact assessment practice of the Commission must be supplemented by equivalent practices in the Member States and the other institutions to be truly efficient. It was also determined that, with a large number of impact assessments, a longer preparation phase is necessary for the drafts than would be the case without an impact analysis.

To further improve impact assessment, an updated impact assessment framework was proposed which included the following points:

- Sustainable development and the Lisbon objectives must be more defined in assessments.
- The list for identifying impacts was improved.[34] It now consists of three main categories (economy, environment, social welfare) and a total of 29 subcategories, within which the aspects of competitiveness and administrative burdens have been explicitly granted greater importance.
- Research projects for developing additional instruments for supporting impact assessment are being carried out.

[29] COM (2004) 70 final, February 2004.
[30] Council of the European Union 9048/04, Brussels, May 2004.
[31] Council of the European Union 9995/04, June 2004.
[32] Council of the European Union, 10688/04, July 2004.
[33] SEC (2004) 1377, October 2004.
[34] Cf. Appendix 2 of the working paper on impact assessment (SEC (2004) 1377, October 2004).

- The principle of “appropriate analysis” must be better applied in practice. The analysis must focus on the most important impacts and effects of distribution, and the depth of the analysis must correspond to the significance of the impacts.
- Transparency will be further improved, for example through easier access to information about impact assessments on the Commission website (introduction of a new Commission impact assessment website at the end of September 2004[35]).
- The quality of the impact assessments should be increased through simplified and improved guides, strengthened capacities and improved knowledge to carry out impact assessments in the Commission. In particular, the objective is to better quantify or monetarise impacts and to take into account to a greater degree the links impacts have with one another.
- The process is being simplified. Impact assessments are basically carried out for all policy-defining documents and legislative drafts resulting from the legislative and working programme of the Commission. The preliminary assessment is replaced by roadmaps; the roadmaps are presented in an early draft phase and represent the subject, the policy options, the probable impacts, planned assessments and consultations, and the schedule. The roadmaps should better inform the other services and the public (at the latest when the legislative and working programme is announced) about the draft and form the basis for an assessment of the required level of analysis (adherence to the principle of "appropriate analysis").
- Capacities and knowledge to carry out impact assessments should be improved through continuing education. If necessary, external expertise should be brought in to support the impact assessments of the Commission. The objective is also improved information exchange between the services of the Commission and with external experts.
- To implement this point, it is necessary for sufficient resources to be made available at the right times.

In 2004 a subject entered the political agenda with the debate about the Lisbon process and has strongly influenced the discussion about Better Regulation. The background was on the one hand the evaluation of the Lisbon process by the Commission, and on the other hand the report requested of the Commission by the European Council in spring 2004 on an expert body led by Wim Kok. The latter suggested measures for a consistent strategy for reaching the Lisbon objectives. The Kok report[36] states that the Lisbon process has had very little success to date and that consequently urgent action is required. Among other things, it reported that it is necessary for the business climate to improve through the reduction of administrative burdens, the improvement of the quality of legislation, making businesses easier to set up and the creation of a better “supportive” environment for businesses. Impact assessments could make a meaningful contribution here. The recommendation was thus made to the Commission that the development of its impact assessment instrument be continued in such a way that the objectives of competitiveness and sustainable development be more effectively integrated. Subsequently, the Commission issued a communication in February 2005 with the title “Working together for growth and jobs. A new start for the Lisbon strategy”[37] in which it announces the introduction of a new initiative on better lawmaking.[38]

This initiative was put into action with the communication of the Commission presented on 16 March 2005 on "Better lawmaking for growth and jobs in the European Union".[39] After simplification, comprehensive impact assessments are the most important element in the new strategy. The Commission holds the view that the assessment of economic effects must be intensified in order to realise the objectives of a re-oriented Lisbon strategy. For this reason, in the

[35] The new Commission impact assessment website provides an overview of the *Extended Impact Assessments* that have been carried out. The results may be viewed and downloaded. For 2005, the *roadmaps* for all legislative and policy-defining drafts of the Commission resulting from their legislative and working programme can be viewed. Cf. http://europa.eu.int/comm/secretariat_general/impact/index_en.htm.

[36] European Communities: Facing the Challenge. The Lisbon strategy for growth and employment. Report by the High Level Group chaired by Wim Kok, November 2004.

[37] COM (2005) 24, February 2005.

[38] Cf. also COM (2005) 97 final, March 2005.

[39] COM (2005) 97 final, March 2005.

future the effects of new regulatory drafts on the economy, especially on competitiveness, should be analysed more closely. This does not mean, however, that less attention is being paid to the consequences for society and environment – emphasis continues to be on an integrated approach. This is being emphasised in the context of updating the general guidelines for impact assessment that are to apply beginning in April 2005.

The roadmap instrument introduced with the working paper on impact assessment in October 2004[40] has already been implemented. The roadmaps for the Commission's 2005 legislative and working programme can be viewed on the Internet. In the framework of the new initiative on better lawmaking, the Commission has announced that it intends to examine possibilities of an earlier and stronger strategically oriented use of roadmaps in planning and programming Commission initiatives, especially in the form of open consultations.[41] In addition, the Commission will examine how the quantification of administrative costs (= administrative burdens, cf. section 4.1.7.) can be better integrated into the impact assessment approach and what possibilities exist for the development of a common approach of EU bodies and Member States in this area.

To increase the quality and to improve the methodology of the impact assessments[42] carried out it is planned to include external experts as consultants. For this purpose, the formation of a group of experts on questions of better lawmaking has been announced. The Commission will assign this group on a case-by-case basis the task of making an ex ante evaluation of the scientific rigour of the method selected for certain impact assessments. This will provide the Commission with a better basis for deciding which form and what breadth their impact assessment should have. In addition, the Commission has been planning since 2002 to carry out a comprehensive and independent evaluation of the impact assessment system by the beginning of 2006 with a view to implementation and continued development. The need for increased quality control of impact assessments by the responsible departments before they are approved for interdepartmental consultations is also emphasised.

It is also important that the EU institutions have joint responsibility in relation to impact assessments. For this reason it is essential that Council and Parliament also have impact assessments carried out before significant changes are accepted and that all three bodies agree on a common approach to impact assessments.

From the point of view of the Commission, the high number of pending legislative proposals at the lawmaking body is a great problem. Beginning in 2005, the review of such pending proposals (especially of those that were accepted before 2004) should be carried out in more detail than has been the case to date with a view to their general relevance, effects on competitiveness and for other impacts, and if applicable, amendments or replacements should be made, or proposals withdrawn.[43]

In summary, it is determined that impact assessments have been a core element of the Commission's regulatory policy agenda since 2001. Changes have been observed, however, in the subject-matter focus of impact analysis. Initially the comprehensive approach was in the foreground, which was intended to integrate all existing procedures and estimate the regulatory impacts as completely as possible. The Commission warned at the end of 2003[44] that there was excessive emphasis being placed on the economic effects and that the social and ecological impacts should be given more consideration. Since then, the priorities have shifted, as the recent focus has been on improved analysis of the impact on the economy, especially on competitiveness and the administrative burden for businesses, while the assessment of the effects on the environment and society have received less attention.

[40] SEC (2004) 1377, October 2004.
[41] COM (2005) 97 final, March 2005 p. 6.
[42] While according to the latest report on Better Regulation the number (2004: 29; 2003: 21) and quality of the extended impact assessments carried out has risen, there are deficiencies, primarily in the question of the systematic application of the methodology. Implementation is also problematic at times, and in both 2004 and 2003, considerably fewer impact assessments were carried out than had originally been planned. COM (2005) 98, March 2005.
[43] COM (2005) 97 final, March 2005 p. 6 et seq.
[44] COM (2003) 770 final, December 2003.

4.1.3. Consultations

In the EU, consultations were an important element in the lawmaking process, even before the Mandelkern Report, for receiving outside input and ensuring access to expertise (cf. Protocol No. 30 of the Amsterdam Treaty[45]). For this purpose, different instruments, such as green and white papers, communications, advisory committees and economy test groups were used. Features of the consultation practice of the Commission were

- that consultations were not carried systematically[46], but on an individual basis,
- that there was no uniform consultation model, and instead different practices had developed in each sector, and
- that the number of consultation bodies (approx. 700) was very high.

Aspects of this system that have been criticised are the lack of transparency and openness. This gave rise to the risk that decision-makers would control information or that individual groups would be given preference because of sector-specific interests or nationality. Against this backdrop, in 2001 a number of documents were published, expressing opinions on the further development of the practice of consultation and promoting the creation of an efficient, transparent and open culture of consultation and dialogue.

The recommendations of a Commission working group published in June 2001 greatly influenced this. These recommendations dealt with the question of consultation and participation of civil society, ahead of the White Paper on European Governance.[47] The following proposals were made:

- greater transparency through the establishment of a comprehensive database listing all consultation bodies together with details on the respective membership organisations of civil society (objectives, membership structure, financing, methods of consulting members); this inventory was intended to lead to a rationalisation of the number of existing forums; the objective is to go from department-specific access to consultations through to dialogue on a selection of subjects called for by the Commission as a whole (e.g. the annual debate on the working programme of the Commission);
- the Commission should also develop, in parallel to this, appropriate instruments for ensuring coherent consultation, i.e. 1) transformation of the existing basis of data of the Commission on special interest groups into a more comprehensive database on European civil society organisations[48] and 2) in order to achieve more transparency both for those directly involved and for the public, setting minimum standards for consultations (purpose of consultations, application of the principle of early consultation, criteria for identifying the relevant interest groups, facilitating participation in consultations, presentation of results);
- the implementation of such minimum standards should be accompanied by two additional measures: 1) co-ordination and monitoring through a network of representatives of the different services of the Commission and 2) development of partnerships that create a stable framework for co-operation: the civil society consultation partners would also apply certain minimum standards in relation to representativeness, responsibility and transparency;
- selective arrangements: After the introduction of minimum standards, the second step is to consider the creation of an overall consultation framework (co-operation and dialogue on a selective basis);

[45] Protocol No. 30 of the Amsterdam Treaty of 2 October 1997 stipulates that the Commission “should, except in cases of special urgency or confidentiality, consult widely before proposing legislation and, wherever appropriate, publish consultation documents."

[46] An exception to this was the area of European social policy, for which special consulting rules were stipulated in the 1991 “Social Policy Agreement”, which stipulates that the social partners participate early on in the policy formation process in the development of social policy measures in the framework of a two-step consultation process, with each step lasting six weeks (Art. 138 I, II TEC).

[47] Commission of the European Communities, Report of Working Group “Consultation and Participation of Civil Society” (Group 2a), June 2001.

[48] CONECCS was developed on the basis of recommendations 1 and 2a.

- the Commission should consider, together with other European institutions, whether increased visibility and political awareness of co-operation with non-governmental organisations requires an article in the EU treaties;
- the future role of the EESC and the CoR in relation to the dialogue with civil society is emphasised; the Commission should create mechanisms that ensure early consultations with the EESC.

Some aspects of the detailed preparatory work and recommendations of the working group were taken up again in the White Book on European Governance[49] dated July 2001. In Table 2, an overview is presented of the proposals of the White Paper, of the Mandelkern Report (which appeared in November of the same year) as well as the communication on "Simplification and Improvement of the Regulatory Environment"[50] dated December 2001.

Table 2: Suggestions for improving consultations (2001)

Measure	*White Paper on European Governance, July 2001*	*Mandelkern Report, November 2001*	*Communication of the Commission, December 2001*
Preparation of a list of all existing consultation bodies of the Commission to improve transparency	+		+
Rationalisation of the number of existing consultation forums with the Commission (transparency)	+	+	
Preparation of a database with information on the civil society organisations active at the European level	+		
Improved public access to information on suggested and existing regulations	+	+	+
More online consultations		+	+
Public access to the remarks made by the consultation participants		+	
Minimum time period of 16 weeks for consultations at the EU level		+	
No legal regulation. Instead a code that sets what to consult on, when, whom and how to consult (minimum standards for consultation)	+	+	
Development of wider-ranging partnerships with representative civil society organisations that must be consulted in addition to the minimum standards	+	+	
More active participation of the EESC and the CoR	+		+
Preparation of guidelines for consulting with experts on policy	+		
Increased dialogue in an early phase of policy formation	+	+	
More active role by national parliaments in European consultation process	+	+	
More active role by European citizens in consultation process		+	
More systematic dialogue with the European and national associations of the regional and municipal authorities	+		
Increased consultation with civil society	+		+
Development of networks for specific consultations		+	
Presentation of text proposal for those affected, including the lawmaking bodies, before the formal presentation of the proposal		+	

The call for the establishment of a code of conduct for consultations was taken up by the Commission in June 2002, when they integrated the definition of minimum standards for

[49] COM (2001) 428 final, July 2001.
[50] COM (2001) 726 final, December 2001.

consultations as an important measure in their action plan[51] and simultaneously published a draft of principles and minimum standards for consultations. A public consultation was held on this draft text, the results of which led to some significant changes and were also published along with the positions on the contents (reasons for accepting or not accepting proposals). In December 2002, the final document appeared under the title "Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission"[52] (hereinafter: minimum standards). This document emphasises that the scope of minimum standards does not include all consultations, as this would not correspond to the principle of proportionality. The need for consultation must also be judged on a case-by-case basis in accordance with the right of initiative of the Commission. Basically, minimum standards should in any case be adhered to when a major political initiative is being dealt with.

On the content: The general principles for consultation are oriented to the general principles of the activities of the Commission, which were set forth in the White Paper on European Governance: Participation (the most comprehensive possible consultations on major political initiatives, openness and responsibility (transparent consultation procedure), effectiveness (earliest possible consultation, proportionality) and coherence. In addition, the following minimum standards for consultations are stipulated:

- Clear content of the consultation procedure (background information, purpose and objectives of the consultation and description of particularly important questions; information on contact partners and deadlines, explanations of the treatment of contributions by the Commission; references to relevant documentation).
- Target groups for consultations: The societal groups affected by a policy must have the opportunity to present their points of view.
- Publication: Publication of public consultations on the Internet and announcement of such publication through the central one-stop shop (Internet portal "Your Voice in Europe"[53]).
- Deadlines for participation: Minimum deadline of eight weeks for public consultations and 20 working days for consultative meetings.
- Confirmation of receipt and feedback: Confirmation of receipt of contributions and publication of the results of consultations on the Internet (through the link to the central one-stop shop); reasons for legislative proposals or communications of the Commission include the results of consultation procedures and explanations of how they were taken into consideration.

In connection with the publication of minimum standards, it was announced that in future a more systematic dialogue with the European and national associations of regional and municipal authorities of the EU should take place and that the use of expert knowledge for political decisions will be made more transparent. For this purpose, the Commission published "Guidelines on the collection and use of expertise"[54], which originated with the obligations arising from the White Book on European Governance and the Commission's "Science and society" action plan [55] (December 2001). Three principles are set out for the collection and use of expertise, which should form the basis for all activities by the Commission in this area: quality, openness and effectiveness. The following guidelines are set out:

- Forward planning: Maintaining an appropriate level of in-house expertise, early identification of subjects on which expert advice is needed.
- Preparation for the collection of expert knowledge: Decision on the type and manner of expert consulting in accordance with the urgency, complexity and sensitivity of a political question; the use of expert knowledge of other services; review as to what extent the existing procedure corresponds to the principles of quality, openness and effectiveness; clear formulation of the subject matter and objective of the inclusion of experts, formulation of clear questions for the

[51] COM (2002) 278 final, June 2002.
[52] COM (2002) 704 final, December 2002.
[53] http://europa.eu.int/yourvoice/index_de.htm
[54] COM (2002) 713 final, December 2002.
[55] European Commission, Science and society. Action plan, Luxembourg 2002.

experts; establishment of characteristics of the expertise required in a consultation (e.g. practical experience with a programme).

- Identification and selection of the experts: Search for experts outside the usual contacts of the services (new ideas and insights); each sex should have at least 40% representation; main trends taken into consideration, but also plausible alternative opinions.
- Organisation of the integration of experts: Logging of the process by the services (specifications, principle contributions of experts); communication between services and experts on understanding of the tasks assigned, data and degree of coverage of the subject under discussion by the evaluation; disclosure of the interests of the experts on the subject
- Guarantee of openness: Publication of evaluations and recommendations (in translation where possible), if applicable, then presence of the public at certain expert meetings; comprehensible presentation of the basis of the recommendations: especially with delicate questions, organisation of seminars or conferences, where political decision-makers, experts and those affected can explain the problems systematically and in detail, each proposal by services for a Commission decision is submitted with a description of the carefully considered expert recommendations; a statement is also made as to the extent to which these recommendations were taken into consideration; cases that were not considered are also mentioned.

At the same time as the minimum standards for consultations and the guidelines for the use of expert knowledge, in December 2002 the Commission published a report on the execution of the White Paper on European Governance[56]. In this report, new developments in the area of consultations are described:

- The possibilities of expressing opinions, submitting positions and proposals for citizens on the Internet have developed rapidly since the acceptance of the White Paper (e.g. “Your Voice in Europe”, Futurum, etc.).
- A working paper is being prepared that should contain measures that, with the help of national and European associations, can build a bridge to the regional and local authorities and set out the scope and conditions of such a dialogue. This working paper should be published for consultation. On the basis of the results of consultations, a communication from the Commission is planned for the beginning of 2003.
- The CoR and the Commission have signed a co-operation protocol. The objective is the more intense incorporation of the committee into the political debate and co-operation in the area of information and communication policy.
- General principles and minimum standards for consultation were set out (see above).
- The idea of creating more comprehensive partnership agreements with a number of organised sectors of civil society is still being reviewed (there are concerns in Parliament and from some in civil society).
- The CONECCS database (“Consultation: the European Commission and Civil Society”) has been fully functioning since June 2002. It provides information on the formal and structural advisory bodies of the EU Commission in which organisations of civil society participate. In addition, the database contains a voluntary directory of non-profit organisations active on the European level. In addition to CONECCS, online services were created by the responsible services of the Commission. These online services were set up for parts of civil society with specific interests (education, international trade, culture, etc.).
- The EESC and the Commission have signed a protocol on the role of the Committee as intermediary between institutions of the EU and civil society.
- The initiative of the European Commission on Interactive Policy Making (IPM) should make possible spontaneous reactions to EU policy. It comprises two instruments: a feedback mechanism that collects information on day-to-day problems in connection with EU policy and a mechanism for online consultation.

[56] COM (2002) 705 final, December 2002.

Also in December 2002, the annual report of the Commission on better lawmaking appeared[57]. It can be seen from the figures published in the report that the relative number of consultation documents of the Commission (in relation to the number of legislative proposals) has increased in comparison to the beginning of the 1990s, i.e. on average there were more consultations. It is also reported that the methods used in the consultations have become more varied and less formal (e.g. organisation of forums or specific conferences, Internet consultations).

In 2003, the Commission published no important communications having to do with the issue of consultation. In the report on better lawmaking 2003[58] published at the end of the year the trend of the prior year towards an increased number of online consultations is confirmed. In 2003, 60 Internet consultations were carried out through the website “Your Voice in Europe” (2002: 12 online consultations). In relation to the use of minimum standards for consultations, it is reported that the standards for publishing through the central one-stop shop, the deadlines for answers and for reports on results were adhered to in almost all cases (results of an internal Commission review through the beginning of November 2003). Feedback to the consultation participants must be improved. Delays in the enactment of proposals were attributed in some cases to the application of standards. The application of the guidelines on the use of expert knowledge[59] has also begun. The need for the greatest possible openness was taken into consideration when the new "standard explanatory memorandum" and the framework conditions for the extended impact assessment were set. For better linking of science and policy, the electronic network SINAPSE (Scientific Information for Policy Support in Europe) was developed. The pilot phase will begin at the start of 2004.

At the beginning of 2004, the subject of consultations was taken up in the framework of the "European Agenda for Entrepreneurship[60] in relation to consultations with SMEs. It has been announced that the dialogue between all Commission services and business associations be intensified by the SME envoy[61] as part of regular meetings. In addition, the mechanism for taking into consideration the experiences of SMEs with the legislation, policies and programmes in place should be improved. While the EIC network (Euro Info Centres)[62] does register feedback on barriers in the internal market met by SMEs as part of the Commission initiative on interactive policy formations, this feedback must be more systematically prepared. The areas for which feedback can be provided should also be expanded. Still planned are the establishment of operational structures for carrying out dialogue with SMEs and an evaluation process (by the end of 2004) as well as a report by the Commission on the participation of SMEs and their representatives in the consultation process and the extent to which their opinions will be considered (by 2005). With a view to the participation of SMEs in forming national policy in the Member States, a benchmarking project was introduced, on the basis of which an assessment of successful and proven processes linked with policy recommendations should be presented in 2005.

The latest Commission report on better lawmaking dated March 2005 [63] states that the number of consultations carried out in 2004 in comparison with prior years rose significantly, which is attributed to the broad fulfilment of minimum standards for consultations. More efforts are still required in the area of feedback to the consultation participants and (to a lesser extent) in relation to transparency. In future, in the decision on the number and level of detail of the consultations to be carried out, it should always be remembered that the stakeholders have only limited resources. If these must be allocated to too many consultations, this could have negative effects and lead to phenomena such as consultation exhaustion. The question of the participation of all parts of society in consultation also requires constant attention.

[57] COM (2002) 715 final, December 2002.
[58] COM (2003) 770 final, December 2003.
[59] COM (2002) 713 final, December 2002.
[60] COM (2004) 70 final, February 2004.
[61] The SME envoy should ensure the appropriate consideration of the needs of SMEs in all EU policy, programmes and legislation, and improve the exchange with SMEs and their representative bodies.
[62] The objective of the EIC network is to inform, advise and support European business in all questions related to Europe.
[63] COM (2005) 98 final, March 2005.

The use of expert knowledge was systematised in certain areas in 2004 thanks to the sixth framework programme for research and technological development and an Internet application for scientific support of policy decision-making (SINAPSE) was developed. Efforts were also begun to improve the transparency of the expert groups set up by the Commission. In 2005, a list of these groups should be published and a register introduced that will provide Parliament and the public standard information on all expert groups.[64]

Two phases become clear if one considers the overall development of consultations with the Commission since the Mandelkern Report: 2001 and 2002 were strongly influenced by programmed statements and developments of actions. In the subsequent years, there were few new proposals for measures, but more attention was paid to implementation. Many of the recommendations listed in Table 2 have been implemented:

- A minimum time period of eight weeks for consultations was introduced, minimum standards for consultations were set and guidelines for the use of expert knowledge were published.
- With the establishment of CONECCS 2002, the existing consulting bodies at the Commission were made transparent and an overview of the civil society organisations active at the European level was provided.[65]
- The number of existing consultation forums was significantly decreased. While there were approx. 700 in 2001, currently 129 bodies[66] are registered in CONNECS.
- A web-based register of all consultations that are taking place and that have been completed as well as the corresponding time periods is available online.[67]
- The number of online consultations was increased (2002: 12; 2003: 60).
- The Interactive Policy Making (IPM) initiative, begun in 2001, comprises two Internet supported instruments: a feedback mechanism on problems with EU policy and a mechanism for online consultation. The mechanism for online consultation is also used for setting up and consulting with a representative Europe-wide panel of enterprises, the European Business Test Panel. This was developed to guarantee direct electronic consultations with enterprises on important legislative drafts. Currently the Commission is preparing a specific SME panel, which should enable the rapid and flexible consultation with SMEs.[68]
- The electronic network on scientific support for policy decisions SINAPSE was put into operation in March 2005. It serves as an interactive library of scientific positions and evaluations and as an early warning system for better recognition of potential crises and a greater sensitivity to important scientific questions.

Consultations have recently ceased to be a separate focus of Commission policy on Better Regulation. Instead, they are usually seen to be an element of impact assessment. Thematic extensions have also taken place in the direction of the economy. For example, the better participation of SMEs is currently an important issue.

4.1.4. Simplifying legislation and improving access thereto

The White paper on European governance[69] dated July 2001 calls for significant streamlining of Community law. This will require the preparation of a comprehensive programme for the speedy streamlining of existing legislation in Council and in the European Parliament: The reorganisation of legal texts, legal reform, the rejection of non-essential provisions in the implementation measures. It is important to ensure that streamlining measures at EU level are accompanied by corresponding obligations on the part of the Member States. In particular, so-called “gold plating”, the supplementing of EU regulations with additional regulations, expensive procedures and

[64] COM (2005) 98 final, March 2005.
[65] http://europa.eu.int/comm/civil_society/coneccs/index_en.htm
[66] February 2005.
[67] http://europa.eu.int/yourvoice/consultations/index_de.htm
[68] Cf. COM (2005) 170, February 2005.
[69] COM (2001) 428 final, July 2001.

complicated regulations should be prevented. To accomplish this, networks should be created between the positions responsible for streamlining in the EU and in the Member States.

