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Simplifying EU Environmental Policy

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STUDY FOR THE EUROPEAN PARLIAMENT"S COMMITTEE ON ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY

IP/A/ENVI/FWC/2006-172/C1/SC4

SIMPLIFYING EU ENVIRONMENTAL POLICY

CONTENTS

EXECUTIVE SUMMARY

This report examined the following questions in relation to the EU"s environmental legislation:

- What are the criteria for assessing the range of issues encompassed by the term "simplification", including simplification of form (such as complexity of amendments) and substance/outcomes (such as burdens of implementation) of legislation?
- What current environmental legislation should be the priority with respect to simplification of form on the basis of the criteria identified?
- What substance/outcomes of environmental legislation require simplification on the basis of the criteria identified, taking account of the objectives of that legislation and how such legislation interacts with other laws?

A number of opportunities for furtherance of the simplification agenda within the context of the environmental acquis are identified. However, there are also constraints in taking this forward. Generally, it is important for the European Parliament to support the breadth of simplification, tackling the implementation deficit and ensuring that simplification should be on a case-by-case basis on true merits of reform in light of broader objectives of regulation.

Codification is an important part of the simplification programme agenda. The criteria set out by the European Commission for codification should be supported. The following conclusions and recommendations are reached in relation to codification:

- Codification has proceeded further in the case of water law than other sectors.
- Currently, there are proposals within pollution control and air sectors.
- The sectors with Directives with the most amendments without proposed codification are nature protection, noise and waste.
- In other sectors, Directives where codification seems most relevant are those on genetically modified organisms (GMOs) and vehicle emissions.

Great consideration should also be given to recasting. Where a new Directive is an amendment to an earlier single Directive, full consideration should be given to whether a completely revised text should be adopted. As legislation is adopted, reviewed, revised, recasted, etc., full consideration should also be given to its interaction with other EU law to enhance coherence.

The basic complexity of EU law can be problematic. It is not possible to identify individual Articles in individual Directives across the entire environmental acquis which deserve simplification. However, the key opportunities for the Parliament to promote simplification are in the following areas:

- Industrial emissions through the review of the Integrated Pollution Prevention and Control Directive (IPPC) (and review of related Directives).
- The waste sector – with revision of the framework Directive and review of waste stream Directives, etc.
- Horizontal sector – with a review of Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA).

There is yet to be a detailed study examining administrative burdens across Member States in a way that is truly comparable, taking account of differences in pre-existing national systems, constraints on instrument choices (including simplification measures), etc, and to consider the proportionality of the impact of EU law. Thus it is important that research continues in this area and that care is taken of how this important issue guides specific simplification action.

Also in supporting the simplification process, Impact Assessment (IA) is critical. However, there are concerns over the current scope and quality of some IAs and, therefore, it is important for the Parliament to support the improvement of the IA process.

There are still important gaps in the knowledge of the assessment of burdens, costs and benefits with which to make detailed and confident proposals for change in some cases. Therefore, efforts to take such work forward (by the Member States, European Commission and others) should be supported in order to ensure a better targeted simplification agenda in the future.

1 INTRODUCTION

1.1 Purpose of the report

This report examined the following questions in relation to the EU"s environmental legislation:

- What are the criteria for assessing the range of issues encompassed by the term "simplification", including simplification of form (such as complexity of amendments) and substance/outcomes (such as burdens of implementation) of legislation?
- What current environmental legislation should be the priority with respect to simplification of form on the basis of the criteria identified?
- What substance/outcomes of environmental legislation require simplification on the basis of the criteria identified, taking account of the objectives of that legislation and how such legislation interacts with other laws?

The report, in analysing these questions provides conclusions to them, recommendations on priorities for simplification, both of specific laws and of particular sectors and identifies where further work is required to examine issues in more detail.

1.2 The simplification agenda in the EU

“Cutting red-tape”, reducing the “administrative” or “regulatory” burdens on companies, “streamlining” regulation, “simplifying” regulation and “better” regulation are common terms applied to the policy drive taking place in many Member States to take forward simplification. Increasingly public authorities have introduced regulatory reform programmes to improve the efficiency and effectiveness of regulations in a variety of ways, e.g. removal of obsolete and contradictory requirements, consolidation of overlapping legal requirements, application of new tools with the support of information technology tools and introduction of organisational and structural changes. The Organisation for Economic Co-operation and Development (OECD) survey “From Red Tape to Smart Tape” used the term “administrative simplification” to cover such measures.[1] The EU institutions have also adopted the term "simplification" to cover a range of related activities at EU level and these are the subject of this briefing.

A detailed assessment of the simplification agenda of the EU institutions is beyond the scope of this briefing. However, it is important to note some key points to provide the context for later discussion. The main guiding document on simplification is the Strategy for the Simplification of the Regulatory Environment (COM(2005) 235), published by the Commission in 2005. However, this has built on previous documents, such as the 2002 Action Plan (COM(2002) 278)[2] for simplifying the regulatory environment which stressed the use of particular tools in the development of legislation, such as Impact Assessment and adequate stakeholder consultation.

[1] From Red Tape to Smart Tape: administrative simplification in OECD countries, OECD 2003.

[2] Communication from the Commission - Action plan "Simplifying and improving the regulatory environment" COM/2002/0278. 5.6.2002.

The 2005 Communication included general and specific objectives, including:

- Review of existing EU legislation: "Simplifying" 80,000 items in the acquis communautaire.
- A continuous "rolling" programme - 2005-08: specifying 300 areas of EU legislation targeted for simplification. This is to be achieved through:
    - Repeal of obsolete items.
    - Codifying separate but related items.
    - Recasting.
    - Use of alternative policy instruments where appropriate:
        - Co-regulation with industry.
        - Framework Directives and more Commission discretion.
        - Replacing Directives with Regulations.
- Screening proposals already in the legislative pipeline:
    - Ambition: withdrawal of one third of pre-2004 proposals. Others called in for re-assessment.

The principles underlying the Commission"s simplification programme have been supported by individual Member States and by the European Parliament (such as through the Dorn and McCarthy Reports – see Annexes I and II). In 2006 the Commission published a report on progress on simplification (COM(2006) 690). Further details of this report are given later in this briefing. In January 2007 the Commission published a further Action Programme (SEC(2007)84)[3]. This built upon earlier principles, but the specific actions it proposed do not include measures within the environmental acquis. However, it is this agenda that is bringing forth simplification proposals and it is this agenda that other initiatives need to engage with, such as reviews of existing Directives and proposals from the Parliament on its own simplification ideas.

[3] Commission Staff Working Document. Action Programme for Reducing Administrative Burdens in the European Union. SEC(2007) 84, 24.1.2007.

2 THE CRITERIA FOR SIMPLIFICATION

Simplification as a general concept might be broadly accepted as a principle. However, it is important to establish criteria on which to base future specific action. It is important that action on simplification does not become an end in itself - a mechanism by which actors are seen to be doing something rather than achieving something. Simplification, therefore, must be integrated into the fundamental objectives of the legislative process. Thus the simplification agenda should have the following three primary goals:

- Results in laws that are more likely to achieve the desired outcomes – such as environmental outcomes;
- Results in laws that are less likely to lead to undesired outcomes – such as unnecessary costs to business; and
- Improves the process by which these are achieved (increased efficiency).

The first of the goals is critical. The goal of protecting health and the environment or safeguarding the operation of the single market must be central to the discussion of simplification. However, what simplification seeks is to achieve these goals while reducing, as far as possible, less desirable outcomes, particularly costs to businesses and administrations.

Costs can also result from poor legislative drafting or a confusing legislative environment. For this reason it is also important to ensure that legislative is clear, coherent, consistent, practicable, etc. Part of the mechanism to deliver this is codification, but there is also a need to improve consistency between laws. Thus this is an important criterion in the simplification agenda. For example, the European Governance White Paper 2001 (COM(2001) 428)[4], identified the need to strengthen:

- Effectiveness;
- Efficiency;
- Coherence (integration);
- Accountability;
- Transparency; and
- Stakeholder involvement.