The Mandelkern Report endorses these requirements. It names June 2002 as the start date for the European streamlining programme and an institutional agreement on an abbreviated adoption procedure. In addition, the Mandelkern Report calls for a plan for the codification of European legal provisions to be drawn up and for the interinstitutional agreement on a more structured use of the recasting technique for legal acts to be adopted by March 2002. These requirements were implemented (November 2001: Codification programme of the Commission[70]; March 2002: Adoption of the interinstitutional agreement on a more structured use of the recasting technique for legal acts[71] The Mandelkern Report also states a concrete reduction objective: Both the number of legal acts and the total page count should be reduced by 40% by June 2004 (compared with 31 December 2001). The Mandelkern Group also recommended that the Commission make all legal texts and provisions for which it is responsible available for public access, as far as possible at no cost, by June 2003. Access to European lawmaking was also supposed to be improved by making the legal acts easier for those affected to understand. This presupposes the existence of appropriate intermediaries.

In its of December 2001, communication "Simplification and improvement of the European regulatory environment" [72]the Commission again took up the question of simplification. It has been determined that measures taken in recent years such as the SLIM Initiative (Simpler Legislation for the Internal Market)[73] have produced very limited results. For this reason, European institutions should work together to formulate an integrated programme for the simplification of the acquis communautaire, which could include measures for consolidation (summary of decisions of the original legal instrument as well as any associated amendments in a single, legally non-binding document), codification (summary of the valid decisions of a regulation in a new legal text with no substantial amendments to the contents), updating and simplification of the contents, and which would complement the Commission's current codification programme. The Mandelkern Report's proposal to set concrete reduction objectives is being taken up, though in a somewhat weaker form. Under the new proposal, the number of valid legal provisions is supposed to be reduced by 25% by January 2005.

The action plan for the simplification and improvement of the regulatory environment [74] (June 2002) also confirms the necessity of defining a simplification programme in addition to a codification programme. The action plan emphasises that the political support of Council and Parliament are absolutely necessary if the objective of simplification and a reduction in the number of regulations are to be achieved. For this reason, the institutions must together to define a simplification programme. To accomplish this, the Commission must identify the areas in which there are issues and submit a report on this to the legislature. For their part, Council and Parliament must change their working methods and, for example, create ad-hoc structures that are assigned the specific task of simplifying lawmaking. An interinstitutional agreement on simplification is considered essential. This applies particularly to the creation of accelerated processes for the adoption of simplified legal acts.[75] The action plan also emphasises the issue of improved access and transparency of EU legal provisions. In order to achieve this goal, the Commission wants to improve public access to EUR-Lex to allow citizens to use EUR-Lex as a simple, central website to view the relevant documents during the entire process of developing EU resolutions. Other possibilities, such as discussion forums on the Internet, should also be reviewed. The greater mobilisation of Info-Centres and traditional contact points and networks for information on the Community would also be appropriate.[76]

Two reports published in December 2002 provide information on the state of these matters and on what has been achieved so far with regard to improving access: the Commission report on the

[70] COM (2001) 645 final, November 2001.
[71] OJ C 77 dated 28 March 2002, p. 1-3.
[72] COM (2001) 726 final, December 2001.
[73] Cf. the Commission's communication on the examination of the SLIM Initiative COM (2000) 104 final, February 2000; Report on the fifth SLIM-Phase SEC (2001), Brussels, 2001.
[74] COM (2002) 278 final, June 2002.
[75] COM (2002) 278 final, June 2002 p. 15 et seq.
[76] COM (2002) 278 final, June 2002 p. 20.

implementation of the White paper on European governance[77] and the 2002 Commission report on better lawmaking [78].

On access to European legislation and legal information, it reports that:[79]

- The transparency of the institutions' work has been improved sharply: the regulation on public access to EU documents [80] had come into force; the Commission has amended its operating charter; transcripts of Commission meetings have been posted on the Internet since January 2002: a public registry of Commission documents, including citizen guides on accessing these documents, has been available online since July 2002; the official registry of the European Parliament has been available to the public since June 2002; a list of Council documents going back to 1999 is also available online.
- Since 2001, the EUR-Lex portal has offered access to the Official Journal of the Communities and since January 2002, all viewable official documents have been available at no charge.
- The Commission's PRELEX database offers information in all languages on the progress of legislation on a specific legal act and contains links to the related texts.
- The Commission's three-month programme is updated monthly and published on the Internet.
- The Commission's willingness to be more active in informing the public on European issues is reflected in two Commission communications from early summer 2002: the communication on a new framework for co-operation on measures in the area of information and communication policy of the EU [81] and the communication on an information and communication strategy for the EU [82].
- In 2002 the Citizens Signpost Service was created. It makes available information on citizens' rights and problems in the framework of the internal market. In addition, a network was created to link Member States' co-ordination centres, which have existed since 1997. The purpose of these centres is to solve problems that enterprises face in the internal market (SOLVIT). The websites "Dialogue with Citizens" and "Dialogue with Enterprises" also offer information on the perception of rights in the internal market.
- The central information service *Europe Direct* responds to inquiries for general information.
- A European cultural portal was created which provides direct access to Community regulations, actions and financial support in this area; additional thematic portals are planned.

The Commission provided the following status report on simplification in December 2002 [83]:

- The consolidation of Community legislation by the Office for Official Publication of the Community and the Legal Service of the Commission is scheduled to be completed by July 2003 and serves as the basis for codification and updating.
- To date, successes in the area of codification have been few and far between. Since the Interinstitutional Agreement on an accelerated working method for the official codification of legislative texts [84] a total of only 33 codified texts have been passed and 347 earlier legislative acts have been eliminated. In the year since the publication of the Commission's new codification programme in December 2001, five codification proposals have been passed by Council and Parliament and 59 legislative acts eliminated.
- Nor has there been much success in the area of updating: In 2002, the Commission and the Legislature approved only one proposal each on updating.

[77] COM (2002) 705 final, December 2002.
[78] COM (2002) 715 final, December 2002.
[79] COM (2002) 705 final, December 2002, COM (2002) 715 final, December 2002.
[80] Regulation (EC) 1049/2001 of the European Parliament and Council dated 30 May 2001 on public access to documents of the European Parliament, Council and the Commission.
[81] COM (2001) 354 final, June 2001.
[82] COM (2002) 350 final, July 2002.
[83] COM (2002) 715 final, December 2002.
[84] ABl. C 102 dated 4 April 1999, p. 2-3.

- Further simplification activities are taking place in the form of the continuation of the SLIM initiative as well as drafting of the simplification programme called for in the action plan. This programme is intended to be the subject of an agreement on the working methods of the three institutions. Areas that should be simplified are currently being identified.

In February 2003, the simplification programme planned for in the Commission's communication on the updating and simplification of the acquis communautaire [85] was published. As no uniform definition of the acquis exists, it is defined in the communication as "binding secondary legislation, i.e. regulations, directives and decisions in the sense of Article 249 of the TEC" [86]. It thus also includes all legislative texts adopted by the Commission (e.g. provisions for implementation in committee procedure). The framework action proposed in the framework of the simplification programme contains six goals, with a number of specific actions assigned to each goal (see Table 3).

Table 3: Simplification programme of the Commission dated February 2003

Goal	***Status***	***Actions***
Simplification[87]	-simplification efforts in individual services in the framework of SLIM and BEST -to date there have been few Commission proposals concerning simplification, and Parliament and Council have rarely attributed much importance to them -low political priority for simplification measures -absence of a clearly defined, coherent strategy	A: Establishing indicators [88] to draw up a priority list for simplification; Council and Parliament should make a statement on them by March 2003 B: Quickest possible consultation on the simplification proposals in Phase I of the simplification programme (February to September 2003) in Council and Parliament C: Establishment of accelerated processes for the adoption of simplified legal acts in the framework of the interinstitutional agreement on improving lawmaking (by March 2003) D: Drawing up of the Commission's priority lists for simplification for Phases II (October 2003 to March 2004) and III (April 2004 to the end of 2004) of the simplification programme
Complete consolidation of the acquis and regular updating	-consolidation has been taking place since 1996 -two-thirds of the acquis has been consolidated to date	-improved presentation of consolidation results A: Conclusion of consolidation by June 2003 B: From June 2003 automatic consolidation each time an existing legal provision is amended
Codification	-the European Council in Laeken called for Community law to be reduced by 25% -the Commission took up this challenge [89] -comprehensive codification campaign[90] since November 2001 with the goal of codifying all secondary Community legislation by the end of 2005	A: Council and Parliament should address the Commission's codification proposals for Phase I as soon as possible B: Conclusion of the Commission's codification programme by the end of 2005 C: Enactment of all proposals made in the framework of the Commission's codification programme by the end of 2006 at the latest (Council/Parliament) D: Establishment of annual horizontal programme planning for updating work starting in 2004; the updating work should be used more systematically to achieve significant simplification of legal provisions
Revision of the organisation and	-since the founding of the EC, the acquis has never been	A: Immediate elimination of outdated autonomous legal acts by the Commission

[85] COM (2003) 71 final, February 2003.
[86] COM (2003) 71 final, February 2003, p. 15.
[87] The term simplification is used here in its widest sense. Simplification can mean the amendment of legal provisions without changing their substance (the same goals and the same area of application, but different lawmaking instruments and processes); but it can also refer to the simplification of the substance (simplification of the goals or the area of application).
[88] There are eight such indicators: 1) significance of the policy sector within the European economy and the EU Internal Market, 2) weight of the policy sector (proportion of secondary Community law, degree of influence by EU legal provisions, level of technical details in the valid legal texts), 3) difficulties in the implementation of legal provisions, 4) poor cost/benefit ratio of the legal provisions, 5) presence of significant potential risks, 6) necessity of update or amendment because of the implementation of horizontal initiatives, 7) the need to make use of more effective, more flexible and more appropriate instruments, 8) requirements for updating or amendment because of new obligations.
[89] COM (2001) 726 final, December 2001.
[90] COM (2001) 645 final, November 2001.

presentation of the acquis	subjected to a complete revision as regards organisation, classification or presentation -the Office for Official Publication (OPOCE) runs the CELEX database (e.g. as a reference source for valid Community law) and the EUR-Lex database -both databases are in need of considerable improvement regarding their user-friendliness and relevance	B: Soonest possible enactment by Parliament and Council of all eliminations recommended for Phase I Revision of the organisation and presentation of the acquis and drafting of proposals by an interinstitutional task force co-ordinated by the Commission; the task force is supposed to systematically review the acquis and present proposals for definition and presentation by the end of 2003 (appropriate methods for the formal confirmation that a legal act is outdated; differentiation between legal acts that are generally applicable and those with very specific purposes[91]) D: Improving the precision, quality and user-friendliness of CELEX, reference sources and EUR-Lex E: Beginning in 2004, annual revision by the Commission with the goal of further streamlining the acquis
Transparency and effective monitoring at the political and technical levels	*N/A*	A: Development of a monitoring/reporting instrument in the form of a summarising indicator (containing information on the development of EU legislation and on progress in the area of simplification, codification and elimination of legal provisions) B: Development of a report on "improving lawmaking" by the commission
Drafting an effective implementation strategy	*N/A*	A: Conclusion of an interinstitutional agreement on the improvement of lawmaking, i.a. on the establishment of a suitable accelerated process for the enactment of simplification and codification proposals B: Application of best practices to ensure regular updating of Community legislation (automatic consolidation and codification; for revisions, the express limit of their validity; application of processes needed for new legislative proposals, including for amendments, or impact assessments, sunset clauses, adherence to requirements for editorial quality [92] and systematic review of regulatory options) C: Ensuring by the institutions that the necessary means for implementation of the framework action are available

Source: COM (2003) 71 final, author's additions.

The first report on the implementation of the measures of the framework action "Updating and simplifying the Community acquis"[93] appeared in October 2003. The subject of this report was the implementation of Phase I and the work foreseen for Phase II; a second report [94] published in June 2004 provided a progress update. The publication of a summarising document on the implementation of the framework action is planned for the first half of 2005. The contents of the two earlier reports are summarised in the following table (see Table 4).

The reports issued through June 2004 on the implementation of the Commission's simplification programme show that the goals set both for the codification of legislation and for the elimination or annulment of outdated provisions were not close to being reached. However, the view is more positive as regards the consolidation and improvement of the presentation and organisation of the acquis. There has been significant success in both areas (see Table 4). A further achievement in the implementation of the simplification programme was the fact that more and more different services were developing activities for updating and simplifying Community law. In the judgement of the Better Lawmaking Report of 2003[95], this trend of including more and more services reflects a transforming process in the regulatory culture. The division into phases proved not to be practicable, as simplification is a long-term undertaking whose work phases are generally oriented to the annual programme planning and implementation cycle of the Commission. For this reason, at the conclusion of Phase II it was decided that, beginning in 2005, the current programme for

[91] Presentation of the "active and generally applicable acquis" not as a legal document, but an easily accessible presentation of the most relevant legal provisions.
[92] Council of the European Union 1999/C 73/01, December 1998.
[93] COM (2003) 623 final, October 2003.
[94] SEC (2004) 774 final, June 2004.
[95] COM (2003) 770 final, December 2003.

updating and simplifying would be integrated into the annual programme cycle of the Commission's work.

Thus even after the conclusion of the three phases of the simplification programme, simplification continues to constitute a significant area of the Commission's policy for improved lawmaking. This is made clear, for example, in the terminology of the re-launch of the Lisbon Agenda in 2005[96]: here simplification is called an important measure to improve European and national legislation, and it serves the goal of making Europe an attractive place to invest and work. In order to achieve even better results in this area, the Commission is planning to reform its strategy for simplifying and improving the regulatory environment and to update its current simplification programme.[97]

Table 4: Implementation of the Commission's simplification programme by June 2004

Goal	***Area of activity***	***October 2003: Implementation report Phase I***[98]	***June 2004: Implementation report Phase II***[99]
Simplification	Indicators for priority setting	-public consultation largely confirms the indicators; Council and Parliament have not commented -no systematic application in practice	no data
	Screening of policy areas for their simplification potential	-11 policy areas were screened; however, the selection of these areas was not carried out in a structured way	-13 policy areas were screened
	Adoption of simplification proposals by the Commission	-14 of 23 planned simplification proposals were adopted -four additional simplification initiatives were also adopted	-adoption of 12 simplification initiatives; problem: a large number of dependent procedures in Council and Parliament (accelerated working procedures are required)
Updating of the acquis and reduction of its length	Consolidation	-conclusion of the consolidation programme in the middle of 2003 -OPOCE is now working on the automatic inclusion of all subsequent amendments to legislation -publication of consolidated texts via EUR-Lex	-ongoing consolidation being carried out by OPOCE
	Codification	-7 codified legal acts of the Commission and 15 codified legal acts of Parliament and Council were adopted (around 220 codification proposals were planned) -difficulties: complicated preparation procedures; financial allocation not fully in place until July 2002; logistical and computer obstacles; impending new members; delays because of impending new amendments	-the adoption of around 150 codification proposals was planned: however, only 24 codification projects were adopted by the Commission; 28 drafts for codified legal actions are pending in Council and Parliament -the technical preparation for codification grew sharply in Phase II: 549 legal provisions were worked on; of these 549 legal provisions, 206 have already been codified and are now in the adoption process

[96] COM (2005) 24, February 2005.
[97] Cf. on this topic the Commission's working programme for 2005.
[98] COM (2003) 623 final, October 2003.
[99] SEC (2004) 774 final, June 2004.

	Elimination and annulment	-13 legal acts of the Commission were eliminated and 17 proposals for the elimination of legal acts were submitted to the legislature by Council and Parliament (planned: elimination or annulment of nearly 600 legal acts) -difficulties: necessity of careful legal review of each case; new tasks (incorporation, organisation); legal acts that were passed in the framework of the exercise of implementing powers (comitology), before elimination consultation with Member States is necessary	-in Phase II, only three legal provisions were eliminated (out of more than 700 potential "candidates") -strong concentration of activities on two DG (“Agriculture” and “Health and Consumer Protection") -for Phase III, the Commission is planning the elimination or annulment of almost 900 legal acts, with some of these coming from other Directorates-General.
Organisation and presentation of the acquis	Drafting of proposals by an interinstitutional task force	-task force has not been set up yet, as the existing committees for co-operation are possibly sufficient	-the interinstitutional Lex Informatics Group is currently evaluating possible improvements in the structure and presentation of the directory
	Improving the precision, quality and user-friendliness of CELEX, the directory and EUR-Lex	-significant increase in revisions in CELEX, particularly as regards validity/invalidity of legal acts -breakdown of secondary Community law by Commission services in CELEX -revision of CELEX and the directory to provide a more transparent and more targeted presentation of the active and generally applicable acquis	-the databases CELEX and EUR-Lex are being combined, access will be completely free by July 2004
Transparent and effective implementation	Development of a monitoring/reporting instrument in the form of a summarising indicator	-first version of the progress indicator is printed in Appendix 1 of the report -the indicator is regularly published on the Commission pages of the EUROPA server	*no data*
	conclusion of an interinstitutional agreement	-in June 2003 an interinstitutional agreement on better lawmaking was concluded; it should be formally adopted by all institutions by October 2003	*no data*

The Commission’s report on better lawmaking dated March 2005 [100]also emphasis the high priority that simplifying the acquis has, particularly for the Lisbon Strategy. The Commission has begun to review the priority lists presented by Council in November 2004[101] and in addition it is trying to present new proposals. The reduction in the volume of Community legislation (codification and elimination of outdated legislation) remains – according to the current report on better lawmaking – “a relatively weak point”[102] The goal of the Prodi Commission to reduce the volume of the acquis by 25 percent by 2005 was not achieved.[103] Significant delays occurred because of the expansion of the Union and the required translations. An update of the interinstitutional agreement on codification of 1994[104] should be considered.

The Commission continues to report that access to documents was significantly improved in 2004 through the opening of the new EUR-Lex. This database allows free access to contracts, international agreements, valid Community law, proposals for legal acts, legal decisions, parliamentary inquiries and other documents of public interest, such as reports of the European Court of Justice.[105] For 2005, better access to information on better lawmaking is planned. To achieve this, each Commission member will create public access to better lawmaking in its area of

[100] COM (2005) 98 final, March 2005.
[101] Proposals have already been presented for three of the priorities; the Commission will comment on the others as soon as possible. COM (2005) 97 final, March 2005, p. 8.
[102] COM (2005) 98 final, March 2005, p. 4.
[103] COM (2005) 97 final, March 2005, p. 16.
[104] ABl. C 102 dated 4 April 1999, p. 2-3.
[105] COM (2005) 98 final, March 2005.

responsibility on the Internet site. This access will give enterprises, non-governmental organisations and citizens the opportunity to file complaints. In this way, unnecessary administrative burdens may be identified and appropriate action taken. Access to better lawmaking will be available on the main Internet set of the Commission.[106]

In the Commission's new initiative on better lawmaking introduced in March 2005[107] simplification forms one of the principal focal points. Procedures for determining which legal provisions need simplification should be strengthened. This concerns those provisions that a careful evaluation - which included those affected – showed to represent a disproportionate burden and complication, as compared with their usefulness, for citizens and enterprises in the EU. If necessary, amendment or elimination of legal acts should be considered. It is important for the success of this measure that all regulatory authorities insist firmly that concrete results be achieved. Where appropriate, the Commission will develop integrated sectoral simplification plans. This has already begun in some areas, e.g. fisheries, agriculture and technical provisions for products. In October 2005, a Commission communication on this subject will be published and then in 2006/7 a new phase of the Commission's simplification plan will be introduced. This is intended to promote the use of European norms as technical support of European lawmaking or as an alternative.

4.1.5. Effective structures

The organisational implementation of the instruments and procedures for Better Regulation is viewed by the Mandelkern Group as being vitally important for the success of Better Regulation. It is particularly important that effective structures within the Commission and an effective network for better lawmaking be established (both between the Directorates-General, i.e. within the Commission, and between the Commission and all Member States as well as other EU institutions, if necessary). Politicians, administration and civil society should form an alliance with the goal of creating a new lawmaking culture.

In the Commission's communication on simplifying and improving the European regulatory environment[108] dated December 2001, the proposals of the Mandelkern Report are taken up and made concrete in the action plan for the simplification and improvement of the regulatory environment[109] dated June 2002. The action plan announces the following measures regarding the establishment of more effective structures for better lawmaking:

- The creation of a "better lawmaking" network within the Commission under the co-ordination of the General Secretariat (task: co-ordination and supplementing of existing instruments and committees, development of an overview of the implementation and follow-up of the action plan);
- Creation of a legislative network between European institutions (2003);
- Creation of a legislative network between the Commission and Member States (better co-ordination and information exchange with the aid of correspondents for "implementation and application") (2003);
- The European Council and Parliament are also advised to create ad-hoc structures for the purpose of simplifying European lawmaking.

An additional structural proposal, which targets in particular the better implementation and application of Community regulations in certain areas, refers to the White paper on European governance and consists in the creation of European regulatory agencies (cf. 3.2.2). At the end of 2002, the Commission published a communication in which it laid out the operating framework for the creation of regulatory agencies, for their work and procedures for their control by the Community[110]; the conclusion of an interinstitutional agreement on this subject is planned.[111]

[106] COM (2005) 97 final, March 2005.
[107] COM (2005) 97 final, March 2005.
[108] COM (2001) 726 final, December 2001.
[109] COM (2002) 278 final, June 2002.
[110] COM (2002) 718 final, December 2002.
[111] COM (2005) 59 final/ Council of the European Union 7032/05, February 2005.

The Commission's annual reports on better lawmaking[112] indicate the extent to which the Commission's proposals on the establishment of effective structures have been implemented to date:

- A "better lawmaking" network within the Commission was set up in 2002.[113] The Secretariat-General is the leading body for horizontal co-ordination of instruments for better lawmaking.
- On 3 December 2003, the interinstitutional agreement on better lawmaking[114] came into force. In this contract, the creation of ad-hoc structures for the simplification of legal acts at Council and Parliament is mentioned as a possibility for accelerating the acceptance of simplification proposals. To better implement and apply Community law in the Member States, Council is called upon to work towards appointing national co-ordinators for implementation.
- The 2003 report on better lawmaking[115] determined that no general forum for co-operation between the Community and national authorities on better lawmaking currently exists.[116] However, the possibility of the creation of ad-hoc working groups for better lawmaking in Council was proposed (by Council [117] and the ministers responsible for public administration); the Commission supports this project. [118]. The establishment of such a group ("Ad-hoc Working Group on Better Regulation") is currently under discussion.[119]
- The problems of co-ordinating the various initiatives for better lawmaking have grown, partly as a result of increased interest in this topic. In its report "Better Lawmaking 2004", the Commission states that the rationalisation of structures and procedures is a topic that must be taken up as soon as possible.[120]
- European regulatory agencies: In 2003, the Commission presented four proposals for new regulatory agencies. In the Commission report on better lawmaking 2004[121] the topic is also treated. The Commission then continued its efforts to delegate certain extremely detailed executive tasks to European regulatory agencies. At the end of 2004 the total number of such agencies was 26 (compared with 12 agencies in July 2001[122]).

For 2005, the Commission is planning to set up a group of high-level national lawmaking experts to facilitate the drafting of measures for better lawmaking at both the national and EU levels. This group will be charged with advising the Commission on questions of better lawmaking, especially simplification and impact assessment. In carrying out this task, it will take into account all relevant points of view, including questions of implementation and enforcement. The group could therefore function as an effective interface between the Commission and relevant government authorities. With this high-level group, the Commission will strengthen co-operation between the Member States by supporting them in their initiatives to promote the implementation of Better Regulation.[123] In addition, the Commission is planning to establish a network of experts for issues of better lawmaking; this network would be independent of the aforementioned group of experts. This second group will include, i.a. academics and experts in the economic, social and environmental areas. They will support the Commission by supplying their expert knowledge on technical issues.[124] It follows from the above, that both groups – the group of high-level lawmaking

[112] COM (2002) 715 final, December 2002; COM (2003) 770 final, December 2003; COM (2005) 98 final, March 2005.
[113] COM (2002) 715 final, December 2002.
[114] ABl. C 321 dated 31 December 2003.
[115] COM (2003) 770 final, December 2003.
[116] COM (2003) 770 final, December 2003.
[117] Council of the European Union C/02/283, September 2002.
[118] The Commission invites Council to establish a horizontal working group on "better lawmaking" with which the Commission could interact. This group could concern itself with the implementation of action plans for better lawmaking, i.a. also with the implementation of the elements for which the Member States are responsible. Commission of the European Communities, COM/2003/0238 final, 2003.
[119] Commission of the European Communities, Secretariat General TFAU-2 Institutional Matters and Governance, Lars Mitek, *Who is doing what on better regulation at EU level – organization charts*, Commission working document, 1st July 2004.
[120] COM (2005) 98 final, March 2005, p. 3.
[121] COM (2005) 98 final, March 2005.
[122] COM (2001) 428 final, July 2001, p. 30.
[123] COM (2005) 97 final, March 2005.
[124] COM (2005) 97 final, March 2005.

national experts and the network of experts for questions of better lawmaking – should be active in an advisory role on general topics and on methodology. They do not, however, represent an additional level at which, for example, individual drafts of proposals for legal provisions would be systematically reviewed.

4.1.6. Implementation of Community law

The Commission functions as "guardian of the EU treaties", i.e. together with the Court of Justice, it oversees the orderly application of Community law in the Member States. In order to improve the implementation of EU law in the Member States and monitoring of its application by the Commission, in 2001 a number of proposals were submitted in both the White paper on European governance and the Mandelkern Report. While the recommendations of the Mandelkern Report primarily focus on the improvement of the flow of information between Member States and the Commission, the White Paper is more concerned with the increased use of alternative implementation instruments (regulatory agencies, target-based tripartite agreements) and with systematically addressing infringements of Community law.