It will be seen in this report that there are many recent and ongoing processes which the simplification agenda has, or could, engage with. There is, therefore, a practical and political context to future work on simplification. For example, the regulation of chemicals has recently been amended by adoption of the REACH Regulation (Regulation 1907/2006). There might be an argument that REACH could be made simpler. However, it is inconceivable that the EU institutions would wish to reopen such a politically sensitive subject again so soon.

[4] European Commission 2001. European Governance. A White Paper. (COM(2001)428), 25.7.2001.

As a result the following simple criteria have been used to guide the discussion on simplification in this report:

1. Where is it possible to improve/codify legislation without altering its obligations on stakeholders?
2. Consistency and coherence of legislation should be improved.
3. Obligations on stakeholders which are burdensome and not justified in relation to the desired outcomes achieved should be removed.
4. Simplification should not result in a net reduction in protection of health or the environment.
5. The political and practical context of sectors/Directives needs to be taken account of in deciding simplification priorities.

These are simple and broad criteria. However, when combined with some common sense approach to the legislative agenda of the EU institutions and likely policy developments, they do provide a sufficient framework which both focuses on what is important and yet avoids unnecessary action.

3 CODIFICATION AND RECASTING

3.1 Introduction

One approach to the simplification of legislation is to bring together different legislative acts into single integrated documents. This provides ease of reference and reduces the likelihood of requirements being overlooked, etc. Two terms are used to describe this process – codification and recasting.

> *Codification* is defined by the Commission as the process whereby the provisions of an act and all its amendments are brought together in a new legally binding act which repeals the acts which it replaces, *without changing the substance of those provisions*. It is an important strand in the simplification programme of the EU institutions.
>
> *Recasting* is the process whereby a new legally binding act repealing the acts which it replaces and *combines both the amendment of the substance of the legislation* and the *codification of the remaining which is intended to remain unchanged.*

It is important to note that the definition used above for "codification" is not the only understood use of the term. Faure (2000)[5], for example, uses the term "codification" in the sense of legislative systems which bring all environmental law into a single legislative document (as seen by Sweden"s Environmental Code or Flemish law[6] – see below). Faure, therefore, discusses "codification" as the "ultimate form of harmonisation of environmental law" overcoming sectoral approaches. This definition is not that of the EU institutions in their use of the term "codification", although Faure concludes by proposing a definition similar to that used by the Commission. However, it is important to note different uses of the term in order to aid understanding and to note that this approach to "codification" has important consequences for the outcomes of EU-level codification in relation to transposition (see below).

In 2001 the Commission[7] launched a programme to codify, wherever possible, existing legislation and estimated, at the time, that this process could reduce the volume of legislation of the acquis as a whole by some 35,000 pages when completed. This process has made some progress and is ongoing (see below).

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission agreed, by an inter-institutional agreement of 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

Codification has also received support within the European Parliament. For example, the 2006 McCarthy Report (see Annex II) stated it "insists that the Commission must continue to consolidate, simplify and codify Community legislation so as to improve accessibility and legibility".

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[5] Faure, M.G. 2000. Defining harmonisation, codification and integration. European Environmental Law Review. June 2000. pp. 174-182.

[6] Lavrysen, L., 1999. The codification of Flemish environmental law. European Environmental Law Review, 1999, 230-233.

[7] Communication from the Commission to the European Parliament and the Council. Codification of the Acquis Communautaire. COM(2001) 645. 21.11.2001.

This section will consider why codification is undertaken, critically examine some examples and discuss where further codification could be focused.

3.2 Why codify?

Over time EU legislation is amended and amended again. This can lead to the official text of a single Directive being spread among a series of texts in different places. COM(2001) 645 provides a number of reasons for the codification process. The primary reason among these (section 1.3) relates to enlargement of the EU. Translation of EU law and transposition activity for Candidate Countries is clearly less expensive if the texts are shorter, both for the Commission Services and the country administrations. The Communication estimated a saving of €17 million[8], much of it coming from texts to be translated to Bulgarian and Romanian (as much of the translation for the EU-10 had already occurred). These figures are now historic, given the 2007 enlargement. However, the same principle applies to the current Candidate Countries (Croatia, Former Yugoslav Republic of Macedonia and Turkey). Since 2005 Irish has been an official language of the EU. However, translation is only currently required for proposals going through co-decision. Interestingly, this means that proposals for codification require translation into Irish (where the original legislation did not). This need for additional translation does not off-set the benefits for Candidate Countries and the Commission, but it does reduce it.

A further argument for codification is that fragmented texts are complex and not easy to understand and that bringing amended texts together in a single document aids transparency and communication as well as accuracy in assessing implementation. This argument is clearly evident when considering national Member State legislation, but is less obvious with much EU law. Stakeholders (e.g. businesses) are not directly affected by a Directive and its amendments, but by the transposing national legislation. Thus it is the fragmentation of transposing law which can be more critical. With EU Regulations, transposition does not occur, so the situation is different.

The transposition process can result in "codification" at national level. In some Member States this is relatively routine. For example, in Flanders the VLAREM[9] framework environment law and its annexes are repeatedly amended as new EU law is adopted, thus codifying the result. A similar case can be found with the Swedish Environmental Code which entered into force 1 January 1999. The Code contains 33 chapters comprising almost 500 sections and new EU rules are integrated within it during transposition.

In other cases integration at transposition can be more infrequent. For example, in England new EU law can result in new secondary legislation (Statutory Instruments) which, like the EU law, amends earlier legislation and not codifies it. However, codification can occur, as seen with the transposition of the third daughter Directive of the air framework Directive in England where the Statutory Instrument included those covering the earlier daughter Directives.

Thus businesses may "see" codified laws implementing EU legislation for laws which are not codified at EU level.

[8] Compared to an overall translation budget of the Commission of €307 million in 2007.

[9] VLAREM, *Vlaams Reglement betreffende Milieuvergunning* – Flemish Regulation on Environmental Permits.

It is also important to note that where businesses and other stakeholders are only concerned with national expression of EU law, codification at EU level need not overcome problems of fragmentation at national level. Codification does not impose new obligations on the Member States. Thus even though the EU can go through this simplification process, the stakeholders can remain subject to fragmentary and confusing texts if the Member State does not follow suit.

These comments are not to be seen as critical of the codification process, but are made to note the limits of its outcomes.

3.3 When to codify and progress on codification

Codification is most applicable when existing law has become repeatedly amended and difficult to follow as a result. The greater the resulting complexity, the more useful codification becomes.

The European Commission has also stated that codification should only take place when the law is "stable", that is it is not subject to likely future amendments that would diminish the benefits of codification.

COM(2001) 645 provides a basic timetable for action and indicates the resources required for undertaking the codification project. However, it does not indicate specific environmental legislation which would be subject to the codification process or why it has been chosen.

The Commission"s report on its simplification agenda[10] noted of the 500 acts in the codification programme, 52 had completed the process, 33 acts were pending and 8 were in the written procedure. It noted that a major hindrance to the programme was the conversion of master copies of the new texts into the new EU official languages. The Communication also detailed the future programme of codification, not only to ensure transparency, but also to "encourage minimal new amendment" of those acts so "stabilizing the legislation involved and reducing delay".

In its "codification rolling programme" (SEC(2006) 1220) the Commission noted the following in relation to legislation in the Environment Chapter:

Acts currently pending

- Shellfish waters Directive (79/923)
- Contained use of Genetically Modified Organisms (GMOs) Directive (90/219)
- Integrated Pollution Prevention and Control (IPPC) Directive (96/61).

Adoption between 1 May 2007 and 31 August 2007

- Regulation 1210/90 on the European Environment Agency

Adoption between 1 September 2007 and 31 December 2007

- Directive 95/12 on ecolabelling of washing machines
- Directive 97/17 on ecolabelling of household dishwashers

[10] Commission Working Document. First progress report on the strategy for the simplification of the regulatory environment. COM(2006) 690. 14.11.2006.

The Commission work programme for 2007[11] stated that it "will step up its work appreciably to reduce the volume of the acquis" and that it aims "to present around 350 codification initiatives in the period up to 2008" (around 100 in 2007).

For legislation under the Environment Chapter, the European Commission specifies five areas where recasting should occur. These are detailed in Table 1.