Shortly after publication of the Mandelkern Report, in its communication "Simplification and Improvement of the Regulatory Environment"[125] dated December 2001, the Commission recommended that the Member States make self-commitments to the correct and timely integration of EU regulations into national law. It was also recommended that correspondents for "implementation and application" in the Member States be nominated. They would ensure the correct flow of information between the Commission and the national administrations and facilitate better co-operation and more feedback. This measure was taken up and established in the action plan for the simplification and improvement of the regulatory environment[126] of 2002. Additional measures of the action plan for better implementation and application of Community law are:

- Determination of criteria to be used to establish priorities for the review of any violations of Community law[127];
- Stronger control of implementation by setting up regular implementation measures;
- Stronger reaction to violations;
- Recommended measures for Member States: communication of implementation measures by electronic means on a single form; creation of an in-house concordance table.

In subsequent years, a number of initiatives on better implementation and application were launched on the basis of the proposals in the White Paper on European governance[128] and the Mandelkern Report. These initiatives are summarised in the following paragraphs.

- The White Paper suggests that the application and implementation of legislation be improved through the creation of additional autonomous EU regulatory agencies in established areas and with clearly defined scopes of activity. At the end of 2002, the Commission issued a communication on the framework conditions for the European regulatory agencies[129]. It sets out criteria for the creation of regulatory agencies, for their work and procedures for their control by the Community. Parliament and Council were called upon to issue a formal framework for the establishment of regulatory agencies on this basis.[130] The acceptance of an interinstitutional agreement on the subject is one of the primary objectives of the Commission for 2005.[131]
- The White Paper also proposed that target-based tripartite contracts be used for simplification, increasing efficiency and acceleration of the execution of Community measures and making lawmaking more flexible on measures with strong territorial effects. As this proposal was met

[125] COM (2001) 726 final, December 2001.
[126] COM (2002) 278 final, June 2002.
[127] This measure goes back to the White Paper on European governance of 2001. Consultation on the White Paper (July 2001 – March 2002) confirmed the call for a new and more efficient approach to dealing with violations of Community law. Cf. COM (2002) 705 final, December 2002.
[128] COM (2001) 428 final, July 2001.
[129] COM (2002) 718 final, December 2002.
[130] Summary COM (2002) 705 final, December 2002.
[131] COM (2005) 98 final, March 2005.

with interest and approval by many local authorities in the consultation on the White Paper, the Commission presented a communication on a framework for the conclusion of target-based tripartite contracts by the EC, Member States and their local authorities.[132] This communication differentiates between target-based contracts (for implementation of Community law by authorities below national level) and target-based agreements (agreements that are concluded outside of a mandatory Community framework). The Commission announces that tripartite target-based agreements will be initiated soon as pilot projects.[133] In 2003, three pilot projects proposed by local authorities were carried out.[134] In 2004, the first tripartite target-based agreement was signed (between the Commission, the Italian State and the region of Lombardy.[135]

- In relation to the setting of priorities in the review of possible violations of Community law (a measure of the action plan), the Commission introduced in its communication a new approach to better control of the application of Community law (December 2002).[136] Criteria for the introduction of a formal treaty infringement process and cases are clarified in which other methods are to be considered. In future preventive measures should be use to a greater extent and administrative co-operation in the Member States should be expanded.
- The “Better Lawmaking 2003” report lists a number of measures that were initiated to improve control of the application of Community law. For example, the report announces that in draft directives of the Commission, in future one provision will be defined for which the Member States will be called upon to provided structured and detailed information on the implementation of Community law (so-called concordance tables). Transparency and accessibility of the implementation deadlines are improved through the “Calendar for transposition of directives”. In addition, a new standardised electronic form for transmitting national implementation measures is introduced. Through a new interface, the national authorities will receive in future direct access to non-confidential internal Commission data. As well, the Commission will report annually on the control of the application of Community law.
- Because infringements of Community law are often revealed when complaints are lodged, the Commission had already accepted a communication in spring 2002 on the relationship to ombudsmen in infringements of Community law.[137] This codified the administrative measures for handling complaints. In 2005, a new Internet-based instrument will be introduced that facilitates the entry of complaints regarding non-observance of Community law by citizens and enterprises.
- Partnerships between national administrations should promote the exchange of best practices in the application of Community law in certain areas. In its report on European Governance of December 2002, the Commission announced that in 2003 partnership models would be proposed.[138] This subject was not taken up again later in the documents analysed.
- A further proposal by the Commission from 2002 that was not mentioned in the White Paper on European Governance and the Mandelkern Report was the change in the "comitology" procedure (Council Decision 1999/468/EC dated 28 June 1999)[139], meaning a clear separation of the executive and control functions, to better balance and strengthen the monitoring by Council and Parliament of the Commission in its function as executive. Basically, a change in the treaties was sought on this question, which was supposed to be entrusted to the Commission to take primary responsibility for implementing laws under the political control of the lawmaker (clear competencies, better control).[140]

[132] COM (2002) 709 final, December 2002.
[133] Summary COM (2002) 705 final, December 2002.
[134] COM (2003) 770 final, December 2003.
[135] COM (2005) 98 final, March 2005.
[136] COM (2002) 725, December 2002.
[137] COM (2002) 141, March 2002.
[138] COM (2002) 705 final, December 2002.
[139] The Commission specifically recommends that existing regulatory procedures for implementation measures that underlie the co-decision procedure be modified by the introduction of two separate phases (implementation and control). Cf. COM (2002) 719 final, December 2002.
[140] Cf. the proposals of the Commission on the convention COM (2002) 728 final/2, December 2002.

- In the interinstitutional agreement on “Better lawmaking”, which entered into force on 3 December 2003[141], the institutions undertook to establish a binding deadline for the transposition of directives into national law (usually not more than two years).

In spite of all these measures, there is still a need to improve the transposition of Community law. For example, the opening of the telecommunications, energy and transport markets exists only on paper in some Member States.[142] Accordingly, a re-launch[143] of the Lisbon Strategy 2005 is being called for in order to improve the implementation of existing EU legislation.

In the communication by the Commission on Better Lawmaking for Growth and Employment in the EU[144], which also appeared at the beginning of 2005, it is made clear that the improvement in the quality of the transposition of EU regulations is an important objective of the Commission, which should be supported by a new high-level group of national regulatory experts to be established. To this end, for example, a common examination is planned as to what extent Member States are overfulfilling (“gold plating”) EU regulations during transposition. With the support of the high-level group, the Commission intends to strengthen the co-operation of the Member States in the implementation of Community law. In order to improve the timely and correct transposition of directives and to avoid gold plating, the Commission intends to further expand the preventive discussion procedure between the Commission services and the Member States.

4.1.7. Reduction of administrative burdens

A subject that has recently seen more attention at the EU level as part of Better Regulation is the question of reduction of administrative burdens. While the primary responsibility for this subject is considered to be with the Member States, the EU institutions must nevertheless make its contribution in co-operation with the individual States to address the problem.[145]

The Enterprise Directorate-General is carrying out in this connection a pilot study on the ex post evaluation of EU legislation and the administrative burdens it imposes on enterprises. The objective of the project is to assess the current effects of legislation at the level of the Member States and to evaluate the differences in implementation practices. The principal focus is on unnecessary burdens on business that arise as a result of the implementation process.

The issue of administrative burdens was also addressed in the Kok Report[146] on improved implementation of the Lisbon Strategy published in November 2004. This report calls on the Commission and Member States to

- approve a common definition of administrative burdens before the meeting of the European Council in Spring 2005;
- assess the cumulative administrative burdens on business and set an objective for the reduction of these burdens;
- indicate before July 2005 by how much and when they will reduce the administrative burdens in key sectors;
- pay special attention, in the reduction of administrative burdens, to those regulations that have effects on the creation of businesses. It is recommended that the Member States drastically reduce the time, the effort and the expense of creating businesses by the end of 2005. The objective of this should be to achieve the average current figures in the three top Member States in this area. The introduction of a one-stop shop for creating businesses is recommended.

[141] Council of the European Union 12175/04, September 2003.
[142] COM (2005) 24, February 2005.
[143] COM (2005) 24, February 2005.
[144] COM (2005) 97 final, March 2005.
[145] SEC (2005) 175/2, 2005.
[146] European Communities: Facing the Challenge. The Lisbon strategy for growth and employment. Report by the High Level Group chaired by Wim Kok. 1 November 2004, Luxembourg 2004.

In its communication[147] to the European Council in spring 2005 on the re-launch of the Lisbon Strategy, the Commission determined that the burdens of regulation were excessively heavy on SMEs, which normally have only limited resources for handling the administrative activities associated with these regulations. New access to regulation should therefore seek to reduce burdens and eliminate bureaucracy that is unnecessary for achieving objectives. The Commission has announced that it will introduce a new initiative[148] on Better Regulation in March 2005. This initiative should, among other things, address the problem that excessively high regulatory burdens, possibly also linked with difficult access to markets and insufficient competitive pressure, could hinder innovations in potential high-growth sectors. The Commission therefore intends to carry out a number of sectoral reviews in order to identify barriers to growth and innovation in key sectors. A special focus of this effort will be on administrative burdens for SMEs.

Growing attention on instruments designed to reduce the administrative burdens associated with regulations is also at times viewed critically, as these approaches only take into consideration quite specific aspects of impacts while ignoring many others. For example, in a December 2004 scientific evaluation[149] of indicators of regulatory quality commissioned by the Commission, the view is held that it would be a mistake to build up programmes and measures for regulatory quality exclusively aimed at administrative burdens, as these represent only a limited part of the regulatory costs and their relative usefulness is not included. This opinion is also shared in recent Commission documents: “Measuring administrative costs can help to improve the regulatory environment, but it cannot take a disproportionate weight in that broader analysis. Nor can EU legislation be presented as a mere cost factor, in particular as it often replaces 25 different national legislations and thus decreases operating costs at EU level.”[150] The Commission therefore intends to take up procedures for quantitatively measuring administrative burdens as an additional element of its integrated impact assessment approach so that all regulatory impacts will continue to be taken into account, but nevertheless more precisely identifying administrative burdens.

As called for by the European Council for Economic and Financial Affairs (ECOFIN) in October 2004[151], the Commission started a pilot phase at the beginning of 2005 in which, based on the results to date of the different services, the Member States and international organisations should develop a common concept for measuring administrative costs and review it for feasibility. The Commission holds the position that the application of a common method makes sense if the method is flexible enough to take into account the different framework conditions in the various States and at the EU level. “The likely benefits of a common approach include:

- bringing clarity about possible differences in procedures followed by the EU institutions and different Member States;
- facilitating cross-country or cross-policy area comparisons, benchmarking and the development of best practices;
- offering economies of scale in terms of data collection and validation.”[152]

After the Commission, with the support of several Member States, carried out a preliminary analysis of the available concepts[153] for evaluating administrative costs, it published a working paper in March 2005[154]. In this working paper, criteria for an EU model are developed and a possible common concept for measuring administrative costs (“EU Net Administrative Cost Model”) is outlined. A common concept in this sense should[155]:

[147] COM (2005) 24, February 2005.
[148] COM (2005) 97 final, March 2005.
[149] Centre for European Studies at the University of Bradford, *Project on Indicators of Regulatory Quality.* Final Report, Bradford, 17th December 2004.
[150] SEC (2005) 175/2, 2005, p. 2.
[151] Council of the European Union 13017/04 (Press 284), October 2004.
[152] SEC (2005) 175/2, 2005, p. 6.
[153] Two methods of quantifying administrative burdens are used in the Member States: 1) a microeconomic method in the form of the Standard Cost Model (SCM), which was developed in the Netherlands and has also been used for some time in Scandinavia, in Belgium, in Slovenia and in the UK (cf. 3.2.3.) and 2) a macroeconomic method in the form of a questionnaire in which a representative sample of businesses indicate how much time they spend each month in administrative activities related to regulations (practised in Belgium).
[154] SEC (2005) 175/2, 2005.
[155] SEC (2005) 175/2, 2005, p. 7.

- be simple to apply;
- be versatile;
- be adaptable in terms of data collection for different policy instruments;
- be transparent and produce reliable estimates;
- enable ex post monitoring of the individual components of costs arising from legislation; and
- ensure clarity on the origins of obligations associated with regulations.

On this basis, the Commission proposes the "EU Net Administrative Cost Model" as a common concept for assessing regulatory costs. In this model, which is partially built on the "Standard Cost Model", some elements are fixed and standardised (definition of administrative costs, principal cost factors considered, report format) in order to ensure comparability, while other aspects remain flexible (degree of detail, possibility of selecting from a variety of methods for data collection). The important content of the "EU Net Administrative Cost Model" is[156]:

- definition of administrative costs as "the costs arising from information and reporting obligations imposed by law";
- examination of net costs ("new costs imposed by an act minus costs suppressed by the same act be it at EU or Member State level"); administrative costs that would be incurred even if the regulation did not exist are not included;
- broad applicability (burdens for businesses, citizens, the third sector and for public administration);
- core equation: price of an administrative action multiplied by its frequency, multiplied by the number of organisations affected;
- degree of detail depends on the probable burdens; the amount of analysis required should be proportionate to the administrative burdens imposed;
- data sources: pragmatic selection of the most reliable and relevant data available at the EU level or provided by the Member States.

The common method should be integrated into the existing Better Regulation mechanisms so that all relevant costs and advantages can be included. One of the items affected is integrated impact assessment. Here it is proposed that different policy options be given a "price tag" in appropriate cases. It is problematic, however, that EU directives cannot be transferred to national law until after they are accepted. An ex ante assessment is therefore difficult and could only be based on hypothetical transposition measures of the Member States. In addition, the common approach could also be used to review administrative costs of existing laws in order to identify simplification measures and to evaluate the success of regulations. The Commission emphasises, however, that the "EU Net Administrative Cost Model" should first be selectively employed to examine specific parts of EU legislation. The process is not suited for the reduction of the overall administrative costs for society or for specific sectors, as this would be too cost intensive and also difficult to realise because of the different regulatory cultures in the EU. The active support of the Member States is especially important for the application of the "EU Net Administrative Cost Model" in those cases in which detailed and precise estimates are necessary.

Before a final decision is taken on the feasibility of a common concept, its modalities and the method of applying it, the Commission considers a test phase to be indispensable. To do this, it has announced the execution of three to five pilot projects in co-operation with the Member States. These should end during 2005. The results of the test phase will be reported in a Commission communication on administrative burdens. Only then will the final decision be taken as to whether and how the common concept will be integrated into the approaches of the Commission to better lawmaking.[157]

[156] SEC (2005) 175/2, 2005, p. 7f.
[157] SEC (2005) 175/2, 2005, p. 10.

4.1.8. Indicators of Regulatory Quality

The EU policy on Better Regulation goes back to the early 1990s, but results of monitoring activities are a newer theme. The Mandelkern Report had called on the Commission to propose a number of indicators for better lawmaking by June 2002 and to present an annual report beginning in 2003 on better lawmaking in the EU and in each Member State.[158] The latter was taken up in the "Simplification and Improvement of the Regulatory Environment" action plan:[159] It was announced that from 2003 an assessment of the quality of EU regulation should be carried out in the framework of the annual report on the application of the principles of subsidiarity and proportionality and that additional annual country reports on the developments in the Member States will be published. This obligation was fulfilled in the subsequent years with the presentation of reports on Better Regulation, but no annual country reports were published.

In its communication on internal market strategy in May 2003, the Commission undertook “to develop, in close co-operation with Member States, appropriate indicators to measure progress towards a higher-quality regulatory framework and lower administrative burdens, starting with the Internal Market”[160]. To date no comprehensive set of indicators for assessing the policy of Better Regulation has been applied.

The Enterprise Directorate-General carried out a 14-month project on this subject in the context of a multiyear programme for enterprises and entrepreneurial initiative 2001-2005. Its final report[161] was presented on 24 January 2005 at a closing conference in Brussels. The main objective of the project was the development of quantitative and qualitative indicators that can be used to evaluate regulatory quality in the EU. This is intended as a contribution to the creation of a co-ordinated approach to Better Regulation in the EU.

In the final report of the project, the advantages and limits of indicators that have already been used are discussed. The project group comes to the conclusion that the reports of the Commission on the different instruments of Better Regulation already contain a number of useful indicators (however, some of these indicators are viewed critically, such as the reduction of the number of pages of the acquis) and that some important data collection instruments are already available as well. Nevertheless, the reports and measures of quality have not yet been organised into a specific system of indicators that covers the entire spectrum of instruments for Better Regulation. At the same time, the uncontrolled expansion of indicators must be guarded against, i.e. there is no need for an additional set of ad-hoc indicators. Instead, efforts should be co-ordinated and redundant measures should be rejected.

In order to measure regulatory quality in the future, three systems of indicators are proposed, which should be applied by both the Commission and the Member States:

- System No. 1 is intended for those Member States that are still in an experimental pilot phase (simple macro ex ante system of quality indicators).
- System No. 2 could be used by a group of Member States in which consultations, simplification and the measurement of administrative burdens are already firmly in place. This system also includes indicators of “real world" outcomes and calls for the examination and ex post measurement of the quality of impact assessments and other instruments, including surveys of those affected by the provision.
- System No. 3 can be applied by the Commission and the Member States with highly developed quality assurance systems. It creates a bridge between the measurement of the quality of regulation and the systematic evaluation of Better Regulation.

It is recommended that the indicator systems be introduced gradually. All Member States should be in a position to introduce System No. 1 and several elements of System No. 2 within 15 to 18 months. The implementation of System No. 2 throughout the EU has not yet been possible as the

[158] German Federal Ministry of the Interior (publisher), The Mandelkern Report on Better Regulation. Final report, 13 November 2001, p. 12.
[159] COM (2002) 278 final, June 2002.
[160] COM (2003) 238 final, May 2003.
[161] Centre for European Studies at the University of Bradford, *Project on Indicators of Regulatory Quality. Final Report,* Bradford, 17th December 2004.

necessary conditions (routine embedding of consultations and impact assessments in policy formulation) are not yet in place in many Member States.

For the future debate on the application of indicators, the project group notes that two important aspects have been very little discussed yet: This has to do with the discussion on the goal of the collection of indicators (why and for what reason are they being collected?) and the question as to who should collect and evaluate the data.

For 2005, the Commission is planning to set up a group of high-level national regulatory experts. The purpose of this group is to discuss the development of a coherent set of common indicators in order to observe progress in the quality of the regulatory environment both at the EU level and in the Member States themselves as a basis for a comparison of performance. The Commission will suggest that the Member States use such indicators so that they set targets and priorities for their improved regulatory programmes in the framework of their national Lisbon programmes. In this connection, the Commission also intends to co-operate with the Member States in improving comparability and compatibility between national programmes.[162]

4.2. The Council: Analysis of the documents pertaining to Better Regulation

At its regular meetings that have taken place since the Mandelkern Report, Council of the European Union has dealt with the topic of Better Regulation on numerous occasions:

- On 15/16 March 2002 in Barcelona[163], the European Council noted the intention of the Commission to include, before the end of 2002, a sustainability dimension in the impact assessment. It also reaffirmed efforts to simplify and improve the regulatory environment and emphasised in this connection, in particular, the reduction in the administrative burden for SMEs. It asked the Commission to submit its Action Plan, which should take into account, in particular, the recommendations of the Mandelkern Group, in time for its next session.
- On 20/21 March 2003 in Brussels[164], the European Council called for the rapid implementation of the Action Plan "Simplifying and improving the regulatory environment" and the conclusion of the Interinstitutional Agreement on better lawmaking. It welcomed the Commission's intention to ensure that, as a rule, all major, proposed EU legislation is preceded by a systematic consultation of all interested parties and accompanied by a rigorous impact assessment.
- On 16/17 October 2003 in Brussels[165], the European Council called for the speedy implementation of the Interinstitutional Agreement on better lawmaking. This should improve the quality of EU legislation - e.g. through impact assessments. Simplifying [EU legislation] would significantly strengthen economic competitiveness, inter alia, through encouraging business confidence.
- On 25/26 March 2004 in Brussels[166], reference was again made to the fact that better lawmaking at both European and national levels would enhance competitiveness and productivity. The Council therefore invited Member States to commit to accelerated implementation of national reform initiatives in the sphere of Better Regulation. It welcomed the Commission's intention to further refine the integrated, regulatory impact assessment process with particular emphasis on enhancing the competitiveness dimension. It also welcomed the development of a method to measure administrative burden on business.
- On 17/18 June in Brussels[167], the European Council mentioned, first and foremost, in light of the proposals and initiatives pertaining to sustainable growth and development, continued efforts to ensure the necessary arrangements for Better Regulation in the EU.

[162] COM (2005) 97 final, March 2005.
[163] Council of the European Union SN 100/1/02 REV 1.
[164] Council of the European Union 8410/03, May 2003.
[165] Council of the European Union 15188/03, November 2003.
[166] Council of the European Union 9048/04, May 2004.
[167] Council of the European Union 10679/04, June 2004.

- On 4/5 November 2004 in Brussels[168], the European Council stressed the fact that the EU institutions have made good progress towards developing a common methodology for impact assessments and in adapting working methods for the simplification programme. It welcomed the development of a common methodology for measuring administrative burdens and called on the Commission to adopt the pilot project methodology undertaken between the Commission and the Member States in its guidelines for impact assessments and its working methods aimed at simplifying legislation. It also welcomed the progress made in establishing priorities for simplification of existing Community legislation with these priorities identified in the environment, transport and statistics sectors.
- On 22/23 March in Brussels[169], the European Council reiterated the importance of improving the regulatory environment and urged that work press ahead at both European and national level. It requested that the Commission and Council examine a common methodology for measuring administrative burdens with the aim of reaching an agreement. The Commission was asked to develop its impact assessment system to achieve rapid progress in the context of simplification. Furthermore, the participation of all parties directly affected should be ensured. The initiatives taken in the context of improving the regulatory environment, however, must not themselves turn into administrative burdens.

In addition to the European Council decisions, an analysis follows below of the most important documents drawn up by various Presidencies and Council Groups with regard to the individual aspects of Better Regulation. This essentially concerns proposals, recommendations and Action Plans.

4.2.1. Legislative alternatives

In a joint statement dated 7 December 2004, the Finance Ministers of the Irish, Dutch, Luxembourg, UK, Austrian and Finnish Presidencies stipulated the focal points for further legislative reform in Europe for 2004 and 2005. In this connection, express reference was made to the possibility of non-regulation as the most effective form of simplification: “The decision to proceed with legislation should never be taken as a given in impact assessment. In order to allow a consideration of non-regulatory and less burdensome alternatives by Council, equal weight needs to be given in all European Commission impact assessments to the relative costs and benefits of no action, of the proposed route of action and, where legislation is proposed, to the possibility of at least one further non-legislative approach. To facilitate discussion of non-regulatory and less burdensome alternatives in Council, Member States should share their domestic experiences with the use of market-based alternatives to regulation, such as the pro-active use of competition policy.”[170]

The regulatory reform priorities for 2004 and 2005 were formulated in a joint initiative of the Irish, Dutch, Luxembourg and UK Presidencies in a document published in January 2004[171]. In this connection, the question of lawmaking alternatives was also considered. Wherever possible, lawmaking alternatives should be examined, including the issues of the common internal market and competition.

4.2.2. Impact assessment

Within the framework of the Greek Presidency of Council of the European Union, an ad-hoc group of experts on Better Regulation[172] presented a report in 2003 on the progress made in this area since the Mandelkern Report. The report contains an analysis of the implementation of Better

[168] Council of the European Union 14292/1/04, December 2004.
[169] Council of the European Union 7619/05, March 2005.
[170] Irish, Dutch, Luxembourg, UK, Austrian and Finnish Presidencies of Council of the European Union, Advancing Regulatory Reform in Europe. A joint statement of the Irish, Dutch, Luxembourg, UK, Austrian and Finnish Presidencies of the European Union, December 2004, p. 10.
[171] Irish Presidency of Council of the European Union/Ministry of Finance/HM Treasury, Joint Initiative on Regulatory Reform. An initiative of the Irish, Dutch, Luxembourg and UK Presidencies of the European Union, January 2004.
[172] Ad-hoc Group of Experts on Better Regulation / Greek Presidency, Report to the Ministers responsible for Public Administration in the EU Member States on the progress of the implementation of the Mandelkern Report’s Action Plan on Better Regulation, Athens, May 2003.

Regulation policies in the Member States and further development in the area of the Commission. With regard to the impact assessments, reference is made to the fact that the Commission wishes to develop an integrated impact assessment procedure in the years 2003 to 2005. Discussions will also involve Council and Parliament which, in accordance with the Mandelkern Report, may present their own assessments in the event of substantial changes to draft regulations.