Table 1: Five areas, as specified by the European Commission, where recasting should occur

Area	Commission comments
Review of existing legislation on industrial emissions	The objectives are to improve the current legal framework related to industrial emissions and to streamline the interaction between various legislation, while not altering the underlying principles and the level of ambition of the present legal framework. It currently includes Directives on Integrated Pollution Prevention and Control (IPPC) (96/61), Large Combustion Plants (2001/80), Waste Incineration (2000/76) and Solvent Emissions (1999/13).
Revision of Regulation 1980/2000 on ecolabelling	This aims to enhance substantially the political profile of the instrument. The aim is for a more business-friendly system.
Revision of Regulation 761/2001 EMAS	This aims to enhance substantially the political profile of the instrument. The aim is to raise its attractiveness to small and medium-sized enterprises (SMEs) and simplify access to the Environmental Management and Audit Scheme (EMAS).
Review of titanium dioxide Directives	The aim is to merge the existing three Directives and delete obsolete provisions while keeping the same level of environmental protection.
Development of a Shared Environmental Information System	A Communication will outline such as system, accompanied by proposals to streamline environmental reporting requirements.

While each of these initiatives contributes towards simplification, only one (on titanium dioxide) is strictly a codification/recasting initiative, as the others are focused on the amendment of legislation.

It can be seen by examination of the proposed areas of work in COM(2006) 690 and COM(2006) 629 that there is, in effect, little new attention proposed in relation to the codification of EU environmental law.

[11] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Commission Legislative and Work Programme 2007. COM(2006) 629. 24.10.2006.

3.4 Codification and Recasting Examples

It is useful to examine some examples of codification and recasting of EU environmental law that have recently been undertaken or are currently being taken forward.

Freshwater fish Directive (78/659)

The freshwater fish Directive (78/659) was codified in 2006 (Directive 2006/44). The 1978 Directive had subsequently been amended by Directive 91/692 (standardised reporting) and Regulation 807/2003 (on Committee provisions). Of these two amendments, only the former affected stakeholders directly. The amendments did not, therefore, affect the substantive provisions of the earlier Directive in relation to standards to be set or provisions to meet such standards, but only relating to specific reporting obligations. Thus the amendment was not complex, focusing on a specific obligation. Member State authorities (to which the amendment would most relate) had many years to understand its consequences as it was not until 2004 (13 years after amendment adoption) that codification was proposed. It is unclear, therefore, what practical or legal problem or confusion would have remained at this stage through which codification would have helped. Finally, it should be noted that at the time of the proposal for codification Directive 78/569 was already scheduled for full repeal under the water framework Directive (2000/60) (in 2013). This example raises the following questions to be pertinent in future codification work:

- How far codification is necessary when there have been no recent amendments, so that stakeholders have become familiar with the fragmented texts?
- How far is codification necessary for Directives that are already scheduled for repeal?

These questions are, of course, largely answered by reference to the objective of the simplification of translation support for enlargement.

The air framework Directive

The Thematic Strategy on Air Quality included a legislative proposal which combines the Framework Directive (96/62), the First (1999/30), Second (2000/69) and Third (2002/3) Daughter Directives and the Exchange of Information Decision (97/101). The Fourth Daughter Directive (2004/107) will be merged later through a simplified codification process. The proposal "clarifies and simplifies, repeals obsolete provisions, modernises reporting requirements and introduces new provisions on fine particulates".

In this case the proposal is an example of recasting, whereby new provisions are proposed regarding fine particulates and the opportunity is taken to bring five items of EU law into a single document.

The Thematic Strategy does not explain why this process does not include Directive 2004/107 at this stage. There does not seem to be any obvious reason for delay in including its provisions within the recasting/codification and to bring EU air quality back to the Council and European Parliament again at a later date would seem inefficient. This example raises the following questions to be pertinent in future codification work:

- Should greater effort be given to ensure that codification is comprehensive?
- Should the timetable for codification be delayed to ensure that all relevant amendments are fully addressed?

Dangerous substances Directive (76/464)

This Directive was subject to a number of amendments. Also, like the air framework Directive, it gave birth to a series of "daughter" Directives covering the regulation of emissions and environmental quality standards for a range of inorganic and organic contaminants. The codification process brought all of these measures into a single legal text.