A European Conference on Better Regulation took place in Naples from 8-9 October during the Italian Presidency of Council of the European Union. In agreement with the Irish and Dutch Presidencies which followed, the Italian Council Presidency proposed concentrating on impact assessments and promoting an exchange of best practices in this area as a matter of priority. At the eleventh meeting of Ministers responsible for public administration in EU Member States which took place in Rome in December 2003, above all, the need for improved co-operation was taken into consideration with regard to Better Regulation. The areas of impact assessments, consultations and the streamlining of regulations and procedures were emphasised as being particularly important in this regard: "The economic and social growth objectives and the proper functioning of the internal market require action to be taken to constantly improve the quality of regulation, among other things, by disseminating and improving the use of such instruments as regulatory impact analysis, consultation and the streamlining of regulations and procedures."[173]

In a joint initiative on regulatory reform during the Irish Presidency of Council of the European Union, the Irish, Dutch, Luxembourg and UK Presidencies formulated priorities for further legislative reform in 2004 and 2005. First and foremost, the quality of the impact assessments is taken into consideration in this connection. It is especially important that the results of these impact assessments are included in the decision-making processes of the Commission, Council and Parliament: "However, a sustained effort will be required to build upon the momentum achieved to date in order to implement the Action Plan fully and to realise the potential contribution of Better Regulation to economic performance. In particular, we need further to enhance the quality of impact assessments and ensure that their analysis actually influences decision-making by the Commission, Council and the European Parliament." [174] Progress was also anticipated as a result of the presentation of examples of best practices. Furthermore, provision should be made for more revision clauses in the drafts.

The Italian, Irish and Dutch Presidencies of Council of the European Union submitted a comparative analysis of Regulatory Impact Assessments in ten EU countries[175] (Austria, Denmark, Finland, Germany, Hungary, Italy, the Netherlands, Poland, Sweden and the UK) for the DEBR Group in Dublin in May 2004 and emphasised therein the fact that development in Member States is also very important. On the basis of this analysis, regulatory impact assessment is recognised in all countries. Different groups are responsible for practical implementation, however. The UK, Denmark and the Netherlands are the outriders and can serve as a benchmark for other countries. In Sweden and Finland as well, impact assessment has progressed to a higher level. Germany, Poland and Austria follow them with some limitations, with Hungary and Italy bringing up the rear.

In a follow up[176] to the General Affairs Working Group regarding the Interinstitutional Agreement on better lawmaking in 2004, the most important aspects of Better Regulation, first and foremost impact assessments, were considered. Reference was made in this regard to the fact that the Interinstitutional Agreement makes provision for more impact assessments (ex post and ex ante) and a common methodology with a view to raising the quality of legislation.

As a result of the 2004 Spring Council, at which the increasingly economic orientation came to light, the High Level Group on Competitiveness and Growth emphasised the competitiveness dimension of impact assessments[177] and had a competitiveness test model based on the criteria of the Commission approach to impact assessment developed by an informal working party. The

[173] Italian Presidency of Council of the European Union, 11th Meeting of European Ministers responsible for Public Administration in Rome. Resolutions, Rome, December 2003, p. 4.
[174] Irish Presidency of Council of the European Union/Ministry of Finance/HM Treasury, Joint Initiative on Regulatory Reform. An initiative of the Irish, Dutch, Luxembourg and UK Presidencies of the European Union; January 2004.
[175] Italian, Irish and Dutch Presidencies of Council of the European Union, A comparative analysis of Regulatory Impact Assessment in ten EU countries. A report prepared for the EU Directors of Better Regulation Group, Dublin, May 2004.
[176] Council of the European Union, 9173/04, May 2004.
[177] Council of the European Union, 10688/04, July 2004.

assessments would be improved from the point of view of competitiveness were they to give consideration to the Lisbon objectives, a global perspective, the effects on employment and the new political proposals aimed at simplifying and reducing bureaucratic burdens. “The group has also looked more widely at how impact assessment and policy processes can combine to ‘competitiveness test’ proposals as they develop, drawing lessons from recent practice. The paper also makes some recommendations on systematic approaches to developing and using the assessment at the pre-legislative and legislative stages therefore, including handling in Council.”[178]

On 7 December 2004, the Finance Ministers of the Irish, Dutch, Luxembourg, UK, Austrian and Finnish Presidencies of Council of the European Union stipulated the focal points for further legislative reform in Europe for 2004 and 2005 in a joint statement.[179] This statement offers the following recommendations with regard to impact assessments:

- “the Competitiveness Council should develop its role and capacity to consider proposals that are likely to have a substantial effect on competitiveness (…), the Competitiveness Council should play its horizontal role by identifying items of particular interest and systematically examining such dossiers to inform work in Coreper and Council (…);
- Council and the European Parliament should make systematic use of the Commission’s strengthened impact assessment (...) and develop guidelines and procedures for evaluation of their own amendments (...);
- Member States should draw on the benchmark project on impact assessment being co-ordinated by the informal network of Directors and Experts of Better Regulation as a step to developing the common methodology of impact assessment (…).”[180]

In its work programme of 5 January 2005, the Luxembourg Presidency of Council of the European Union considered the impact of legislation on competitiveness. Above all, reference was made to the importance of the impact assessment instrument and a corresponding methodology: “Systematic use, by the Commission, Council and the European Parliament, of impact assessments for substantial amendments to Community legislation could have a quite significant effect on the European Union’s decision-making. The Luxembourg Presidency will assess the results of a pilot project on these issues and will also take account of work in progress at the Commission on developing an integrated impact assessment methodology. Likewise, the Presidency will seek to achieve progress in implementing the institutional agreement on ‘Better Regulation’ within the high-level technical group bringing together Council, the Commission and the EP, to lend consistency to the ongoing effort. In co-ordination with the preceding and forthcoming Presidencies, the Luxembourg Presidency has identified Better Regulation as a Presidency priority in two joint letters, further to a recommendation in the Kok report. The issue will certainly be included in the future contribution from the Commission that is to provide the basis for the mid-term review of the Lisbon strategy due in March 2005.”[181]

A Council publication from February 2005[182] describes the first positive example of Council’s own impact assessment. This is based on the Interinstitutional Agreement on better lawmaking and is regarded as a pilot project for an impact assessment of Council’s proposals for change on the Commission’s draft regulations. In this case, the impact assessment referred to a new, EU draft directive on batteries and accumulators and dealt, inter alia, with the question of whether restrictions should or should not be added as regards the use of cadmium in batteries. In terms of further, future impact assessments, it was pointed out that the pilot project could be carried out without requiring additional resources in terms of finance and personnel and that it had not delayed Council’s negotiations. It was stressed that the impact assessment had resulted in structured

[178] Council of the European Union, 10688/04, July 2004.
[179] Irish, Dutch, Luxembourg, UK, Austrian and Finnish Presidencies of Council of the European Union, Advancing Regulatory Reform in Europe. A joint statement of the Irish, Dutch, Luxembourg, UK, Austrian and Finnish Presidencies of the European Union, December 2004.
[180] Ebd., p. 5 *et seq*.
[181] Luxembourg Presidency of Council of the European Union, Work programme of the Luxembourg Presidency of Council, Brussels, January 2005, p. 9 *et seq*.
[182] Council of the European Union, Better Regulation - Pilot project on Council impact assessments, Brussels, February 2005.

discussions and helped the delegations clarify their points of view without having to alter them significantly, however.

4.2.3. Consultations

The progress report on the subject of Better Regulation since the Mandelkern Report, which was presented within the framework of the Greek Presidency of Council of the European Union in 2003 by an ad-hoc group of experts on Better Regulation, contains an analysis of all the elements of the Mandelkern Report and hence, also, on consultations.[183]

At the European Conference on Better Regulation in Naples in October 2003, public consultations were named an important co-operation theme within the EU. In addition, reference was also made within the framework of the Italian Presidency of Council of the European Union at the eleventh meeting of Ministers responsible for public administration in EU Member States which took place in Rome in December 2003 to the need for improved co-operation, especially in the areas of impact assessments, consultations and the streamlining of regulations and procedures.

At the meeting of the DEBR Group on 19/20 February 2004 in The Hague during the Irish Presidency of Council of the European Union, consultations did not constitute a separate discussion point, being dealt with instead in the context of discussions on the implementation of the Commission's Action Plan. The "Report on RIA in ten European Countries" was presented in Dublin on 13 May 2004. The content of this report included, inter alia, consulting Member States on information procurement (consultations) as part of impact assessments. The most important results are as follows:

- In the ten states investigated, citizens were generally not consulted (except in Finland and the UK), although the potential recipients of the standard and other government actors were consulted; committees or similar were used in all countries and special interest groups purposely informed.
- Hitherto, no guidelines have been laid down anywhere for identifying interested parties.
- Consultation techniques: informal consultations and the circulation of drafts on which parties may comment take place in all countries; however, public notice, test panels, focus groups, public meetings, advisory panels of experts and polls were only held in a number of countries.
- Two countries have laid down a minimum consultation period; with many countries, however, this varies on a case by case basis. Seven countries have stipulated a timeframe for submitting comments.
- Comments arising from consultations are published in five countries.
- A legal obligation to observe the comments submitted only exists in one country (Sweden).
- Official consultation guidelines exist in six countries while only two countries (Germany and Sweden) have minimum consultation standards.
- EU consultation standards are taken into account in two countries.
- Obligations to consider vague, non-organised interests and those of groups that are considered weak in society (SMEs, minorities) exist in four countries. SMEs are consulted in all countries, however.

The most important report recommendations are as follows:

- The holding of consultations should be stipulated in law or be formally recommended by the government and should not only relate to select organisations but to all interested parties.
- Consultation results should be used in a transparent manner (and this use substantiated) and published where possible.

[183] Ad-hoc Group of Experts on Better Regulation / Greek Presidency, Report to the Ministers responsible for Public Administration in the EU Member States on the progress of the implementation of the Mandelkern Report's Action Plan on Better Regulation, Athens, May 2003.

- Consultations should take place as early as possible ("when the choice is still open").
- It is recommended, and also partly necessary, that parties affected are consulted directly (especially in the case of non-organised or weak interests), even if this is expensive and requires more time and resources.
- The quality (credibility) of the information obtained should be examined.

In a joint statement dated 7 December 2004, the Finance Ministers of the Irish, Dutch, Luxembourg, UK, Austrian and Finnish Council Presidencies of Council of the European Union stipulated the focal points for further legislative reform in Europe for 2004 and 2005. In this connection, the question of consultations was also considered under the key words "Strengthening the regulatory framework".[184] Among other things, more activity to improve pre-legislative consultations, including the increased use of Green and White Papers, is called for. Furthermore, enterprise inputs in the regulation process are to be strengthened, e.g. by means of a new, permanent "Business Task Force" to advise on reforms and prepare an annual report for the EU institutions.

4.2.4. Streamlining legislation and improving access thereto

In the progress report in the area of improved regulation which was presented during the Greek Presidency of Council of the European Union by the ad-hoc group of experts on Better Regulation[185], reference is made to the SLIM (Simpler Legislation for the Internal Market) initiative with regard to a simplification of the regulatory environment. Particular emphasis is placed on the fact that this only relates to the common internal market and, consequently, other aspects of simplification are disregarded.

At the eleventh meeting of Ministers responsible for public administration in EU Member States which took place in Rome in December 2003 within the framework of the Italian Presidency of Council of the European Union, above all, the need for improved co-operation ("streamlining of regulations and procedures"[186]) was taken into consideration with regard to simplification.

The priorities for 2004 and 2005 were formulated in a joint initiative of the Irish, Dutch, Luxembourg and UK Presidencies on regulatory reform during the Irish Presidency of Council of the European Union. Simplification was also considered in this connection, especially with regard to the economic effects: "A timetable should be agreed by Council and Commission for a targeted process of simplification during 2004/2005, including in the environmental and social areas. This process should focus on areas where the impact in terms of the burden on business and competitiveness is greatest. The current simplification programme has the potential to contribute significantly to reducing the negative economic impact of regulation, including through consolidation and codification."[187] Simplification is then particularly effective where it reduces administrative costs and raises companies' competitiveness.

In a follow up[188] to the General Affairs Working Group regarding the Interinstitutional Agreement on better lawmaking, as regards simplification, it was simply decided that Council should ask the Commission to specify "what simplification means in substance." That makes it clear that, in future, this involves the setting of simplification priorities first and foremost. The working group also dealt with the transparency of the legislation and improving the way citizens are informed: "Work is ongoing in Council on enhancing transparency. Access to Internet video is under active consideration. While such a system is technically feasible, cost effectiveness remains an issue. A

[184] Luxembourg Presidency of Council of the European Union, Work programme of the Luxembourg Presidency of Council, Brussels, January 2005, p. 9.
[185] Ad-hoc Group of Experts on Better Regulation / Greek Presidency, Report to the Ministers responsible for Public Administration in the EU Member States on the progress of the implementation of the Mandelkern Report's Action Plan on Better Regulation, Athens, May 2003.
[186] Italian Presidency of Council of the European Union, 11th Meeting of European Ministers responsible for Public Administration in Rome. Resolutions, Rome, December 2003, p. 4.
[187] Irish Presidency of Council of the European Union/Ministry of Finance/HM Treasury, Joint Initiative on Regulatory Reform. An initiative of the Irish, Dutch, Luxembourg and UK Presidencies of the European Union; January 2004.
[188] Council of the European Union 9173/04, May 2004.

satellite system managed by EbS ("Europe by Satellite") is currently active and allows the transmission of all or part of Council debates held in public."[189]

In addition to the 2004 Spring Council, the High Level Group on Competitiveness and Growth emphasised the competitiveness dimension of impact assessments[190] and had a competitiveness test model developed by an informal working party: "The conclusions of the March 2004 Spring European Council welcomed the Commission's commitment to further refine the integrated impact assessment process, working with Council and the European Parliament within the framework of the Interinstitutional Agreement on better lawmaking, with particular emphasis on enhancing the competitiveness dimension. Moreover, the conclusions adopted by the Competitiveness Council at its May session called for consideration in September 2004 of how Council will contribute to enhancing the competitiveness dimension of the integrated impact assessment process on the basis of inputs from Member States."

In Council conclusions (on competitiveness) to its meeting of 17/18 May 2004[191], a whole range of elements concerned with Better Regulation (simplification, impact assessments and, therein, particular emphasis on the competitiveness dimension and the administrative burden on business, indicators, enterprise consultation, timely transposition of EU law) were commented on. The Council of the European Union committed itself "to consider priority areas for simplification in September, with a view to agreement before end 2004, drawing on all policy areas and building on work already under way in Member States and at EU level, in particular the Commission's rolling programme for up-date and simplification; and to examine options for future priorities".[192] In addition, the Commission was invited "to examine possible use of the results of the research project on ex post evaluation of Community legislation and its burdens on business, and the results of the current study involving Member States and the Commission on the cumulative burden of legislation in the automotive sector for the process of identifying areas of legislation for simplification".[193]

In September 2004, the Chairman of the Permanent Representatives Committee presented a progress report on the simplification of legislation in which Member State proposals regarding simplification were analysed.[194] Seventeen Member States had sent specific proposals: Belgium, Denmark, Germany, Estonia, Spain, Ireland, Cyprus, Latvia, Luxembourg, Hungary, the Netherlands, Austria, Poland, Portugal, Slovenia, Sweden and the UK. Another three Member States - France, Italy and Finland - were almost ready to submit contributions. In excess of 200 concrete simplification proposals were submitted.

An initial analysis of these proposals showed that they cover almost all the different aspects of simplification. It is pointed out that the implementation of legislation causes difficulties for the following reasons: ongoing changes, overlapping or contradictory requirements and potential legal uncertainty as a result of contradictory definitions and terminology. In other instances, the administrative costs and the costs of implementation and enforcement appear out of all proportion in relation to the advantages that the Community legislator is pushing for. The following simplification measures were mentioned in particular in the proposals submitted by the Member States:

- the codification and consolidation of legislation (above all, in the transport sector);
- the cutting back of requirements with regard to reporting and the transmission of information (above all, in the sphere of statistics);
- reducing over-regulation and avoiding an accumulation of legislation (above all, in the area of electronic business transactions);
- regulations of exceptions for certain types of enterprise or activity (above all, in the social and environmental protection spheres);

[189] Council of the European Union, 9173/04, May 2004.
[190] Council of the European Union, 10688/04, July 2004.
[191] Council of the European Union, 9995/04, June 2004.
[192] Council of the European Union, 9995/04, June 2004, p. 6.
[193] Council of the European Union, 9995/04, June 2004, p. 7.
[194] Council of the European Union, 12339/04, September 2004.

- regulations governing access to European programmes (structural funds and education).

The proposals from the Member States covered a wide range of legislative areas, focusing, in particular, on transport, statistics, the environment, agriculture, fisheries, electronic business transactions and financial services.

On 20 October 2004, the High Level Group on Competitiveness and Growth met in order to examine, on the one hand, the proposals for priority simplification areas and, on the other, to put forward concrete simplification proposals in the form of illustrative examples from these areas. It was assumed in this connection that the political objectives of the legislation in question should not be jeopardised as a result of simplification. At the end of the discussions, there was a broad consensus within the group regarding the priority areas while opinions differed slightly as regards the choice of examples. It was agreed to propose the following areas as priorities:[195]

- the environment
- statistics
- transport
- and - with the reservations of several delegations - electronic business transactions.

At Council Meeting in November 2004, a list containing 15 priorities for the simplification programme was adopted on the basis of more than 350 proposals put forward at that time.[196] Moreover, Council emphasised that there is a clear need to codify legislative acts, especially in the transport sector, and invited the Commission to include this sector in the next phase of its codification programme. With the other procedures, first and foremost, the competitiveness aspect should be brought into focus.

In a joint statement dated 7 December 2004, the Finance Ministers of the Irish, Dutch, Luxembourg, UK, Austrian and Finnish Council Presidencies of Council of the European Union stipulated the focal points for further legislative reform in Europe for 2004 and 2005. In this regard, simplification, and not just the quality of the legislation, also played an important role. This process should be continued.

The Luxembourg Presidency of Council of the European Union emphasised the simplification aspect, inter alia, in its work programme of 5 January 2005: “The Luxembourg Presidency intends to continue the work started a year ago in the area of what is commonly referred to as ‘Better Regulation’. It will begin by focusing on the legislative simplification of the acquis and the impact assessment of legislation in preparation and/or under negotiation. The Netherlands Presidency has completed a preliminary exercise involving the identification and proposal of simplification measures. Member States are expected to be consulted on a new list of simplification proposals during the first half of 2005.”[197]

4.2.5. Effective structures

At the eleventh meeting of Ministers responsible for public administration in EU Member States which took place in Rome in December 2003, the following proposal was put forward with regard to the organisational support for Better Regulation at EU level: “The Ministers of Public Administration reaffirm their wish for the setting up of an ad-hoc horizontal working party on Better Regulation reporting to Council, through Coreper, in accordance with Article 207 of the Treaty, with a view to assisting in the follow-up of the Commission’s Action Plan ‘Simplifying and Improving the Regulatory Environment’.”[198]

In 2003, the Hellenic, Italian, Irish and Dutch Presidencies of Council of the European Union put forward a whole raft of proposals for structural improvements in the field of Better Regulation in its

[195] Council of the European Union, 13836/04, October 2004.
[196] Council of the European Union, 15017/04, November 2004.
[197] Luxembourg Presidency of Council of the European Union, Work programme of the Luxembourg Presidency of Council, Brussels, January 2005, p. 9.
[198] Italian Presidency of Council of the European Union, 11th Meeting of European Ministers responsible for Public Administration in Rome. Resolutions, Rome, December 2003, p. 4.

Mid Term Programme for Co-operation in Public Administrations.[199] Furthermore, in accordance with this, co-operation in the sphere of public administration should be organised on three levels:[200]

1. *Ministerial level* (meetings of Ministers responsible for public administration);
2. *"Director" level*: (Directors General for public administration, the DEBR Group, meetings of school and public administration institution directors);
3. *Working party level*.

The Directors General responsible for public administration should implement procedures and solutions, inter alia

- to improve co-ordination and the role of the Troika so as to facilitate better planning during different Council Presidencies and
- to strengthen the use of electronic media in communication between network members and between the network and citizens.

To implement these activities, sub-groups may be established where appropriate: "For some issues, it will be possible for Directors General to set up sub-groups composed of delegates of the countries most interested in the individual issues. Sub-groups will report to the correspondent Working Groups".[201]

In a joint statement dated 7 December 2004, the Finance Ministers of the Irish, Dutch, Luxembourg, UK, Austrian and Finnish Presidencies stipulated the focal points for further legislative reform in Europe for 2004 and 2005. In this connection, reference was also made to the possibility of establishing a task force: "Within the context of improved consultation, strengthen business input into the process of regulatory development and reform, for example, by considering the establishment of a new task force to provide input for the institutions in assessing progress and to identifying areas where further reform is needed. Many Member States have already developed mechanisms for allowing those who bear the costs of regulation to inform and provide advice as part of the regulatory process. We believe there is scope for considering these innovations at the European level. Responsibilities of such a task force could include providing an additional perspective on the quality of impact assessment at the European level, identifying areas of existing legislation which impose unnecessarily high economic or compliance costs, and preparing an annual report for Council, the European Commission and the European Parliament on their view of progress to date and priorities for future action, including for simplification."[202]

The joint initiative of the Irish, Dutch, Luxembourg and UK Presidencies of Council of the European Union concerned with regulatory reform proposed the establishment of a horizontal Council working party on Better Regulation as a priority for 2004 and 2005. This working party should support the implementation of the Action Plan "Simplifying and improving the regulatory environment" (2002) and promote the quality of the impact assessments. "The existing informal network amongst Member States, the Directors and Experts of Better Regulation, should continue to work to promote and monitor progress on Better Regulation amongst Member States, and to share experience and best practice with the new Member States in particular. In addition, during its Presidency, Ireland will host an expert seminar on the contribution of Better Regulation to competitiveness and economic performance. The Netherlands will, during its own presidency, organise a high level conference on 'Better Regulation', with particular attention to elements of the Action Plan such as the simplification programme."[203]

[199] Hellenic, Italian, Irish and Dutch Presidencies of Council of the European Union, Mid Term Programme 2004-2005 for Co-operation in Public Administrations, Rome, December 2003.
[200] Ebd., p. 13.
[201] Ebd.
[202] Luxembourg Presidency of Council of the European Union, Work programme of the Luxembourg Presidency of Council, Brussels, January 2005, p. 10.
[203] Irish Presidency of Council of the European Union/Ministry of Finance/HM Treasury, Joint Initiative on Regulatory Reform. An initiative of the Irish, Dutch, Luxembourg and UK Presidencies of the European Union; January 2004.

4.2.6. Transposition of Community law

Since the Mandelkern Report, the requirement for improved and more rapid transposition of EU law in the Member States has gained importance on the part of the Commission. However, there are hardly any references to this topic in Council documents.

In a follow up[204] to the General Affairs Working Group regarding the Interinstitutional Agreement on better lawmaking, the question of the transposition of EU law in the Member States was considered. Reference was made in this connection to the fact that the Interinstitutional Agreement makes provision for a time limit as regards implementation and the nomination of transposition co-ordinators in the Member States. These co-ordinators could meet every six months and focus, first and foremost, on the development of common best practices.

4.2.7. Reducing administrative burdens and regulation quality indicators

Over and above the Mandelkern Report, Council underlines, in particular, the reduction in administrative burdens - within the framework of simplification - and an increase in the quality of the regulations, inter alia, through the development of indicators and participation by Member States.

In a joint statement dated 7 December 2004, the Finance Ministers of the Irish, Dutch, Luxembourg, UK, Austrian and Finnish Presidencies stipulated the focal points for further legislative reform in Europe for 2004 and 2005. Several new points were mentioned in this connection under the key words “Strengthening the regulatory framework”, including the quality control of the regulatory impact assessments: “(…) develop external quality control arrangements for identifying, ex post, good and bad practice in impact assessment by the institutions and highlighting where assessments do not meet the standard required. It is right that those designing and developing policy proposals are responsible for assessing their burden and for presenting options which achieve stated goals at minimum economic cost. But for this to work effectively, and for there to be a high degree of external credibility in the policy-making process, there must be clear accountability for the quality of this assessment. The six Presidencies commit to explore the range of options available for establishing such arrangements. In addition, Member States, working together in Council, have a clear role to play in assessing the quality of impact assessments produced alongside regulatory proposals, and as consecutive Presidencies we will ensure that such scrutiny is given priority.”[205]

In Council conclusions (on competitiveness) to its meeting of 17/18 May 2004, a whole range of elements concerned with Better Regulation (simplification, impact assessments and, therein, particular emphasis on the competitiveness dimension, the administrative burden on business and the development of indicators regarding the quality of legislation) were commented on.[206] The Council asked the Commission to develop, in co-operation with Council, a method for assessing the administrative burden on business, taking into account the experience acquired by Member States. Moreover, the Commission was asked to continue its work with regard to the development of indicators regarding the quality of legislation in agreement with the Member States. Since then, Council has supported the dissemination of a common European methodology based on the Standard Cost Model (SCM).[207]

4.3. Parliament: Analysis of the documents pertaining to Better Regulation

4.3.1. Legislative alternatives

The Committee on Economic and Monetary Affairs took up the theme of utilising legislative alternatives in its opinion on the Commission communication on simplifying and improving the

[204] Council of the European Union 9173/04, May 2004.
[205] Luxembourg Presidency of Council of the European Union, Work programme of the Luxembourg Presidency of Council, Brussels, January 2005, p. 9.
[206] Council of the European Union, 9995/04, June 2004.
[207] Council of the European Union, 13017/04, October 2004.

regulatory environment of May 2002.[208] The Committee emphasises therein "that the introduction of co-regulation with the aim of making Community law more flexible and efficient should not interfere with Parliamentary legislation. It considers co-regulation for selected, precisely defined areas as being worthy of support in principle but considers a call-back procedure necessary in all instances, this necessitating a change to Article 202."[209] [210]

In the resolution adopted in May 2003 on environmental agreements at Community level within the framework of the Action Plan on the simplification and improvement of the regulatory environment[211], Parliament deals in greater detail with the use of voluntary regulatory instruments (self-regulation and co-regulation) for the environmental policy area. Parliament considers "that the use of environmental agreements may be a useful alternative and/or complement to legislative measures where they bring improvements of equivalent or broader scope than those achievable by means of traditional legislative instruments."[212] It agrees with the distinction made by the Commission between the two models of environmental agreement (self-regulation and co-regulation). Parliament does call on the Commission, however, to define a clear set of criteria for determining the choice between these two instruments. Parliament stresses "that traditional legislative instruments must continue to be the normal means of achieving the environmental policy objectives laid down in the Treaties."[213] As in its resolution of 13 March 2003 on the Commission communication "Consumer policy strategy 2002-2006"[214], where environmental agreements are chosen as a supplement to legislative measures, Parliament speaks out in favour of co-regulation, since this would allow both the European Parliament and Council to be involved in the stipulation of the objectives and would ensure open and transparent processes. It requests that the Commission should refrain from concluding or recognising any environmental agreements (self-regulation or co-regulation) whenever the legislator is not in favour of such agreements being concluded. The prerequisites for the conclusion of an environmental agreement are as follows:

- *Impact assessment*: The decision to make use of a voluntary instrument rather than a legislative act should be based on a comparative analysis of the potential impact of the two instruments in environmental, economic and social terms and in terms of administration costs.
- *Definition of the objectives*: Every voluntary instrument should indicate clear, quantified and measurable objectives, as well as the deadline for achieving them.
- *Representativeness*: The use of a voluntary instrument presupposes participation in, and commitment to, honouring the agreement on the part of a vast and representative majority of operators in the sector (so as to rule out the risk of "free riding").
- *Consultation and involvement of civil society*: All the parties involved should be notified regarding the intention to make use of a voluntary instrument and should be able to formulate observations at any stage in the procedure. They should also
- be told about the conclusion of the agreement and the results of the monitoring thereof.
- *Mechanisms for monitoring, assessment and penalties*: Monitoring and assessment mechanisms and possible penalties in the event of the agreement being a failure should be clearly defined. If the results achieved do not meet the agreed objectives, the legislator may ask the Commission to submit a legislative proposal to replace or supplement the environmental agreement.

Parliament endorses the Commission's approach of assessing those sectors in which voluntary agreements should be used on a case by case basis.[215]

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[208] P5_TA (2002) 0443, May 2002.
[209] Article 202 of the EC Treaty provides that Council (as a legislative body) confers implementing powers on the Commission (as an executive body). The Council may also reserve the right, however, in specific cases, to exercise directly implementing powers itself.
[210] P5_TA (2002) 0443, May 2002.
[211] P5_TA (2003) 0205, May 2003.
[212] Ebd.
[213] Ebd.
[214] P5_TA (2003) 0100, March 2003.
[215] P5_TA (2003) 0205, May 2003.

In subsequent documents, the emphasis is on increased Parliamentary participation when using alternative instruments. In the European Parliament resolution on the conclusion of an Interinstitutional Agreement between the European Parliament, Council and the Commission on better lawmaking[216] from October 2003, Parliament is of the opinion "that it must commit itself not to adopt legislative acts which require implementing measures taken in accordance with the co-regulation procedure that do not expressly include the monitoring and call-back provisions provided for in number 18 of the agreement. It reserves the right, pursuant to Article 230 paragraphs 2 and 3 of the Treaty, to institute proceedings before the Court of Justice if a legislative act adopted in accordance with the self-regulation procedure impairs the powers of the legislative authority and hence, also those of Parliament."[217]

In the third report published in February 2004 regarding the communications from the Commission on simplifying and improving the regulatory environment[218], the Committee on Legal Affairs and the Internal Market is also in favour of increased Parliamentary participation in the areas of co-regulation and self-regulation, in particular as regards:

- the right to be consulted as a matter of course if the Commission considers self-regulation advantageous; and
- the right to suspend the application of any voluntary agreement that is not accepted by Parliament once and for all.

Both these points are included in the resolution on the communications from the Commission on simplifying and improving the regulatory environment of March 2004.[219] Parliament's right to ask the Commission to submit a proposal for a legislative act within the framework of the latter examining self-regulation practices is emphasised.

In summary, it may be concluded that Parliament's main concern is to safeguard its own influence and it is therefore also in favour of co-regulation, since this would allow the European Parliament to participate in defining the objectives.

4.3.2. Impact assessment

In its opinion on the communication from the Commission on simplifying and improving the regulatory environment of May 2002[220], the Committee on Economic and Monetary Affairs gives consideration to the impact assessment instrument. The Committee welcomes the Commission's commitment to establish a coherent method for impact assessments which ensures that all important proposals are assessed in terms of their economic, social and environmental effects. According to the area of jurisdiction of the Committee on Economic and Monetary Affairs, its opinion deals in particular with the competitiveness of European enterprises and economic growth. It stresses "that an impact assessment should concentrate on economic consequences as a matter of priority in order to raise the competitiveness of European enterprises and make a contribution to economic growth and job creation."[221] In principle, the Committee welcomes the fact that draft proposals are to be examined within the framework of a preliminary assessment. It does point out, however, that this measure could prove counter-productive since it may lead to more bureaucracy and lengthy processes. It therefore emphasises in this connection that the Community's legislative procedure should not be excessively delayed, nor should there be any resultant restriction on the Union's power to act.

In its resolution on the outcome of the European Council Meeting (Brussels, 20/21 March 2003) which was adopted in March 2003[222], Parliament requests that all major draft legislation should be subject to a rigorous impact assessment.

The use of impact assessments is again dealt with in the European Parliament's resolution on environmental agreements from May 2003.[223] These should play an important role when using

[216] P5_TA (2003) 0426, October 2003.
[217] Ebd.
[218] A5-0118/2004, February 2004.
[219] P5_TA (2004) 0155, March 2004.
[220] P5_TA (2002) 0443, May 2002.
[221] P5_TA (2002) 0443, May 2002.
[222] P5_TA (2003) 0127, March 2003.

voluntary regulatory instruments. The decision to make use of a voluntary instrument rather than a legislative act should be based on a comparative analysis of the potential impact of the two instruments in environmental, economic and social terms and in terms of administration costs.

As regards the qualitative effects of the introduction of impact assessments, the following aspects are commented on in Parliament resolutions on the Commission reports on better lawmaking 2000, 2001[224] and 2002[225] as well as on the legislative and work programme 2004:[226]

- The impact assessments give predominant coverage in favour of the economic effects. The social and environmental impacts should be considered more carefully, in particular when the Commission puts forward initiatives to liberalise economic activities further.
- Adherence to the principles of subsidiarity and proportionality should be clarified in greater detail.

In the resolution on European Governance from December 2003[227], the European Parliament points to the fact "that the introduction of an ex ante impact assessment ('citizens' criterion') as a non-legal instrument for assessing the social, environmental and economic impact of legislative proposals on people's everyday lives can be a good way of placing members of the public at centre-stage in the European policy-making process."[228]

In March 2004, Parliament published a report on assessment of the impact of Community legislation and the consultation procedures[229] in which the Committee on Legal Affairs and the Internal Market is in favour of giving greater consideration to the effects of regulation on competitiveness, administrative burdens and the impact on SMEs. The concrete recommendations made in this regard are reflected in the European Parliament resolution adopted in April 2004 on assessment of the impact of Community legislation and the consultation procedures.[230] The most important points of the resolution are summarised below:

- "Parliament notes that the impact assessment method used hitherto has not supplied any information that has been helpful in assessing the consequences and costs of proposed Community legislation. It therefore welcomes the Commission's initiative to adopt a systematic impact assessment approach with new legislation;
- defines impact assessment as a straightforward mapping out of the consequences on social, economic and environmental aspects as well as a mapping out of the policy alternatives that are available to the legislator in that scenario;
- points out that impact assessment is a means by which to improve legislation and also considers that an impact assessment is in no way a substitute for the democratic decision-making process;
- 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 European Parliament and Council amendments which will have a substantial impact on social, economic and environmental aspects."[231]

  Parliament therefore proposes the following procedure to that end:
  1. the carrying out of a global cost estimate for every legislative proposal,
  2. the stipulation of a cost threshold above which a rigorous impact assessment should be carried out,
  3. the implementation of the impact assessment in all three EU institutions,
  4. the establishment of auditing offices in Council, Parliament and the Commission.

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[223] P5_TA (2003) 0205, May 2003.
[224] P5_TA (2003) 0143, April 2003.
[225] P5_TA (2004) 0113, January 2004.
[226] P5_TA (2003) 0585, December 2003.
[227] P5_TA (2003) 0540, December 2003.
[228] P5_TA (2003) 0540, December 2003.
[229] A5-0221/2004, March 2004.
[230] P5_TA (2004) 0291, April 2004.
[231] P5_TA (2004) 0291, April 2004.

The European Parliament resolution on the Commission's legislative and work programme for 2005[232] again took up the problems of impact assessment. Parliament welcomed the commitment by the Commission regarding the effective application of the impact assessment process envisaged in the Interinstitutional Agreement on better lawmaking for all legislative measures of substance. Parliament is convinced that early agreement on a common methodology for impact assessments between the three institutions would represent a significant step forward.

In summary, it may be concluded that Parliament supports a systematic impact assessment as regards new legislation, in which connection greater consideration should be given to the administrative burdens.

4.3.3. Consultations

In its resolution on the Commission White Paper on European Governance from November 2001[233], Parliament examined the problem of consultation in greater detail. Parliament welcomes the White Paper's proposals contained therein on the further development of consultation practice within the EU and the establishment of an efficient, transparent and open culture of consultation and dialogue. It emphasises, in particular, the need to rationalise the number of existing consultation forums with the Commission and to list all existing Commission consultation committees with a view to improving transparency. It makes reference to the fact that certain projects such as "Online consultation regarding the interactive policy shaping initiative"[234] include the risk of "consultation inflation" and that such a development would be incompatible with the objective also cited in the White Paper of "shortening the lengthy periods of time required to transpose Community regulations."[235] On the basis of these considerations, Parliament observes that:

- the "organised civil society", although important, is inevitably sectoral and cannot therefore be regarded as having its own democratic legitimacy;[236]
- the consultation of interested parties with the aim of improving draft legislation can only ever supplement and can never replace the procedures and decisions of legislative bodies which possess democratic legitimacy;
- early consultation of the EESC by the Commission can be seen as a way of increasing participatory democracy at Union level;
- the Commission, in conjunction with the EESC, must find organisational structures so that a procedure for consulting interested parties can be conducted in a meaningful and efficient manner.

The following proposals have been made:

- The conclusion of an Interinstitutional Agreement on democratic consultation committing all three institutions to commonly agreed consultation standards and practices at Union level;
- improved access: access to legislation is an important part of effective participation and consultation, so that legislation must be both consistent and clear, access thereto must be practical, and there must be better understanding of laws by those concerned;
- the Commission's commitment to attach, in future, to each legislative proposal, a list of all the committees, experts, associations, organisations and institutes consulted when the proposal was drafted;
- regions and local authorities should involve themselves much more in consultative work in the pre-legislative phase as well as in post-legislative monitoring of the effect of such legislation on the ground;

[232] P6_TA-PROV (2005) 0053, February 2005.
[233] A5-0399/2001, November 2001.
[234] COM (2001) 428 final, July 2001.
[235] Ebd.
[236] Cf. the resolution of 26 October 2000 (better lawmaking, 1998 and 1999), OJ C197 of 12 July 2001, pp. 433-436.

- the development of a dialogue with associations of municipalities should result in municipalities and local authorities being consulted on all Commission plans that affect their interests.

The inclusion of regional and local authorities is also emphasised in the European Parliament resolution on the role of regional and local authorities in European integration[237] which was adopted in January 2003. Here, Parliament proposes giving the Committee of the Regions the right to appeal to the Court of Justice in the event of a presumed violation of the subsidiarity principle or to safeguard its rights.

The Committee on Economic and Monetary Affairs takes up the theme of consultation in its opinion on the communication from the Commission on simplifying and improving the regulatory environment of May 2002.[238] It is of the opinion that increased consultation, as proposed by the Commission, could prove counter-productive since it may lead to more bureaucracy and lengthy processes. Parliament has already made reference to this risk in its resolution on the Commission White Paper on European Governance of 29 November 2001.[239] It therefore emphasises in this connection that the Community's legislative procedure should not be excessively delayed, nor should there be any resultant restriction on the Union's power to act.

In its resolution on environmental agreements at Community level within the framework of the Action Plan on the simplification and improvement of the regulatory environment of May 2003[240], Parliament stresses the importance of consultation and the involvement of civil society in the context of using voluntary regulatory instruments to achieve environmental objectives. Hence, all participants must be informed regarding the intended use of voluntary instruments and have the option of giving an opinion during all stages of the process. In addition, the parties concerned must be notified regarding the conclusion of an agreement and the results of the corresponding monitoring. To this end, all the information connected with the agreement and its monitoring shall be made available via the Internet.

In December 2003, Parliament published a resolution on European Governance[241] in which it again examines in greater detail the problems of consultation. It points to the fact that it expects the Interinstitutional Agreement on better lawmaking to enter into force without delay, in particular the agreements on consultation preceding presentation of legislative proposals and the associated provision of information for the European Parliament and Council. The most important points of the resolution are summarised below:

Parliament is of the opinion that:

- the improvement of the bond between citizens and the European Union's institutions should be achieved primarily by increasing Parliament's legislative powers, through uniform electoral legislation to provide increasingly direct communication between Members of the European Parliament and their voters and by means of genuine transparency in the work, sessions and proceedings of Council, at least as far as its legislative function is concerned;
- the consultation of third parties by the Commission should take place in a transparent and efficient manner in order not to slow down the legislative process and in order to guarantee openness;
- the implementation of the Commission's framework for consultation be dealt with in the annual report on "better lawmaking";
- the conclusion of an Interinstitutional Agreement laying down minimum rules for consultations for all institutions would be even more effective;
- the Commission, in the collection and use of expert opinions, must ensure compliance with the duty of responsibility, pluralism and the integrity of experts who have been consulted;

[237] OJ C38E of 12 February 2004, pp. 167-171. Cf. also the European Parliament resolution on the division of competencies between the European Union and the Member States, OJ C180E, pp. 493-499.
[238] P5_TA (2002) 0443, May 2002.
[239] A5-0399/2001, November 2001.
[240] P5_TA (2003) 0205, May 2003.
[241] P5_TA (2003) 0540, December 2003.

- during the consultation process, the knowledge of the Economic and Social Committee and the Committee of the Regions should always be utilised;
- the co-operation protocols which the Commission has concluded with the Committee of the Regions and the Economic and Social Committee should be put to use correctly and as often as possible;
- furthermore, more frequent use should be made of Articles 262 and 265 of the EC Treaty which provide for consultation of these committees;
- the minimum standards which the Commission proposes and the three basic principles applied in this connection - openness, effectiveness and quality - may be a good step towards greater harmonisation and clarity of the use of experts;
- the added value of experts as a source of information during the legislative process shall be recognised; however, the evidence and the way in which it is used in the legislative process should be published so as to inform the European Parliament about how fundamental policy choices are made;
- a list of all committees, experts, associations, organisations, institutions and other parties consulted for the purpose of drafting those documents should be attached to each legislative proposal or communication;
- the Commission should maintain a constant dialogue also with representatives of local and regional authorities during the preparatory stage in order to increase the practicability and acceptance of legislation at an early stage;
- a more systematic consultation procedure between the Commission and representatives of the relevant European organisations should take place at an early stage when the Commission submits initiatives.

In summary, it may be concluded that Parliament supports the conclusion of an Interinstitutional Agreement for consultation standards as well as a transparent consultation practice on the part of the Commission. It stresses that a consultation of this nature must not replace Parliamentary democracy which is based on the role of the European Parliament and Council as co-legislators.

4.3.4. Streamlining legislation and improving access thereto

The need for clear, precise, simple and effective Community regulations is still crucial: on a daily basis, it profoundly affects the Community institutions, the Member States, businesses, and, most of all, citizens.[242]

In the resolution to the communication from the Commission regarding a review of SLIM: Simpler Legislation for the Internal Market[243], the European Parliament requests more structured co-operation in the area of streamlining and improving the quality of legislation between the Commission and the Member States; an annual survey of best practices in the area of streamlining and improving the quality of legislation in the Member States can contribute to this.[244] Parliament emphasises that complicated streamlining measures may be superfluous if consideration was given to the adoption of high quality legislation from the outset, with a clear interpretation of the administrative and financial consequences, and therefore takes the view that both it and Council must display the necessary political determination, thereby ensuring that the legislation is unambiguous and straightforward when published by the Community institutions.[245] The European Parliament recognises that it must contribute to simpler and better lawmaking and that through its proposed amendments, it may not necessarily improve the quality of a legal text but complicate it further.

[242] A5-0118/2004, February 2004.
[243] OJ C262 of 18 September 2001, pp. 45-47.
[244] Ebd.
[245] Ebd.

In its opinion to the communication from the Commission on simplifying and improving the regulatory environment of May 2002[246], the Committee on Economic and Monetary Affairs states that previous efforts on the part of the EU with regard to the improvement and simplification of legislation have only produced very modest results. The Committee criticises the vagueness of the proposals made in the communication and points out that it is crucial that the current initiative on simplifying and improving the regulatory environment produces concrete measures and measurable results (questions: how are these proposals to be implemented effectively in practice? Is the objective of reducing the volume of existing legal texts by 25% by January 2005 realistic?). The Committee on Economic and Monetary Affairs has spoken in favour of avoiding further goodwill schemes in any event, the sole success of which lies in creating even more texts, (advisory) committees and processes. As mentioned in a previous opinion from the Committee on Economic and Monetary Affairs regarding the SLIM initiative, simplification must be cost effective and should not lead to the establishment of new organisational and administrative structures. The Committee also requests that the Commission's proposal and its arrangement to withdraw proposals, were a compromise submitted by Council or the European Parliament to complicate the legal provision in question over and above the general principles, become constituent parts of the Interinstitutional Agreement to be drawn up regarding the simplification and improvement of the Community's regulatory environment.[247]

In its resolution on an information and communication strategy for the European Union which was published in April 2003[248], Parliament stresses the need to inform the public on European issues in a more active manner. It underlines in this context the importance of improved co-ordination and interinstitutional co-operation.

In its resolution on the Commission reports "Better lawmaking 2000 and 2001" from April 2003[249], Parliament is again dealing with the theme of simplification. The most important points are summarised below. Parliament:[250]

- points out that the requirement to produce high-quality legislation applies to the formal quality of texts as much as to their substance and that drafting laws more simply and clearly, in line with the principles of subsidiarity and proportionality, is a precondition for their being properly used by the citizens;
- aims to make legislative texts more comprehensible and easy to apply and to reduce their number and encourages the Commission and Council to do likewise;
- deplores the proliferation of preparatory documents issued by the Commission (Green Papers, White Papers, communications, reports and interpretative notes);
- calls on the Commission to take steps to speed up the simplification of Community law, particularly via the SLIM [Simplified Legislation for the Internal Market] initiative and to submit a complete codification programme with binding deadlines;
- welcomes the Commission's initiative to facilitate administrative preparations for enlargement by reducing the number of pages to be translated and encourages it to continue with this approach.

As regards better access to legislation, Parliament notes in its resolution on European Governance from December 2003[251] "that although the EUR-Lex portal has become more user-friendly and contains more documents, there is still not a single uniform on-line contact point for all institutions where members of the public can monitor the formulation of policy proposals throughout the whole decision-making process and calls on all the institutions, therefore, to combine the various internet sites to create a single portal."[252]

Parliament supports the Commission's proposal to reduce the volume of legislation by repealing legal acts and by means of a programme of consolidation and codification but notes, however, that

[246] P5_TA (2002) 0443, May 2002.
[247] P5_TA (2002) 0443, May 2002.
[248] P5_TA (2003) 0187, April 2003.
[249] P5_TA (2003) 0143, April 2003.
[250] Ebd.
[251] P5_TA (2003) 0540, December 2003.
[252] Ebd.

the reduction in the volume of legislation must not be achieved at the expense of the Community acquis, which forms an essential element in the present European Union.

At the same time as the resolution on European Governance, Parliament published a resolution on the Commission's legislative and work programme for 2004[253] in which it pointed to the need to reach agreement with the Commission in 2004 on an ad-hoc procedure governing the various stages in the preparation and presentation of the next legislative programme. Parliament takes the view that application of the Interinstitutional Agreement on better lawmaking will clear the way for wider-ranging co-ordination of legislative work among the three institutions and considers that Council should be involved in an interinstitutional legislative programme.

In its resolution on the outcome of the European Council Meeting (Brussels, 20/21 March 2003) which was adopted in March 2003, Parliament requested the rapid implementation of the Action Plan "Simplifying and improving the regulatory environment".

In its resolution on the Commission's legislative and work programme for 2005 from February 2005[254], Parliament is again dealing with the theme of simplification. In terms of content:

- Parliament calls for the full implementation during the coming year of the Interinstitutional Agreement on better lawmaking[255] and welcomes the commitment, in principle, by the Commission regarding the effective application of the impact assessment process envisaged in the Agreement for all legislative measures of substance;
- Parliament believes "that simplifying legislation and enhancing the quality of its drafting remain of paramount importance, expresses concern at the unambitious list of areas of legislation earmarked for the planned simplification process and, consequently, calls on the Commission to identify and accelerate its programmes for simplifying, recasting and consolidating existing legislation - first envisaged in the 2002 Action Plan for better lawmaking - in order to make EU legislation more coherent and to reduce the overall volume of texts in selected policy areas."[256]

In summary, it may be concluded that as far as Parliament is concerned, comprehensive co-ordination and interinstitutional regulation are to the fore. It emphasises the fact that there must be a material desire for simplification, instead of mere "goodwill schemes".

4.3.5. Effective structures

Parliament does not have its own agency (working party/committee) at its disposal which is concerned with better lawmaking.

In the resolution on assessment of the impact of Community legislation and the consultation procedures which was adopted in April 2004[257], Parliament proposes establishing auditing offices to monitor the impact assessment process. These should be established in all three EU institutions and have the task of supporting and supervising the implementation of cost and impact assessments. An independent institution which is not connected to the executive should monitor the implementation of impact assessments.

4.3.6. Transposition of Community law in Member States

In its resolution on the Commission White Paper of November 2001[258], Parliament deals with the theme of transposition of Community law in Member States. In terms of content:

- Parliament "points out that better lawmaking must become part of public administration 'culture' at all levels in the European Union, and must also encompass the implementation of laws and rules by Member State authorities; this will require effective and appropriate information and

[253] P5_TA (2003) 0585, December 2003.
[254] P6_TA-PROV (2005) 0053, February 2005.
[255] OJ C 321 of 31 December 2003, p. 1
[256] P6_TA-PROV (2005) 0053, February 2005.
[257] P5_TA (2004) 0291, April 2004.
[258] A5-0399/2001, November 2001.

training of officials, both at European level and at national, regional and local levels, in order to guarantee decentralised administration and 'Europe-friendly conduct' at all levels."[259]

- Parliament "calls on the Commission, in order to 'give priority to consideration of any infringements of Community law' - as it has expressed the intention of doing - not to hesitate in future to initiate measures possibly leading to proceedings for non-compliance before the Court of Justice of the European Community against Member States under Article 226 of the Treaty."[260]

In its opinion to the communication from the Commission on simplifying and improving the regulatory environment of May 2002[261], the Committee on Economic and Monetary Affairs makes reference to the responsibility of the Member States as regards the quality of the regulatory framework, taking account of the fact that they are responsible for transposing 90% of Community law and that the major part of the regulatory burden falls on the national and regional authorities. It welcomes the Commission's proposal of reviewing the possibility of a common strategy as regards the monitoring and practical application of Community law and eagerly awaits concrete proposals in this area.

In its resolution on the Commission's legislative and work programme for 2005[262] which was adopted in February 2005, the European Parliament supports the drive to ensure prompt and effective transposition, implementation and enforcement of EU directives in national law.It invites the Commission to come forward with a more ambitious approach for guaranteeing that Member States comply with and meet their obligations within the timeframe provided for in any given piece of legislation. Parliament underlines the importance of the petitions process as a source of information on faulty implementation and/or enforcement of EU law.