The Directive and its amendments fit the criteria of the Commission for codification not only in the number of amendments, but also in relation to stability. Legal developments in this area have transferred to development of a daughter Directive under the water framework Directive (2000/60), so that further change to the dangerous substances Directive will no longer occur. It should be noted that, like the freshwater fish Directive, the dangerous substances Directive will be repealed by the water framework Directive in due course.

Contained use of GMOs Directive (90/912)

This Directive has been subject to a number of amendments and a codified version has been proposed (COM(2006) 286). This Directive has been subject to considerable scrutiny over recent years, given the active growth in development of GMOs and the political sensitivity of this issue. It does, therefore, seem to be an important example of a Directive whose stakeholders would benefit from codification.

IPPC Directive (96/61)

This Directive has been amended twice – firstly by the Directive transposing the requirements of the Aarhus Convention on public participation (2003/35) and secondly by the introduction of the Directive on greenhouse gas emissions trading (2003/87). As a result a proposal for a codified version has been made (COM(2006) 543).

It is not clear, however, that this Directive meets the criteria for codification set out by the Commission, in particular the requirement for legislative stability. The Directive is currently under very active review with a number of studies examining many aspects of the Directive with extensive Member State participation. This process is continuing, but is likely to lead to a major amendment that will clarify terms, modify obligations, and seek greater harmonisation with other EU legislation. It can be argued that undertaking codification prior to subsequent amendment "prepares" the institutions for dealing with the issues addressed in the Directive. However, this does seem rather a wasteful process of the time of Commission, Council and Parliament staff. This example, therefore, raises the following question in relation to codification:

- Are the criteria set out for determining which legislation should be codified being adequately applied?
- Is there a benefit in codifying legislation that is not "stable"?

3.5 Which areas of EU environmental law most deserve codification?

Table 2 provides examples of selected EU environmental Directives indicating the number of amendments to which they have been subject. This does not give an indication of the complexity of any amendments, which would require a more detailed assessment. However, the following conclusions can be reached:

- Codification has proceeded further in the case of water law than other sectors.
- Currently, there are proposals within pollution control and air sectors.

- The sectors with Directives with the most amendments without proposed codification are nature protection, noise and waste.
- In other sectors, Directives where codification seems most relevant are those on GMOs and vehicle emissions.

Codification is only practical where there is no rapid production of amendments. This generally happens in the case of vehicle emissions and it is likely that any codified version would be rapidly amended. However, further consideration in this case should be given to recasting.

On nature protection there has been significant amendment of the birds and habitats Directives in particular. While both could be codified (many amendments addressing enlargement), consideration could also be given to combining the two Directives. This would require further amendment, but would overcome what is viewed by many stakeholders as the anomalous position of the birds Directive.

Table 2. Examples of Directives and Regulations across different sectors of the environment chapter of the acquis indicating the number of amendments that they are subject to[12]. The amendments do not include derogations.

Measure	Short name	Number of amendments
Horizontal		
2001/42/EC	Environmental Impact Assessment (EIA) Directive	0
761/2001	EMAS Regulation	3
Pollution		
87/217/EEC	Asbestos Directive	3
96/61/EC	IPPC Directive	4
2004/35/EC	Environmental liability Directive	1
Radioactivity		
2003/122/Euratom	Directive on high activity sealed and orphaned sources	0
2006/117/Euratom	Directive on shipment control	0
Water		
75/440/EEC	Directive on surface waters for drinking	2
79/869/EEC	Directive on measurement and analysis	5
91/271/EEC	Urban waste water treatment Directive	1
91/676/EEC	Nitrates Directive	1