Target-based tripartite contracts and agreements

A frequently recurring theme in connection with improved transposition of Community law is the issue of the use of target-based tripartite contracts and agreements. Parliament dealt with this topic in its resolution on the communication from the Commission entitled "A framework for target-based tripartite contracts and agreements between the Community, the States and regional and local authorities" from December 2003 Parliament:

- "expresses its satisfaction that the Commission is carrying forward its proposal to embark on tripartite contracts and agreements, starting with tripartite agreements on a trial basis;
- accordingly welcomes the Commission's communication laying out a framework for these;
- exhorts the Commission to press ahead with its pilot programme in a number and range of cases sufficient to test in an adequately representative and rigorous way this proposed method for achieving flexibility in the means provided for implementing legislation;
- points out, however, by way of warning, that the conclusion of target-based tripartite contracts and agreements cannot, in any way, be allowed to jeopardise the binding nature or uniform application of Community law;
- considers that there is an urgent need to ensure that, in cases where target-based tripartite contracts and agreements are concluded, the political responsibility remains clearly recognisable to citizens."[263]

European regulatory agencies

Another topic which is talked about time and again in connection with the discussion of improved implementation and application of Community law is the creation of additional European regulatory agencies (cf. Section 3.2.2).

[259] A5-0399/2001, November 2001.
[260] Ebd.
[261] P5_TA (2002) 0443, May 2002.
[262] P6_TA-PROV (2005) 0053, February 2005
[263] P5_TA (2003) 0550, December 2003.

In its resolution on the Commission White Paper on European Governance of 29 November 2001[264], Parliament commented on the "autonomous regulatory authorities". It emphasised therein that the establishment of additional autonomous agencies requires specific scientific or technical expertise and that this must not lead to any reduction in expert and judicial scrutiny by the Commission or to any watering down of the Commission's political accountability vis-à-vis Parliament and Council. In its resolution on the typology of acts and hierarchy of legislation in the European Union which was adopted in December 2002[265], Parliament takes the view that regulatory power must be conferred on the Commission and, within the framework of their respective territorial responsibilities, on the Member States. The legislature shaped by Council and Parliament can, however, pass the task of laying down specific technical measures for transposing laws and acts on to a specialist agency or a self-regulatory body.

In its resolution on the communication from the Commission entitled 'The operating framework for the European regulatory agencies' from January 2004[266], Parliament calls on the Commission to define the framework conditions for the use of regulatory agencies by adopting a framework regulation which should be preceded by an Interinstitutional Agreement spelling out the relevant guidelines. As regards the establishment of these agencies, it stresses the suitability of a legislative act adopted in the co-decision procedure. It takes the view that the choice in favour of creating an agency must be justified in each case on the basis of an external cost-benefit assessment. Parliament also considers that the autonomy of the new agencies should be exercised under the direct supervision of the Commission and monitored politically by the European Parliament.

In summary, it may be concluded that Parliament emphasises the immediate and effective transposition of Community law in Member States. The conclusion of target-based tripartite contracts may not jeopardise the binding nature and uniform application of Community law. With regard to the instrument of implementation of the regulatory agencies, Parliament stresses the need to define the operating framework for the use of regulatory agencies.

4.3.7. Reducing administrative burdens

In its opinion on the communication from the Commission on simplifying and improving the regulatory environment of May 2002[267], the Committee on Economic and Monetary Affairs emphasises that, especially with regard to the fulfilment of the objectives set by the European Council at Lisbon, the burden borne by enterprises, and SMEs in particular, in complying with regulations must be reduced. An impact assessment should concentrate, first and foremost, on the economic consequences in order to raise the competitiveness of European enterprises and contribute to economic growth and job creation.

The Committee on Legal Affairs and the Internal Market dealt with the issue of reducing administrative burdens in its report on assessment of the impact of Community legislation and the consultation procedures [268] which was published in March 2004. The recommendations were taken up in a European Parliament resolution on the impact of Community legislation and the consultation procedures[269] which was adopted shortly afterwards.

The Committee on Legal Affairs and the Internal Market emphasises the need for a fundamental reduction in the overall administrative burden for European citizens and enterprises. "To this end, an overview must be drawn up of the entire European administrative burden."[270] Specifically, that legislation which entails a considerable financial burden for European enterprises should be subjected to an impact assessment." Every legislative proposal should be accompanied by a quantification by the competent officials in agreement with an independent auditing office which is subordinate to the Secretariat-General of the European Commission. Members of Parliament may present comprehensive proposed amendments, which represent a substantial burden on the

[264] A5-0399/2001, November 2001
[265] P5_TA (2002) 0612, December 2002
[266] P5_TA (2004) 0015, January 2004.
[267] P5_TA (2002) 0443, May 2002.
[268] A5-0221/2004, March 2004.
[269] P5_TA (2004) 0291, April 2004.
[270] A5-0221/2004, March 2004.

economy, to the parliamentary audit office to determine the administration costs. An independent institution checks the quantification and verifies whether the expected administrative burden could not be reduced by adapting the proposal or by means of alternatives. On the basis of the quantification, a decision can be taken as to whether a legislative proposal should be subjected to a rigorous impact assessment.[271]

In summary, it may be concluded that Parliament emphasises the need for a fundamental reduction in the administrative burden for European citizens and enterprises. It is in favour of that legislation which entails a considerable financial burden for European enterprises being subjected to an impact assessment.

4.4. The European Economic and Social Committee (EESC): Analysis of the documents pertaining to Better Regulation

Since October 2000, the EESC has submitted four relevant opinions on the theme of simplifying and improving the regulatory environment within the European Union.[272] References and requirements relating to "Better Regulation" can also be found here and there in other documents.

In its documents, the EESC emphasises the importance of simplification, improved legislation and better governance. The Committee's overriding concern is not a policy of deregulation but a policy of regulatory optimisation. As far as the EESC is concerned, it is not only a question of deciding between regulation and self-regulation but of effective, harmonised legislation. Inefficient, fragmented legislation at European and national level should be overcome.

The EESC largely agrees with the proposals contained in the Commission documents.[273] Given that the EESC's stance largely conforms to the Commission's proposals, a description, primarily, of the exceptional features and peculiarities of the EESC's opinions follows below.

4.4.1. Lawmaking alternatives

The EESC welcomes the proposals included in the White Paper entitled "European Governance", for example, regarding the increased use of other political instruments as legislative measures. The Committee is in favour of examining all lawmaking alternative measures even-handedly and reviewing their pros and cons on the basis of objective criteria.[274]The emphasis should not be put on individual, alternative instruments such as co-regulation from the outset. The Committee emphasises the usefulness of instruments such as self-commitments, voluntary agreements and the "open co-ordination" method. Before resorting to lawmaking, alternatives to this should first be sought. These may take the form of self-regulation, co-regulation or even non-regulation. Whether the option of self- or co-regulation can be considered for markets that have hitherto been regulated should also be investigated.[275]

Generally speaking, it is argued in relation to this report that there is no doubt that a detailed and all too prescriptive legislation is out of all proportion for a fast-moving market.

However, the EESC also points out that, as a result of the subsidiarity principle, EU regulations have been transposed in the Member States in different ways. As a result, distortions of competition have arisen on the internal market. Therefore, legislation should be formulated in such a way that it cannot be altered significantly at national or local level during the transposition process.[276] Consequently, legal regulations should be enacted instead of directives at European level. This goes hand in glove with the need for a centralising influence to help reduce the

[271] Ebd.
[272] EESC (2001), 16 January 2001, C14; EESC (2002), 21 February 2002, C48, EESC (2002), 27 May 2002, C125; EESC (2003), 6 June 2003, C133.
[273] EESC (2003), 6 June 2003, C133/12
[274] EESC (2002), 27 June 2002, C125/66.
[275] EESC (2002), 21 February 2002, C48, 130.
[276] EESC (2002), 21 February 2002, C48, 138.

disparities between the works of the Member States. For this, an independent committee along the lines of the Office of Regulatory Affairs in the USA is called for.[277]

4.4.2. Impact assessment

In its document dated 26 March 2003, the EESC calls, in particular, for the regular impact assessment process to be extended to the Commission's annual work programme.[278] The Committee emphasises the fact that it would like to be involved with the impact assessment.

Impact assessments should be carried out in relation to all legislative proposals. It has been observed that it is a fact that the impact assessments drawn up by the Commission are frequently rendered worthless as a result of changes introduced by the European Parliament or Council in relation to the legislative proposals. For this reason, it is essential that in both the European Parliament and Council, impact assessments are drawn up for all proposals for amendment which introduce new facts that were not considered in the original impact assessment and that these assessments at least adhere to the standards of the impact assessments presented by the Commission.[279] Moreover, the Committee requests that an independent committee be established to assist in the impact assessment. The EESC's idea is that a body outside the Commission should be entrusted with the analyses. The procedure is to be based on a systematic impact assessment of legislative acts; at the same time, effective consultation between the economic and social groups directly affected should be improved and the impact assessments made accessible to the public.[280]

The Committee is of the opinion that a major part of the Commission's proposals on "Better Regulation" should be transposed within the framework of an integrated process based on the principles of impact assessment.[281]

The Committee requests that the regulations have to be examined in terms of their feasibility over and beyond the principle of proportionality. The legislator must focus on the practical consequences of the proposed legislation on the day-to-day routine of enterprises and citizens.[282]

4.4.3. Consultations

The EESC welcomes the wide-ranging consultations at the preparatory stage of the legislative process. The Committee requires that civil society institutions (incl. the EESC) are consulted. This should not just relate to organisations which have European-level structures.

In the context of improved regulation, the Committee considers an extension of the timeframe required on account of consultations with regard to the legislative procedure justifiable.[283]

Ex post consultations are also called for. Whilst small enterprises, in particular, would not be able to make an adequate contribution in preparing the legislative procedures, they would be in a position to comment afterwards. The same applies to small and less well organised civil society institutions.

4.4.4. Simplification

The Committee emphasises that the theme of simplification has been on the European agenda time and again. By way of contrast, however, there are only the slightest signs of practical progress.[284] This particularly applies to the Community acquis. The EESC therefore calls for a codification procedure which would enable the Community acquis, which has approximately 85,000 pages, to be reduced by around 75%.

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[277] EESC (2002), 27 May 2002, C125/109.
[278] EESC (2003), 6 June 2003, C133/12.
[279] EESC (2003), 6 June 2003, C133/10.
[280] EESC (2003), 6 June 2003, C133/10; regarding the institutionalisation of an independent committee, see also EESC (2002), 21 February 2002, C 48/139.
[281] EESC (2002), 27 May 2002, C125/109.
[282] EESC (2002), 27 May 2002, C125/110.
[283] EESC (2003), 6 June 2003, C133/10.
[284] EESC (2003), 6 June 2003, C133/10.

According to the Committee, 90 percent of European regulations are national, regional or local regulations while approximately 10 percent are European regulations. Legal simplification must therefore encompass all levels.

In 2003, the Committee welcomed the Commission programme on updating and simplifying the Community acquis, which is associated with a review of the simplification requirement and a reduction in the scope of the acquis.[285] The success of the simplification initiative depends, inter alia, on the realisation and transposition of an effective partnership agreement between all participants at European and national level in the legislative process. It also depends on the intent displayed by the participants to make every effort to achieve the objectives set. Previously, the Committee had already requested that a high-ranking political personality should see to this in order to ensure the success of the simplification process. Only in this way can lethargy and inertia be overcome.

The Committee also requests that a reduction in the acquis be accompanied by clear performance targets (e.g. 20 percent in five years). In the context of simplification, the application of sunset legislation, i.e. the imposition of a time limit for all legislation, is proposed. In addition, SMEs are to be exempted from complying with certain legal provisions (or extracts of the same).

The objective of the simplification policy has to be a high degree of harmonisation and co-ordination between legislation in the Member States and at EU level.

4.4.5. Access

The Committee emphasises time and again that the legislation must be accessible by all parties to which it applies. In its opinion dated 6 June 2003, the Committee kindly notes in this regard the Commission's intention to facilitate accessibility to, and transparency of, Community regulations, for instance, in terms of extending public access to EUR-Lex and Internet discussion forums.[286] In its opinion dated 27 May 2002, the EESC refers to legal consolidation which is understood as non-legally-binding legislative wording in summary form. It is noted in this regard that the parties applying the law require a concise, coherent and straightforward yet, at the same time, also complete text, in the shortest possible timeframe. Since this legally consolidated text is not binding in law, however, preference is given to the codification and updating of the legal provisions.[287]

With regard to the consultation process, the Committee would welcome it if, at the time the legislative proposal is drawn up, the Commission would be required to publish a résumé of the reactions received from which the extent to which the contributions have been taken into account could be established.[288]

The Committee supports Council recommendation of making the impact assessments accessible to the public.[289]

4.4.6. Effective structures

The Committee supports networking with regard to improved regulation in a number of ways. For instance, it approves of the Commission's intention to establish an internal legislative network with a view to supporting processes, for example, and recognises, for its part, the need to create an interinstitutional network designed to look after the legislative quality of the texts.[290] Partnerships between the institutions must be realised, thereby enabling the simplification principles to be transposed.

The Committee has imposed the stipulation, however, that an independent, interinstitutional committee should be established to assist in impact assessment. It also requests that the changes made to a legislative draft by the European Parliament and Council of Ministers should be subject to an impact assessment as well. A committee is required to this end. It should be observed in this

[285] EESC (2003), 6 June 2003, C133/11.
[286] EESC (2003), 6 June 2003, C133/11.
[287] EESC (2002), 27 May 2002, C125/110.
[288] EESC (2002), 27 May 2002, C125/108.
[289] EESC (2003), 6 June 2003, C133/10.
[290] EESC (2002), 27 May 2002, C125/108.

connection that Council has instructed the Committee of Permanent Representatives to give due consideration to the appointment of a horizontal group on 'Better lawmaking' (…).[291]

The Committee also calls elsewhere for a special committee to monitor inspection of prevailing legal provisions and lay down guidelines for enacting new legislation. This committee should also carry out an ex post assessment of the repercussions of legislation and should be made up of representatives from the Commission, the national authorities and enterprises.[292]

4.4.7. More recent developments

The following should be emphasised as important, new developments:

- The requirement for impact assessments in the case of changes made to the legislative draft by Council and the European Parliament. With regard to the European Council, a cross-sectional committee is required to this end.
- Ex post consultations and reports pertaining to legal provisions are also required (keywords: retrospective impact assessment[293]).
- An analysis of the feasibility of legal provisions by the parties concerned is called for. This means that in addition to the ex ante impact assessments, further tests have to be carried out on the legislative draft (keywords: the checking and inspection of legislative drafts; accompanying regulatory impact assessment).
- The essential requirements of the theme of Better Regulation can be integrated in the impact assessment instrument.

4.5. The Committee of the Regions (CoR): Analysis of the documents pertaining to Better Regulation

In its documents, the Committee of the Regions emphasises time and again the importance of subsidiarity and notes that subsidiarity must be established in a stronger form.

The Committee welcomes the fact that through the reforms undertaken since 1996 and the Constitutional Treaty signed on 29 October 2004, almost all the requirements relating to the subsidiarity principle have been satisfied (ex ante and ex post system of checks regarding observance of the subsidiarity principle[294]) and stresses that, as a result of the changes to the Constitutional Treaty, it is moving from its previous mere advisory role to the legislative bodies of the European Union to a political supervisory body and is thereby approaching its objective of becoming a fully authorised European Union body.[295]

4.5.1. Lawmaking alternatives

Simplifying and rationalisation mechanisms are welcomed. Mention is made of co-regulation, self-regulation, voluntary co-operation and subsequent assessment of legislative acts. The Committee is in favour of aligning these with the "quality principle" of lawmaking. This would open up the possibility of appealing to the European Court of Justice.

Generally, the use of existing instruments that constitute an alternative to legislative acts is called for.[296]

The Committee would like to be involved when co-regulation instruments are applied. This method should only be applied in relation to technical standards and not extended to those areas where there is the need for democratic control.[297]

[291] EESC (2003), 6 June 2003, C133/11.
[292] EESC (2002), 21 February 2002, C48/131.
[293] Cf. in this regard: Böhret / Konzendorf, 2001.
[294] CoR (2003), 10 July 2003, p. 9; also: CoR (2002), 21 November 2002, p. 6.
[295] CoR (2005), 24 February 2005, p. 3.
[296] CoR (2002), 21 November 2002, p. 8.
[297] CoR (2002), 4 April 2002, p. 6.

4.5.2. Impact assessment

The Committee of the Regions points to the fact that the application of the subsidiarity principle means carrying out proactive checks in particular, something which should be regulated by the national and regional parliaments, so as to be able to give a critical analysis regarding whether a European legislative initiative is necessary in the first place.[298] In this connection, the Committee of the Regions calls on the national bodies to disclose which European Union proposals can be attributed to whose initiative. This should prevent a situation where the national bodies pass responsibility to the EU, thereby relinquishing responsibility vis-à-vis the electorate.

The introduction of a new impact assessment procedure for all large-scale European Commission initiatives is welcomed. It is stressed in this connection, however, that insufficient consideration is given to the impact on regional and local authorities.[299] The capacities for this must be increased.[300] The inclusion of the Committee of the Regions in impact assessment has been called for on a continuous basis.[301]

The Committee of the Regions proposes that the Commission stipulate a procedure in which both institutions determine jointly those priority European Commission proposals for the following year which necessitate a special check on subsidiarity as well as an impact assessment with regard to regional and local authorities.[302]

4.5.3. Consultations

An extension of consultations is being advocated on an ongoing basis in documentation drawn up by the Committee of the Regions. It therefore welcomed in 2003, for instance, the current consultation laying down the principles and procedures of a "territorial dialogue".[303] Above all, the role of the Committee of the Regions must be extended with regard to the consultations.[304]

In its 2005 documents, the Committee emphasises that

- the subsidiarity principle be extended to regional and local authorities;
- under the Constitutional Treaty, the European Commission is obliged, in the pre-legislative phase, to consult regional and municipal authorities extensively.
- the Committee, as the mouthpiece of the regions and municipalities, receives the right to institute proceedings in order to safeguard its rights before the European Court of Justice[305];
- the Committee receives an additional right to institute proceedings regarding adherence to subsidiarity. In this connection, the Committee points out that, unlike national parliaments, it is not bound by a six-week timeframe, although this period should be adhered to for measures that are politically successful;
- it is called on to deal with the European Commission's annual report regarding the observance of proportionality and subsidiarity;
- an early warning system is created for checking compliance with the subsidiarity principle at a political level.[306]

Over and above the agreements, the Committee requests that a check be carried out regarding

- whether a particular field has transnational aspects which cannot be regulated by the Member States or regional or municipal authorities;

[298] CoR (2005), 24 February 2005, p. 4.
[299] CoR (2005), 1 March 2005, p. 3.
[300] CoR (2002), October 2002, p. 76.
[301] CoR (2002), 18 December 2002, p. 6; for impact assessment, see also: CoR (2002), 21 November 2002, p. 4.
[302] CoR (2005), 24 February 2005, p. 9.
[303] CoR (2003), 10 July 2003, p. 4.
[304] CoR (2002), 18 December 2002, p. 4; for consultations, see also, for example: CoR (2002), 4 April 2002, p. 3; CoR (2002), 4 April 2002, p. 9, CoR (2002), 21 November 2002, pp. 4 and 7 *et seq*; CoR (2002), October 2002, p. 76 *et seq*.
[305] Cf. CoR (2002), 4 April 2002, p. 12.
[306] CoR (2005), 24 February 2005, p. 5.

- whether measures adopted by Member States alone, or by regional or municipal authorities alone, would contravene the requirements of the Treaty or the interests of Member States, regions or municipalities,
- whether measures taken at EU level would bring clear advantages compared with measures adopted by Member States, regions or municipalities.[307]

It therefore pushes for a more extensive examination of proportionality.

In addition, the Committee also requests that it be consulted well in advance of the legislative process and points out that this consultation could render proceedings before the European Court of Justice superfluous on the grounds of infringement of the subsidiarity principle.

4.5.4. Simplification

The Committee welcomes the measures taken by the European Commission regarding simplification of the acquis[308] and views such measures in connection with reducing unnecessary bureaucracy and the preservation and creation of jobs.[309] The quality of the legislative acts should be maintained during the streamlining process and one should not proceed on the basis of a purely quantitative way of thinking.[310]

At European level, the Committee requests that directives are issued instead of regulations.[311] The "open co-ordination method" is also considered in connection with simplification and should be applied.[312] This method should not, however, result in any weakening of decision-making powers in Member States at a municipal or regional level. EU competence may not extend to issues which do not have any basis under EU treaties.

A deregulation policy should be adapted in line with codification, updating and consolidation. The participants and parties affected frequently use unofficial, consolidated versions which are useful in practice but which point to a "democratic deficiency".[313] The Commission should therefore commit itself to take concrete steps.

The Commission's proposal of withdrawing older legislative proposals independently without a decision from Council or Parliament is criticised. This should only be possible with the consent of the other two institutions.[314]

4.5.5. Access

The increase in transparency is welcomed.[315] As far back as 1999, the Commission was called on to use new technologies to make Community law more accessible to the citizens.[316] In this connection, a request is made for further activities to consolidate the legislative acts.

4.5.6. Effective participation

The Committee of the Regions welcomes the interinstitutional co-operation established in connection with better lawmaking but regrets the fact that the local and regional dimension is not adequately recognised in this regard. It calls on Council, the European Parliament and the European Commission to participate more closely. It lays claim to participation along the lines of the minimum consultation standards as apply to civil society.[317]

All in all, it can be stressed that the Committee of the Regions is requesting greater consultation in order to safeguard the principles of subsidiarity. New instruments (e.g. co-regulation, impact

[307] CoR (2005), 24 February 2005, p. 5.
[308] e.g. as far back as 1999 on the SLIM initiative: CoR (2000), 23 May 2000, p. 6.
[309] CoR (2005), 24 February 2005, p. 6.
[310] CoR (2002), 18 December 2002, p. 5.
[311] CoR (2002), 18 December 2002, p. 5.
[312] CoR (2002), 4 April 2002, p. 5.
[313] CoR (2002), 18 December 2002, p. 5.
[314] CoR (2002), 18 December 2002, p. 6.
[315] CoR (2002), 4 April 2002, p. 5.
[316] CoR (2000), 23 May 2000, p. 6.
[317] CoR (2005), 1 March 2005, p. 3; see also CoR (2002), 18 December 2002, p. 6.

assessment) are always considered in this connection. The Committee of the Regions sees considerable progress in the manner in which the subsidiarity principle is embodied in the Constitutional Treaty and in that its demands have largely been taken into account.

4.6. Interinstitutional Agreements

4.6.1. Mandelkern Report recommendations

By 2001, EU institutions had concluded four Interinstitutional Agreements within the framework of efforts for better lawmaking:

- the Interinstitutional Agreement dated 25 October 1993 on the procedures for implementing the principle of subsidiarity[318],
- the Interinstitutional Agreement dated 20 December 1994 on an accelerated working method for the official codification of legislative texts[319],
- the Interinstitutional Agreement dated 22 December 1998 on common guidelines for the quality of drafting of Community legislation[320],
- the Interinstitutional Agreement dated 28 November 2001 on a more structured use of the recasting technique for legal acts[321].

The Mandelkern Report took up the theme of Interinstitutional Agreements at various points and provided the following recommendations:

- The Commission was invited to present the European Parliament and Council by December 2002 at the latest with a test report on the effectiveness of the Interinstitutional Agreement on an accelerated working method for the official codification of legislative texts and a test report transposing the Interinstitutional Agreement on common guidelines for the quality of drafting of Community legislation. If necessary, these test reports should also contain proposals for amendment.
- The EU institutions and the Member States were also encouraged to conclude an agreement by June 2002 on the conditions under which the proposals emanating from the Commission's simplification programme could be subject to an abridged co-decision procedure, with a view to adoption at first reading.
- The Interinstitutional Agreement on a more structured use of the recasting technique for legal acts should be adopted by March 2002.
- As regards the establishment of an efficient, transparent and open culture of consultation and dialogue in the EU, the Mandelkern Report recommended the establishment of a code of conduct, possibly in the form of an Interinstitutional Agreement.[322]

[318] OJ C 329 of 6 December 1993, p. 135.
[319] OJ C 102 of 4 April 1999, pp. 2-3.
[320] OJ C 73 of 17 March 1999, pp. 1-4.
[321] OJ C 77 of 28 March 2002, pp. 1-3.
[322] The European Parliament also submitted a proposal in November 2001 to conclude an Interinstitutional Agreement on democratic consultations (A5-0399/2001, November 2001; then: P5_TA (2003) 0540, December 2003). Thus far, such an agreement has not materialised, however. Minimum standards and principles governing consultations were laid down in 2002 in the form of a communication from the Commission for their area of responsibility (COM (2002) 704 final, December 2002).

4.6.2. Further developments since 2001

The Interinstitutional Agreement on an accelerated working method for the official codification of legislative texts[323]

Back in 1994, the three EU institutions concluded an Interinstitutional Agreement so as to accelerate the examination of the Commission's codification proposals in Council and Parliament. Results were limited, however. The Commission report on better lawmaking 2002[324] stated that no more than 33 codified texts in total had been adopted since 1994. This was attributed, inter alia, to the methods of working employed in Council and Parliament which are not suitable for adopting codified texts quickly. The Commission has therefore asked the legislative authorities time and again to introduce accelerated procedures and ad-hoc structures for simplification.

At the end of 2003, an Interinstitutional Agreement on better lawmaking[325] was concluded which, inter alia, contains an obligation for Parliament and Council to alter their methods of working within six months of the agreement coming into force so as to be able to adopt codified texts more quickly. This has not yet happened. The current report on better lawmaking from March 2005[326] confirms that success has basically been non-existent as regards the codification of Community law. The Commission therefore suggests updating the 1994 Interinstitutional Agreement on codification.

The Interinstitutional Agreement on the quality of drafting of Community legislation[327]

The 1998 Interinstitutional Agreement lays down guidelines for the quality of drafting of Community legislation. In accordance with these guidelines, it is particularly important that the legislation is drafted clearly, simply and precisely, and that the terminology used is coherent. Unnecessarily convoluted wording should be avoided and the composition based on a standard structure. Regarding the agreement's implementation, the Mandelkern Report stated that further transposition measures would have to be taken for the guidelines to be applied in a proper manner.

To this end, a practical set of guidelines for the drafting of legislation was developed. Since 2003, this set of guidelines has been made available to all parties inside and outside EU institutions who deal with the drafting of legislation.[328] The Commission's internal procedures were arranged in such a way that Legal Service employees are already in a position to improve legislative proposals at an early stage in the process.[329] Their task is to examine the legitimacy of the proposal and compliance with the prescribed form, to structure the provisions in a clear and proper manner, and to make any revisions to the draft. Moreover, the Legal Service carries out advanced training in the drafting of legislation.[330] In addition, the departments of the individual EU institutions responsible for the quality of drafts have extended their co-operation. Co-operation with the Member States was also reinforced by means of seminars on the subject of the quality of legislative texts.[331]

Reminders regarding further efforts on the part of the institutions with regard to the quality of drafts, in particular, greater consistency between the texts, were sent by the European Council in May 2004: "Areas which might be examined with a view to improving and to ensuring greater consistency of texts include possible interventions by jurist linguists prior to presentation of proposals. All three institutions could play a role in this respect. Parliament could focus on the area of efficient handling and management of amendments. For its part, Council could fix a target date

[323] OJ C 102 of 4 April 1999, pp. 2-3.
[324] COM (2002) 715 final, December 2002.
[325] OJ C 321 of 31 December 2003, pp. 1-5.
[326] COM (2005) 98 final, March 2005, p. 4.
[327] OJ C 73 of 17 March 1999, pp. 1-4.
[328] European Communities, Joint practical guide of the European Parliament, Council and the Commission for persons involved in the drafting of legislation within the Community institutions, Luxembourg 2003.
[329] COM (2003) 770 final, December 2003.
[330] Commission of the European Communities: Communication from the Commission to Council and the European Parliament. Better Regulation for Growth and Jobs in the European Union, Brussels, March 2005, p. 14.
[331] COM (2003) 770 final, December 2003.

for receipt of comments from delegations. A number of technical points could usefully be solved by the services concerned by agreeing on clear and readily understood common practices." [332]

The Interinstitutional Agreement on a more structured use of the recasting technique for legal acts[333]

As requested by the Mandelkern Group, the Interinstitutional Agreement on a more structured use of the recasting technique for legal acts, which was passed in November 2001, entered into force in March 2002. Recasting is defined therein as the "adoption of a legal act which incorporates in a single text both the substantive amendments which it makes to an earlier act and the unchanged provisions of that act. The new legal act replaces and repeals the earlier act."[334] The aim of the agreement is to lay down procedures which "facilitate systematic recourse to the recasting technique for legal acts within the framework of the Community's standard legislative process".[335]

There was very little success in December 2002 with regard to the recasting of legislative texts. Whilst the Commission did report that updating proposals were being compiled, in 2002, only one such proposal was adopted by both the Commission and the legislator. In the reports which follow on better lawmaking for 2003 and 2004, no figures relating to updates were published.

The Interinstitutional Agreement on "Better lawmaking"[336]

One of the most important milestones in EU policy on simplifying and improving the regulatory environment after 2001 was the conclusion of an Interinstitutional Agreement on better lawmaking between the European Parliament, Council and the Commission in December 2003. This agreement materialised on the basis of the realisation that efforts are required in all phases of the legislative process for the measures to be a success and, consequently, all EU institutions must contribute to a policy of better lawmaking. The most important elements of this agreement are as follows:

- Improvement in interinstitutional co-ordination:
  - co-ordination of the annual legislative programmes of the three institutions with a view to reaching agreement on joint annual programming,
  - the three institutions will keep each other permanently informed about their work throughout the legislative process,
  - the Commission will submit an annual progress report on its legislative proposals,
  - the relevant Commission and Council members shall participate in Parliamentary committee discussions and plenary debates;
- Transparency and accessibility:
  - use of new communication technologies,
  - greater public access to EUR-Lex,
  - the three institutions will hold a joint press conference to announce the successful outcome of a legislative process;
- Choice of legislative instrument and application of alternative regulatory processes:
  - the Commission will provide a clear and comprehensive justification for choosing a specific legislative instrument,
  - the stipulation of joint definitions for co-regulation337 and self-regulation338,

[332] Council of the European Union 9173/04, May 2004.
[333] OJ C 77 of 28 March 2002, pp. 1-3.
[334] OJ C 77 dated 28 March 2002, p. 2
[335] OJ C 77 of 28 March 2002, p. 1
[336] OJ C 321 of 31 December 2003, pp. 1-5.
[337] "Co-regulation is understood to mean the mechanism through which a Community legislative act transfers responsibility for achieving the objectives laid down by the regulatory authority to parties that are recognised in the field in question (in particular, economic participants, social partners, non-regulatory organisations or associations)." OJ C 321 of 31 December 2003, p. 3.
[338] "Self-regulation is understood to mean the facility for economic participants, social partners, non-regulatory organisations or associations to adopt between themselves, and for their own benefit, common guidelines at European level (inter alia, codes of conduct or sectoral agreements)." OJ C 321 of 31 December 2003, p. 3.

- the stipulation of co-ordinated conditions for using alternative lawmaking instruments (especially observing the criteria of transparency and representativeness of the parties involved);

- improved quality of legislation:
  - the holding of the most comprehensive consultations possible prior to the presentation of legislative proposals by the Commission; the results of these consultations must be accessible by the public,
  - more frequent use of impact assessments, if necessary, the development of a common methodology by the three institutions,
  - Parliament and Council shall take suitable measures so as to ensure coherence of the texts enacted in the co-decision procedure (e.g. the agreement of a short timeframe which facilitates legal reviews prior to the final adoption of a legislative act);

- better transposition and application:
  - the stipulation of a binding time limit for the transposition of directives into national law (generally not more than two years),
  - the Commission will draw up annual reports on the transposition of directives in the individual Member States (incl. transposition quotas),
  - Council will also encourage Member States to draw up their own tables regarding the transposition of Community law and appoint a transposition co-ordinator;

- simplifying and reducing the volume of legislation:
  - the three institutions agree to update and condense existing legislation and to simplify it significantly,
  - within six months the European Parliament and Council shall modify their working methods and establish, for example, ad-hoc structures with the specific task of simplifying legislation, thereby accelerating the adoption of simplification proposals.

Although implementation of the Interinstitutional Agreement on better lawmaking began in 2004, the Commission is of the opinion that it needs to gather momentum. The adaptation of the working methods of Council and the European Parliament with regard to the accelerated adoption of proposals for simplification is particularly urgent.[339]

The Interinstitutional Agreement on the operating framework for the European regulatory agencies

In addition to the areas described previously, a further proposal has recently been discussed for an Interinstitutional Agreement. Consequently, according to the report "Better lawmaking 2004"[340], the adoption of an Interinstitutional Agreement which should define the operating framework for European regulatory agencies is one of the Commission's principal objectives for 2005. The form of an Interinstitutional Agreement is therefore proposed which involves all three EU institutions from the outset in establishing the basic conditions to be met when legislative acts to set up sectoral agencies are adopted subsequently. The choice of this type of instrument does not rule out the possibility, however, of drawing up more detailed arrangements as part of a framework regulation as a second step.

In February 2005, the Commission presented a draft Interinstitutional Agreement defining the operating framework for the European regulatory agencies.[341] This agreement is designed to assist in the creation of greater transparency and coherence as regards the names, tasks, organisational structures and control mechanisms of regulatory agencies. For the purpose of this agreement, the term "European regulatory agency" shall mean "any autonomous legal entity set up by the legislative authority in order to help regulate a particular sector at European level and help implement a Community policy."[342] The most important points of the draft agreement are as follows:

[339] COM (2005) 98 final, March 2005, p. 5.
[340] COM (2005) 98 final, March 2005.
[341] COM (2005) 59 final / Council of the European Union 7032/05, February 2005.
[342] COM (2005) 59 final / Council of the European Union 7032/05, February 2005.

- the operating framework must comply with the principles of good governance proposed in the White Paper (openness, participation, accountability, effectiveness and coherence);
- any proposal for the creation of a European regulatory agency must be the subject of a rigorous impact assessment;
- the stipulation of restrictions on the transfer of direct executive responsibilities to regulatory agencies;
- any powers delegated by the legislative authority must be strictly defined and subject to rigorous controls;
- the stipulation of an organisational and structural operating framework, e.g. an administrative board as an agency programming and monitoring body, equal numbers of representatives in terms of Commission and Council members on the administrative board, etc.;
- the commitment on the part of the agency to exhibit the highest possible level of transparency when conducting its activities, inter alia, by drawing up an annual work programme and an annual activity report;
- the stipulation of extensive evaluation and control mechanisms.

5. Organisation of "Better Regulation"

This Chapter deals with the important issue of the organisation of Better Regulation at EU level and contains special remarks regarding the development potential of the informal DEBR [Directors and Experts of Better Regulation] Group. In view of the complexity of the topic and the diversity of the participants, both at EU level and in view of the increasing number of Member States, organisational optimisation constitutes an important success factor in the progressive process, alongside the development and implementation of instruments. Current organisational projects, in particular those on the part of the Commission, illustrate this.

5.1. Organisation of Better Regulation at EU level

The description of the organisation of Better Regulation in this section is based on the investigation "Who is doing what on Better Regulation at EU level".[343] This investigation describes the most important institutions and committees dealing with Better Regulation at Council level (cf. Fig. 2), at Parliament level (cf. Fig. 3) and at Services level (cf. Fig. 4).

The European Economic and Social Committee (EESC) and the Committee of the Regions (CoR) have also been included in the analyses of this study (cf. Sections 4.4 and 4.5).

The European Economic and Social Committee is an advisory assembly made up of representatives of the various economic and social fields in organised civil society. It is designed to support the European Parliament, the European Union Council and the European Commission in an advisory role. The Committee is consulted when the Treaties so require. It is therefore an active participant in the decision-making process within the Community and, with its opinions (which number around 150 a year), is also an important element in the sphere of Better Regulation.

The Committee of the Regions is a political assembly which represents local and regional authorities in the European Union's institutional structure. The representatives of the municipal authorities, towns and cities and regions need to have their say when new EU regulations are drafted, since approximately three-quarters of EU regulations are transposed at local and regional level. The Treaties stipulate that Commission and Council must request an opinion from the Committee of the Regions in all areas where the EU's legislative proposals may have repercussions at local and regional level. The Committee of the Regions may also issue opinions on its own initiative and, like the EESC, represents an important element in the sphere of Better Regulation.

Apart from the wide variety of committees, what is noticeable is that several of these are primarily concerned with Better Regulation, while a whole raft of other groups deals with this topic alongside their other tasks and responsibilities.

The DEBR Group, whose special development potential is described in the following section, is an informal group under the jurisdiction of the Ministers responsible for public administration and deals exclusively with this subject.

[343] Commission working document, compiled by the Secretariat General TFAU-2, July 2004. The diagrams below are taken from this document.

INTERGOVERNMENTAL STRUCTURES

FIG. 2: COUNCIL STRUCTURES

INTERINSTITUTIONAL STRUCTURES
(MS-Commission-ECB)

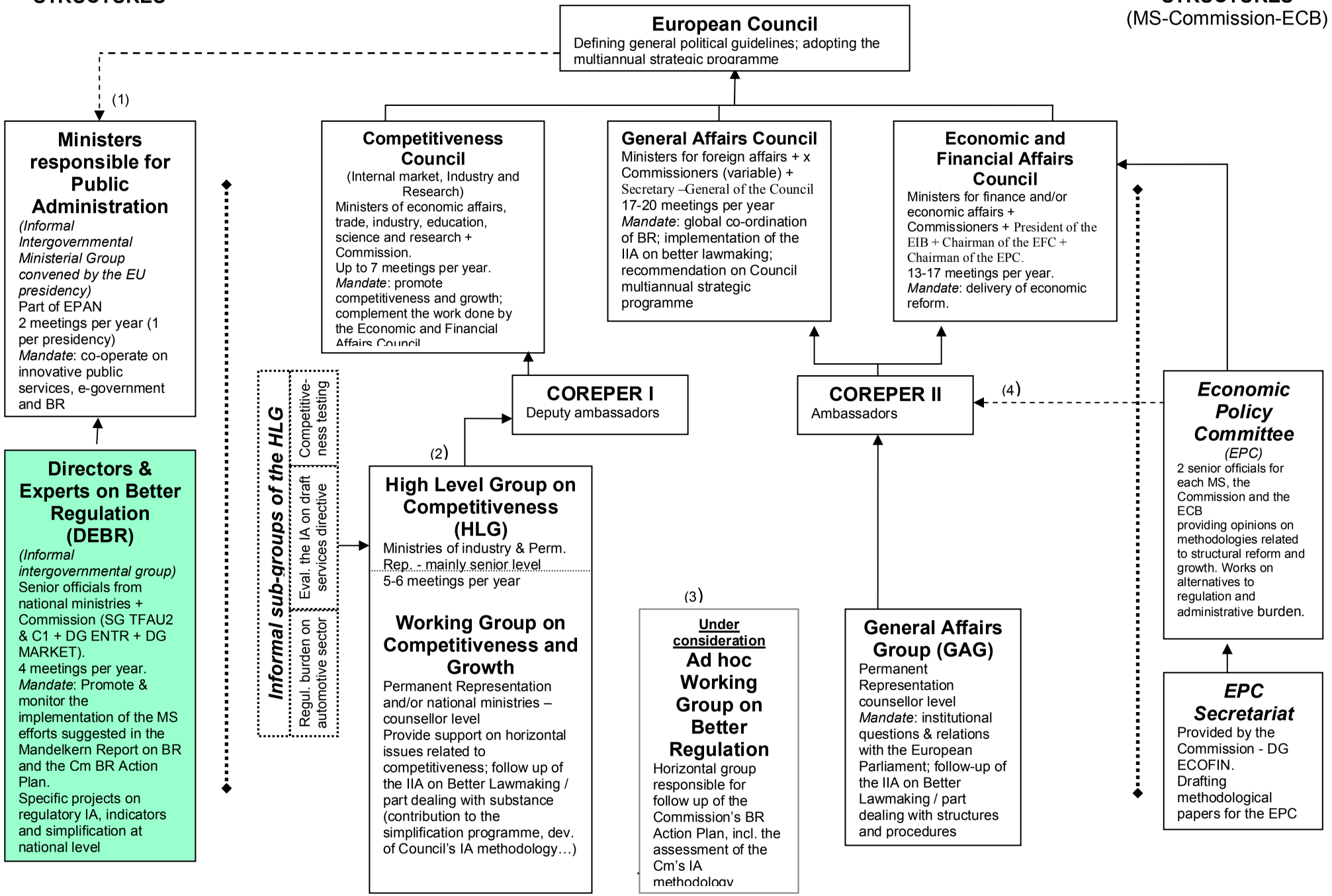


FIG. 3: EUROPEAN PARLIAMENT STRUCTURES (MAY 2004)

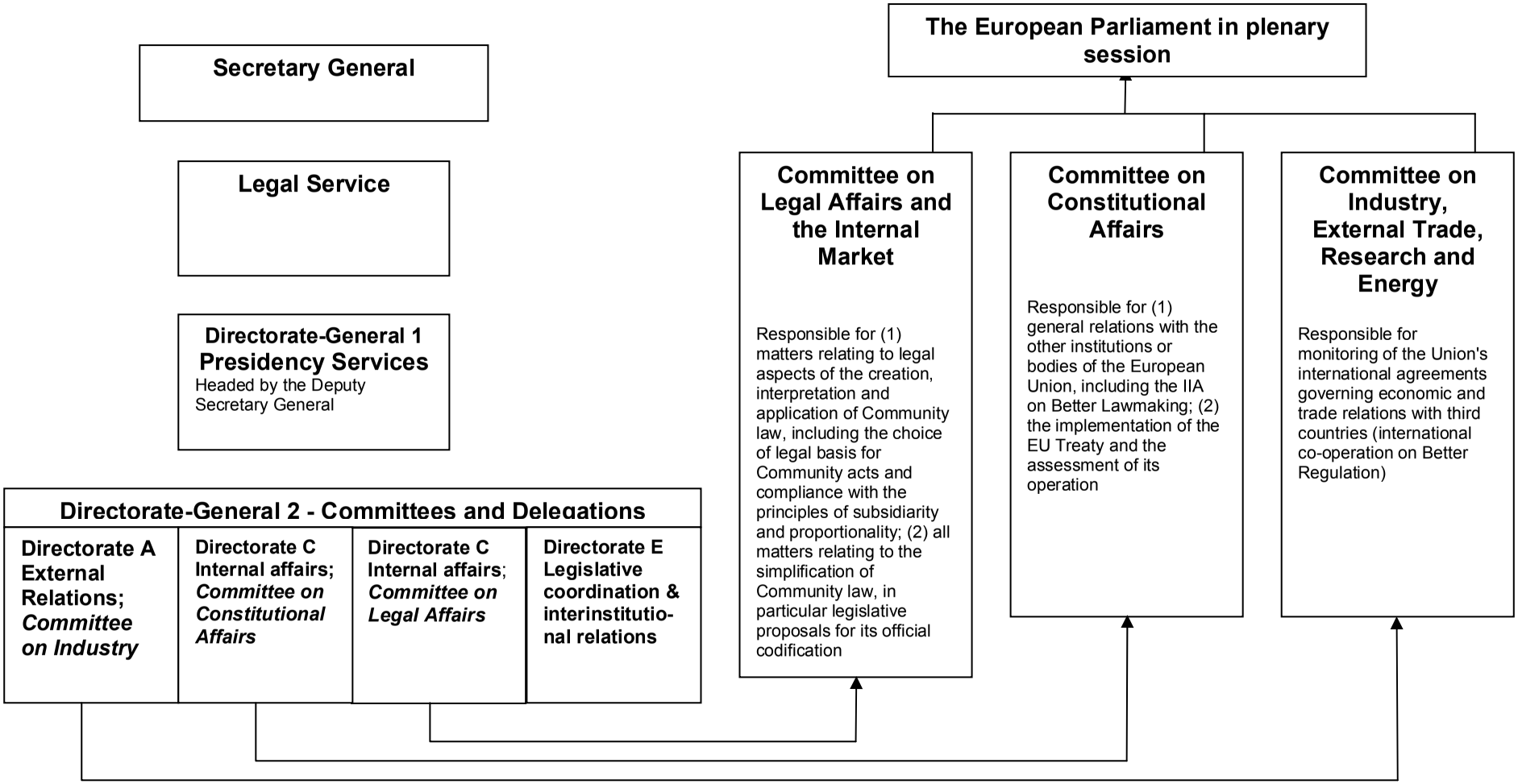
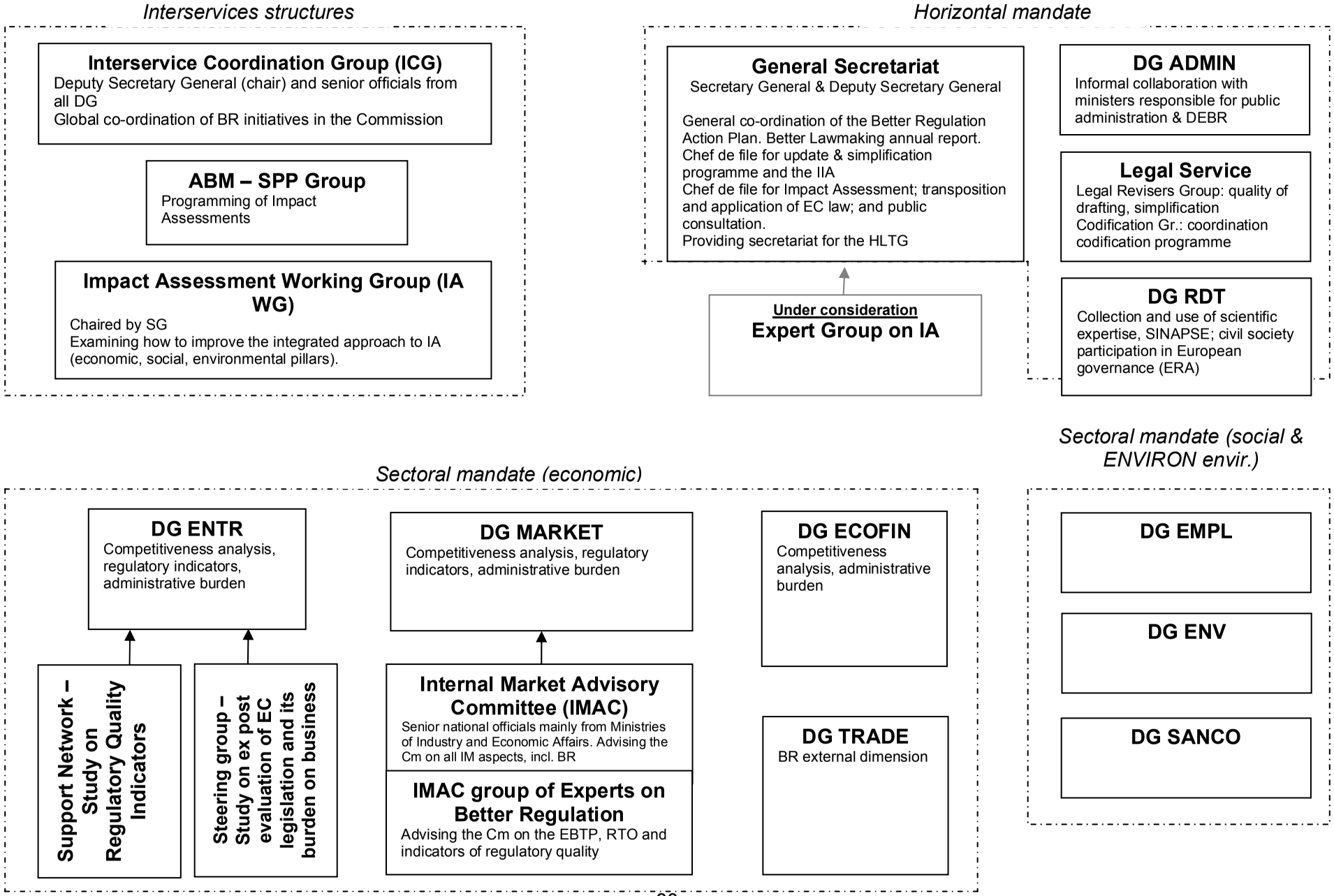


FIG. 4: EUROPEAN COMMISSION STRUCTURES AT SERVICES LEVEL



5.2. The development of the DEBR Group

The informal DEBR Group[344] primarily organises exchanges of information and reporting (monitoring) on the subject of Better Regulation, both at EU level and in the Member States, with several individual exchanges a year taking place between experts in the Member States. There were three meetings in 2002 (Madrid, Copenhagen, Dublin), two in 2003 (Athens, Rome), three in 2004 (The Hague, Dublin, Luxembourg) and the first meeting of 2005 was held in London. The subjects that were prioritised were aspects of the Mandelkern Report, although more recent developments (indicators, quality, Standard Cost Model) and the Commission's and Parliament's activities were also discussed.

Certainly, the most important activity undertaken by the DEBR Group was its RIA initiative with benchmarking in various EU countries. This study was submitted by the Italian, Irish and Dutch Presidencies of the Council of the European Union in 2004[345] (cf. also Section 4.2.2).

The following considerations deal with the organisational structure of the DEBR Group and its development potential. This depends, not least, on political decisions and the Group's conception of itself. This means that the "parties concerned" should participate in an active formation process in the development of the organisation. Hence, over the last year, the Group has increasingly focused on its role and method of working, as, for instance, in Dublin on 13 May 2004.

At the workshop which took place in Luxembourg on 9 December 2004, the Dutch delegation provided some input into the discussion on the future role of the DEBR:

- The DEBR focuses on two subjects - the exchange of national practices and developments at EU level, in connection with which the DEBR fulfils an "advocacy role", i.e. promotes best practices and initiates new thinking.
- EU issues are also discussed on other platforms, in particular, by the Council's "Competitiveness and Growth" working party. Any overlaps should be avoided here, although Better Regulation is not an institutionalised issue within the working party, nor are the national representatives, for the most part, the national experts on Better Regulation.
- The DEBR Group could initiate dialogue on topics that are not yet on the official EU agenda; for this, however, participants would have to be fully up to date; in this regard, the DEBR should also assume an information distribution role.
- The DEBR Group should not exercise any monitoring role in relation to the Commission, since its informal nature is less suited to this. As long as Council's working party continues to monitor the implementation of the Mandelkern Report, the DEBR Group need do no more than supplement and pass on its evaluation.
- The DEBR Group should operate in a flexible manner, facilitating the informal exchange of ideas, and should not therefore have an official work programme.