[12] Derived from EUR-Lex

Measure	Short name	Number of amendments
98/83/EC	Drinking water Directive	1
2000/60/EC	Water framework Directive	1
2099/2002	Regulation establishing Committee on Safe Seas	1
2005/35/EC	Directive on ship-source pollution	0
2006/7/EC	Bathing water Directive	0
2006/11/EC	Dangerous substances Directive (codified)	0
2006/44/EC	Fishlife Directive (codified)	0
2006/113/EC	Shellfish waters Directive (codified)	0
2006/118/EC	Groundwater Directive	0
Air pollution[13]		
93/389/EEC	Directive on CO_2 monitoring	2
93/12/EEC	Directive on sulphur content of fuels	2
1999/32/EC	Directive on sulphur content of fuels	2
93/76/EEC	Directive concerning the promotion of energy efficiency in the Community (SAVE)	0
926/93	Regulation on forest monitoring	1
94/63/EC	Directive on Volatile Organic Compounds from petrol storage	1
98/70/EC	Directive on fuel quality	3
1999/13/EC	Directive on solvent emissions	2
2000/69/EC	Waste incineration Directive	0
2001/80/EC	Large combustion plant Directive	2
2001/81/EC	National emission ceilings Directive	2
2003/87/EC	Green house gas emissions trading Directive	1
842/2006	Regulation of fluorinated gases	0
Noise		
70/157/EEC	Directive on vehicle noise	14
2000/14/EC	Directive on noise from outdoor equipment	1
2006/93/EC	Directive on limitation of aeroplane operations	0
Risks		

[13] Note that this section does not include regulation of motor vehicle emissions through Directive 70/220/EEC (light vehicles) and 88/77/EC (heavy vehicles). These Directives have been subject to a whole series of amendments stepwise to tighten the limit values. Such legislation is highly "active" and not "stable".

Measure	Short name	Number of amendments
94/55/EC	Directive on transport of dangerous goods	7
96/82/EC	Seveso II Directive	2
2001/18/EC	Directive on deliberate release of GMOs	4
Nature		
79/409/EEC	Birds Directive	10
348/81	Regulation on imports of whale products	2
83/129/EEC	Directive on importation of seal products	1
92/43/EEC	Habitats Directive	5
338/97	Convention on International Trade in Endangered Species (CITES) Regulation	4
Waste		
75/439/EEC	Waste oils Directive	3
86/278/EEC	Sewage sludge in agriculture Directive	3
91/157/EEC	Batteries and accumulators Directive	1
91/689/EEC	Hazardous waste Directive	2
96/59/EC	Polychlorinated biphenols Directive	0
1999/31	Landfill Directive	1
2000/53/EC	End of life vehicles Directive	4
2000/59/EC	Ship waste Directive	1
2002/95/EC	Restriction on Hazardous Substances Directive	7
2002/96/EC	Waste Electrical and Electronic Equipment Directive	1
2150/2002	Waste statistics Regulation	3
1013/2006	Regulation on waste shipments	0

3.6 Interactions between legislation

An individual piece of EU law might be clear and easily understood in itself. However, it might be inconsistent with other EU laws. Inconsistency and lack of coherence between legislation is a problem for the environmental acquis and has been discussed a number of times (such as by European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), within the IPPC review, in the development of the water framework Directive and the waste Thematic Strategy, etc). Although this is a different subject to codification, it is important to raise the issue for completeness sake within the context of the simplification agenda.

This report is not the place to detail all of the inconsistencies between EU laws. However, it is important to stress that review of Directives and even proposals to codify existing law should consider how far interactions should be addressed. Consistency varies, even with current legislative proposals. For example, there has been considerable effort to ensure consistency of approach between the proposed floods Directive and the water framework Directive[14]. However, there are inconsistencies between the latter Directive and the proposed marine strategy Directive[15]. This is presumably deliberate on the part of the Commission and the Parliament has indicated a desire to improve consistency and a harmonised approach.

It is, of course, important to avoid inconsistencies, etc, in legislation at all levels. It is not clear how far inconsistencies in EU law are translated into the legal systems of the Member States. Where Member States "copy out" EU law, it is more likely that inconsistencies, etc, are retained into national systems and, therefore, become a problem in implementation for administrations and businesses. However, where new EU law is integrated into existing legal frameworks, then greater attention may be given to harmonisation. An example can be seen with the implementation of the IPPC and solvent emissions Directives in Flanders. The two Directives define the size of an installation differently – IPPC by solvent capacity and solvent emissions Directive by level of emissions of volatile organic compounds. The latter is far more realistic (as plants generally run at a fraction of theoretical capacity), so Flemish law has used the solvent emissions Directive definition and not that of the IPPC Directive. It is not appropriate here to comment on whether this is an example of adequate transposition or not, but it is an example of how national administrations can attempt to ensure that problems with EU law are not "seen" by their administrations and businesses.