The present discussion of the Group's conception of itself can also be explained by the fact that it needs to reorientate. This is necessary given the dynamic environment, which is characterised by the continuing development of Better Regulation instruments and their application.

Against this background, the following section describes the potential for developing the responsibilities and organisation of, and various conceivable implementation strategies for,

[344] Both the abbreviations DBR and DEBR are used in documents. In this text, the abbreviation DEBR is used throughout. This abbreviation stands for "Directors and Experts on Better Regulation".

[345] Cf. the Italian, Irish and Dutch Presidencies of the Council of the European Union, A comparative analysis of Regulatory Impact Assessment in ten EU countries. A report prepared for the EU Directors of Better Regulation Group, Dublin, May 2004.

the DEBR Group. Organisation theories[346] and the practical experience acquired by the authors underpin the models and strategies. They serve as a stimulus for discussion and should not be viewed as recommendations. The ongoing development process can only succeed if the parties concerned familiarise themselves with possible alternatives and take the necessary decisions on that basis.

The organisation of Better Regulation takes place at the junction between politics and administration and therefore depends on individual rationalities and occasional historic opportunities to reconcile the two. Thoughts have therefore been presented on two "pure" models, the rational model and the "muddling through" model, which is more orientated to the real conditions encountered in complicated political processes.

5.2.1. Development potential in the "rational model"

If the organisational potential of the DEBR Group is considered within the framework of the rational model, future functions and responsibilities in connection with regulation quality assurance need to be explained first. To this end, regulation quality assurance can be divided into three stages, which can also be regarded as a chronological sequence. These stages are as follows:

1. The development stage (invention)
2. The test stage (innovation)
3. The introduction stage (dissemination).

Fig. 5 illustrates the potential for developing the responsibilities and organisation of the DEBR Group in the light of these stages. The scales depict, on the one hand, the extent and type of lawmaking support (from straight exchanges, through projects, to control) and, on the other hand, the degree of institutionalisation (from ad-hoc meetings, through regular meetings, to a permanent institution). The diagram also indicates the position of the DEBR Group in spring 2005. In layman's terms, it is situated half way between stages one and two mainly because, although it at least meets on a regular basis, it has the status of an informal group.

1. Development stage: invention

The first stage focuses on the development of criteria and measures for regulation quality assurance. Such criteria are mentioned in the Mandelkern Report under the headings "Alternatives to regulation", "Regulatory impact assessment (RIA)", "Consultations", "Simplification", "Access" and "Effective structures" and are being discussed and developed further in various EU committees. The question currently remains open as to whether this development process (incl. indicator formation) has already been concluded for all criteria and measures or whether further investment is needed in this task. According to the findings of this documentation, suitable methods and processes still need further development, for example, in the area of simplification.

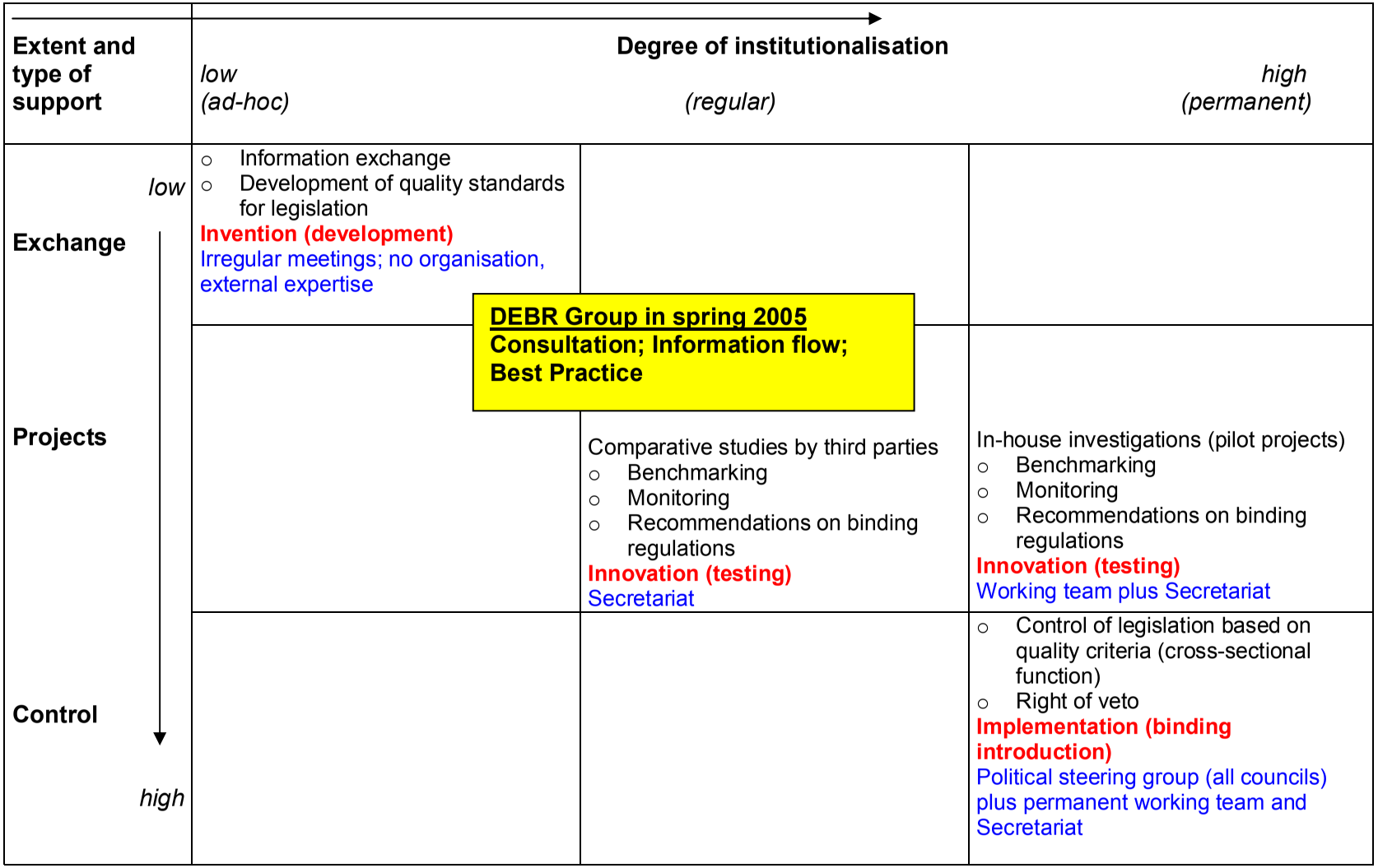
If it is concluded that further investment should be made in the development of instruments and processes, i.e. additional fundamental ideas and development work on regulation quality assurance are required, an open organisational form ("adhocracy")

[346] See, for example: Kieser 2002; Miller/Friesen 1984; March/Simon 1958; Scott 1986; Weick 1995; Schreyögg 1998.

suggests itself (cf. Fig. 6). In an adhocracy[347], the search for and development of, new instruments and processes takes centre stage.

[347] Adhocracy is understood to be a form of organisation that is geared to new development. A high level of informal exchange with participants from different areas (science, business, etc.) is therefore sought (loose coupling). The degree of formalisation (e.g. through statutes) and the level of institutionalisation is low so as not to hinder creativity.

Fig. 5: Potential for developing responsibilities and organisation of the DEBR Group



With this sort of structure, the DEBR Group would deal with the further development of quality standards (criteria, measures) without networking with the other groups. The inclusion of external expertise can be useful in this regard. The aim of this procedure is to further develop previous ideas in the most creative way possible. It is for this reason that the open, rather spontaneous organisational form of the adhocracy, which facilitates the generation of ideas, suggests itself. Whilst the creative strength of the group can be promoted in this way, its influence is low on account of the modest level of direct support for lawmaking. This may be desirable, however, for the development process. From the point of view of vertical integration, the DEBR Group could remain answerable to the Ministers or Directors General responsible for public administration.

The other two development stages are described below as prospects for the DEBR Group in this connection.

2. Test stage (innovation)

If it is concluded that the development stage has already been largely completed and an initially informal test of the criteria and measures (including indicators) should take centre stage during their possible further development, networking with all Council groups dealing with Better Regulation suggests itself as an action strategy for the DEBR Group.[348] As an expert group on regulation issues, the DEBR Group could take on the role of lead group in the network. The aim of this strategy is to establish the criteria and measures for Better Regulation at the working level. For this, the DEBR Group would probably have to compromise with the perceptions of other groups. Furthermore, the measures and criteria would need to be tested in pilot projects. When pilot projects are evaluated, measures and criteria would need to be subjected to critical examination, which might reveal the need for a further development phase.

In our opinion, the organisational prerequisite for this networking strategy is a secretariat (support) to organise network meetings and co-ordinate the progress of studies (incl. evaluation). This networking strategy represents a preliminary stage to the dissemination of the criteria and measures for Better Regulation.

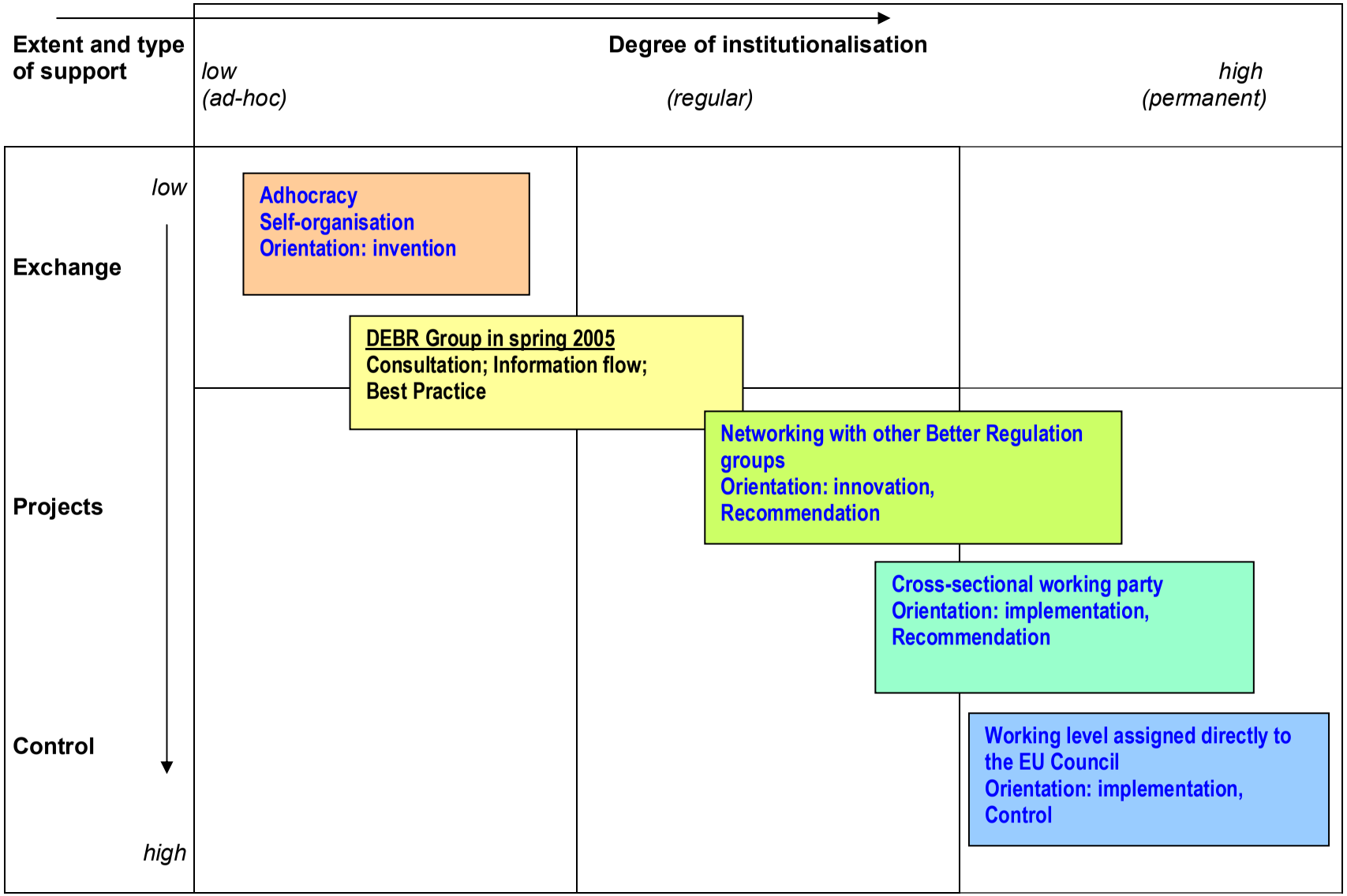
Unlike the adhocracy organisational form, the networking strategy is orientated less to invention than to innovation. Measures and criteria are tested and compromises established between the participating groups. The networking strategy represents an intermediate stage between the generation of ideas and dissemination on the road to regulation quality assurance.

Different ways of improving regulations can be tested in pilot studies and evaluated comparatively. Even under the networking strategy, the DEBR Group could continue to remain answerable to the Ministers responsible for public administration.

By way of alternative to the networking strategy, a formal working party on Better Regulation could be established at right angles to the Council's pillars (horizontal group). The political requirement for a working party of this nature would be a European Union Council decision on the establishment of such a group and its incorporation as a formal member of the European Public Administration Network (EPAN). This political institutionalisation is more orientated towards the dissemination of criteria and measures (application on a widespread or regular scale).

[348] In order to ensure practicable networking, all Council groups involved with Better Regulation should set up delegations for individual exchanges. Efficient exchanges would hardly be possible were all group members to participate. All group members could be included for opinions submitted in writing.

Fig. 6: Possible implementation strategy for the DEBR Group (stage model)



However, the creative nature of the adhocracy strategy and the experimental nature of the networking strategy, which is also geared towards testing, are repressed. The orientation of the working party would also be as an intermediate stage between the generation of ideas and the binding dissemination of a quality assurance system. One of the Group's main tasks would be to make recommendations on Better Regulation on the basis of an analysis of experiences (e.g. pilot studies on RIA, consultations, simplification). The establishment of this working party does imply, however, a higher degree of binding support and institutionalisation compared with the networking strategy. In our opinion, an additional permanent working level (with just a few members) would be required here in addition to a secretariat. This working level would evaluate all experiences in connection with Better Regulation (pilot studies, etc.), organise exchanges with newly established Commission committees (group of high-level national lawmaking experts; group of Better Regulation specialists) and co-ordinate the Commission's and Council's approach. This strategy can be called a "binding recommendation strategy".

From the point of view of the vertical integration of this form of institutionalisation, the group would no longer be answerable to the Ministers responsible for public administration. On the contrary, the group would have to be answerable to Council or to all "ministerial groups or councils". At the same time, the members of the DEBR Group would be seconded by the Ministers responsible for public administration in order to retain the personal nature of the group. With this (recommendatory) hierarchy, on the one hand, and secondment on the other hand, there are likely to be acceptance problems on the part of the Competitiveness Council, the General Affairs Council and the Economic and Financial Affairs Council (ECOFIN).

3. Introduction stage (dissemination)

Mention must be made of dissemination (application on a widespread or regular scale) of the criteria and measures for Better Regulation as the last stage in establishing regulation quality assurance. This dissemination is accompanied by control (dissemination control strategy) of the lawmaking processes (with regulation of exceptions). This means that every legislative process is reviewed in order to establish if the criteria and measures of good regulation (consultation, roadmap, RIA, etc.) are being observed. For example, it is checked in order to establish if an appropriate impact assessment was carried out. If substantial changes are made to the legislative draft (by Council or the European Parliament) following the impact assessment, the impact assessment is supplemented.[349] As a rule, if standards of good regulation are not adhered to, the legislative draft is not presented to Council of Ministers. In terms of observing this procedure, there must be a direct political link to the Council of the European Union. The DEBR Group would then be obliged to report directly to Council. In order to perform these functions, a highly efficient working party and a secretariat would be required, in addition to the direct link to the Council of Ministers. Moreover, clear rules of procedure (statutes) and defined standards (indicators) would be needed by which to assess the lawmaking processes from the point of view of good regulation.

A high degree of institutionalisation, coupled with a high degree of binding support for lawmaking processes, would increase the influence of good regulation standards within the European Union.

In order to establish a new way of thinking on the part of members of national and European administrative authorities, as well as on the part of those responsible for policy, and hence create a new regulatory culture[350], information on progress in meetings and publications should be provided at all stages of this model. Furthermore, a clear political signal to apply the instruments and processes of Better Regulation would be required.

[349] Such a course of action is also called for by the EESC. The DEBR Group might possibly be responsible for carrying out this supplementary impact assessment. It is also conceivable, however, that it could pass the legislative draft on to the Commission with a request to supplement the impact assessment.

[350] Cf., for example, EPC Working Paper No. 10, Achieving a New Regulatory Culture in the European Union: An Action Plan, April 2004.

5.2.2. Muddling through as an alternative to the rational model

In addition to the rational model and its different stages, the “muddling through” strategy remains an option for the DEBR Group (cf. Fig. 7). Lindblom introduced this strategy into the debate on planning and organisational development[351] back at the end of the 1950s. In view of complex, political correlations with material shifts in position, planning and rational organisational development are not possible, nor do they take place in standard decision-making. Unlike the rational model, the “muddling through” approach does not have any long-term, orientated planning and organisation development. This approach only ever tackles and resolves the next problem, i.e. proceeds step by step (incrementally). New initiatives and processes are decided on situationally and implemented by adapting to perceived environmental changes. This is accompanied by a short-term orientation dealing solely with parts of problems. An adaptation strategy is therefore chosen.

As regards the DEBR Group, this orientation would imply that it is highly flexible but without a clear, strategic orientation, dependent on changes in the Better Regulation policy field. In concrete terms, this could mean, for instance, that the DEBR Group would sometimes deal with simplification issues and sometimes with impact assessment issues on an ad-hoc basis depending on feasibility (e.g. resources, change in political positions). The individual issues dealt with would also be influenced considerably by the operating framework.

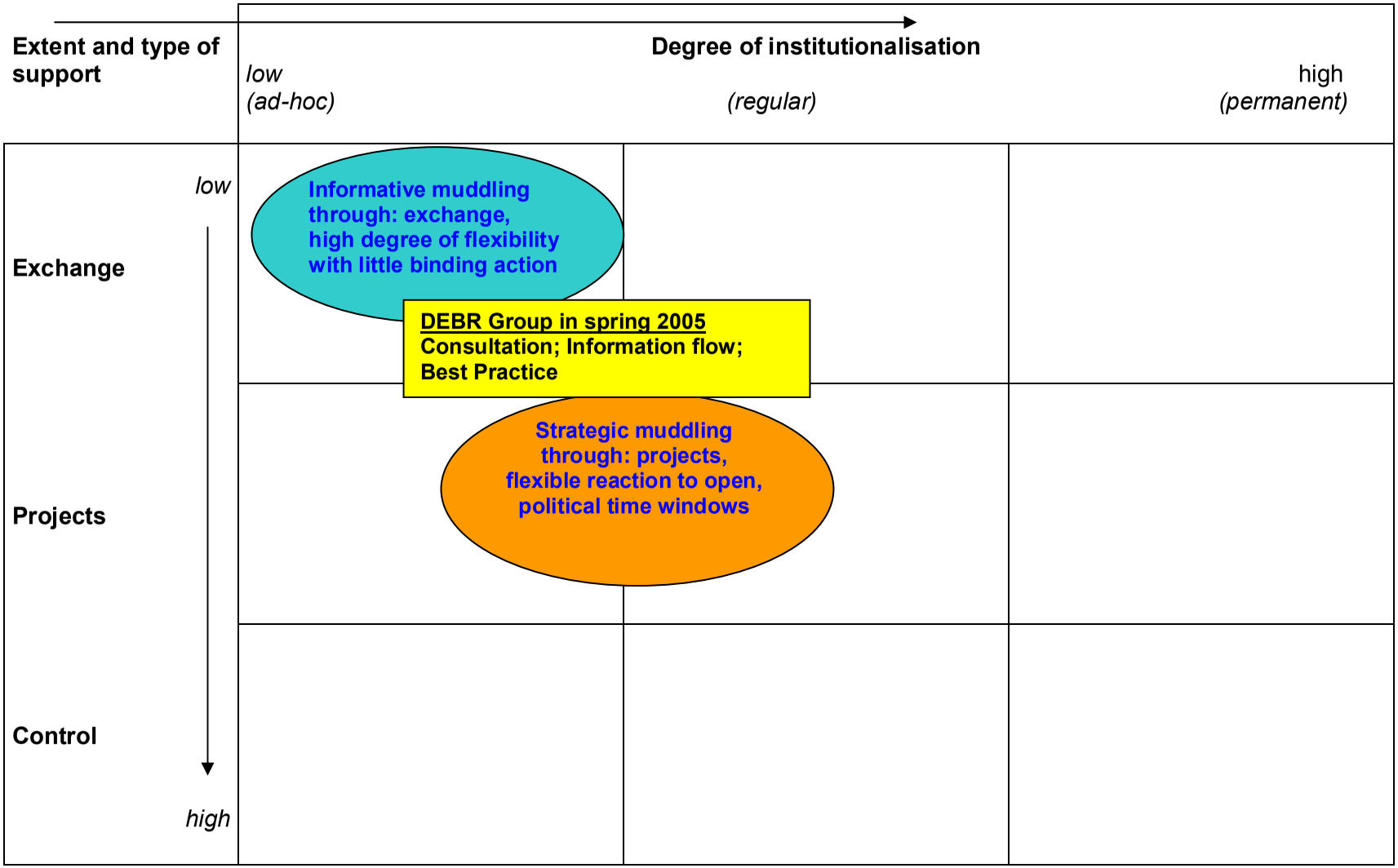
At a low level of support, an informative “muddling through” approach is conceivable. “Muddling through” in practice also includes the implementation of projects with a higher degree of binding support. With open, political time windows, projects may have a considerable impact. In both instances, the degree of institutionalisation is low.

The advantage of these strategies is that the Group can act flexibly. The disadvantage is that there is little stringency in its action and no strategic orientation.

A combination of the “rational” model with elements of “muddling through” is also conceivable. For example, an evolutionary strategy might consist of using the latitude for flexible adjustment and creative action within the framework of the overall rational orientation. To counter the associated risk of “watering down”, however, strategy sessions would again be required in order to reflect on short-term, targeted initiatives (information, projects) against the background of overall orientation and reconfigure them accordingly.

[351] Lindblom 1959, 1979.

Fig. 7: Possible implementation strategy for the DEBR Group (muddling through)



5.3 Integration with Commission groups

Insofar as implementation and control take precedence in Better Regulation, greater co-ordination and harmonisation - generally speaking integration - is necessary among the participants. This poses the question as to what relationship should exist between the DEBR Group and new Commission committees (group of high-level national lawmaking experts and group of Better Regulation specialists). Certain references to the tasks and functions of the new Commission committees may help to define the relationship.

The Commission group of high-level national lawmaking experts is to advise the Commission on questions of Better Regulation (in particular, simplification, impact assessment). This group should deal with both lawmaking and transposition (execution) and should scrutinise the legislation of both individual states and the EU. It is not improbable that this group will be composed of national employees of the departments responsible for public administration. As these are high-level national experts, there may be overlaps in terms of personnel with the DEBR Group. Both these personnel interdependencies and the overlap between the groups in terms of tasks and responsibilities suggest that the working parties should be integrated. The following potential for co-operation exists in this respect, although account will need to be taken of the legal operating framework:

- ad-hoc or regulated exchanges between the groups;
- functional distribution of tasks between the groups so as to avoid duplication;
- the implementation of joint schemes and projects;
- the formation of a joint steering group.

Overlapping in terms of tasks and responsibilities is also probable with regard to the newly installed Commission group of experts. This group should act methodically in an advisory capacity. Therefore, especially when pursuing the adhocracy and networking strategies described, overlapping in terms of tasks and responsibilities is to be expected. However, since these two strategies are geared to invention or innovation and, in this connection, different ideas are really desirable, the overlapping of tasks and responsibilities would not necessarily be a disadvantage.

6. Annex

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6.2. List of abbreviations

Art.	Article
BEST	Business Environment Simplification Task Force
CONCL	Council of the European Commission
CONECCS	Consultation: European Commission and Civil Society
CoR	Committee of the Regions
Council	Council of the European Union
DEBR	Directors and Experts of Better Regulation
DG	Directorate General
EbS	Europe by Satellite
EC	European Community
ECOFIN	Economic and Financial Affairs Council
EESC	European Economic and Social Committee
EIC	Euro-Info-Centres
EPAN	European Public Administration Network
EU	European Union
IIA	Interinstitutional Agreement
IPM	Interactive Policy Making
MISTRAL	Meetinstrument Administratieve Lasten (Measuring instrument, administrative burdens)
OJ	Official Journal of the European Union
OPOCE	Office for Official Publications of the European Communities
RIA	Regulatory Impact Assessment
SCM	Standard Cost Model
SINAPSE	Scientific Information for Policy Support in Europe
SLIM	Simpler Legislation for the Internal Market
SME	Small and medium-sized enterprise
SPP/ABM	Strategy and Programme Planning/Measure-related management
TEC	Treaty establishing the European Community