This section will simply conclude with a recommendation of the need to include consistency between laws as an important element of simplification. It should be a "bottom line" when any consideration of simplification within a legislative sector is considered and, therefore, colours the conclusions reached later in this report.

3.7 Conclusions on codification and recasting

Codification is an important part of the simplification programme of the EU institutions. It provides a clearer basis for communication with stakeholders and reduces the burdens of approximation during enlargement.

The criteria set out by the Commission for codification should be supported. However, given time, further criteria could be developed. These could include the following:

- *The "volume" of amendment.* In this case it is not simply the number of amendments that have occurred that might stimulate codification, but their "volume". If the objective is, for example, to reduce translation costs, a simple one line amendment will not be worth the effort. Are the changes, therefore, substantive?
- *The "nature" of amendment*. In this case an amendment might, for example, be of significant "volume", but form a simple insertion into an existing Directive without replacing earlier text. Again codification would not significantly reduce translation costs in such a case.

[14] Farmer, A.M. 2005. A European Union Directive on flood management. *The Journal of Water Law*. 16: 85-89.

[15] Farmer, A.M. 2006. A European Union Marine Strategy Directive. *The Journal of International Maritime Law*. 12: 122-133.

It is not always clear why the environmental Directives subject to current codification were chosen and others not. It would, therefore, be useful for DG Environment to develop a Communication or staff working document discussing its understanding of codification priorities and how these fit into its wider legislation development and review programme.

Greater consideration should also be given to recasting. This seems to be an obvious case where codification could be achieved. Where a new Directive is an amendment to an earlier single Directive, full consideration should be given to whether a completely revised text should be adopted. It most cases the benefits of doing this would outweigh any disadvantages. If there is concern that putting an entire Directive again through co-decision would open up contentious debates again, the inter-institutional agreement could be amended to allow for debate over the amended part of the Directive, but not on that which is simply being codified. It would, therefore, be beneficial for the Commission, Council and Parliament to explore the potential for greater recasting and the working methods to achieve this.

Finally, as legislation is adopted, reviewed, revised, recasted, etc., full consideration should be given to its interaction with other EU law and attention paid to improve coherence and consistency. Adoption of new laws that are not harmonised with existing law should be avoided unless there is a clear statement of why this should be the case.

4 ADMINISTRATIVE BURDENS

The costs of implementing EU environmental legislation can vary significantly between the Member States. Clearly there may be variation due to the different state of industry prior to adoption of a Directive. For example, under IPPC industry in one Member State might already operate to Best Available Techniques (BAT), while that in another Member State does not, with resulting differences in necessary technical investments. This variation is not the subject of this briefing. Even with industry (or other sectors) at a similar level, the costs of implementation can vary. This can be due to the nature of choices made by Member States determined by a range of factors.

It is important to explore this issue here as any judgement over the burdens that EU legislation imposes on Member States is affected by it. A Directive might be seen as a heavy administrative burden in one Member State and be viewed as of little burden in another. Some examples include:

- IPPC: Sweden has argued that its regulatory system largely encompasses IPPC as does Ireland"s Integrated Pollution Control system. Thus the net burden of EU law is limited compared to many other Member States.
- Water framework Directive: this is clearly less of an administrative burden in France with its existing structures than some other Member States.
- Packaging waste Directive (1994): studies[16,17] have found that Member States have adopted widely differing measures to meet the targets in the Directive, with resulting significant differences in costs, such as between Austria and Germany (costly) and the Netherlands.

Thus the burdens imposed on Member States vary according to the nature of pre-existing national regulation and the choice of measures that they take to implement a Directive.

It is also important to note that implementation of EU law can take place alongside national regulatory systems. This can affect any estimation of burden. For example, Finland"s 2000 Environment Act includes the requirements of IPPC, for a few hundred installations. However, it also imposes similar conditions on a few thousand activities not subject to the Directive. The administrative burden of the Directive is, therefore, small compared to that for national law.

Member States also recognise the importance of the choices that they make in implementation and can seek least cost routes and opportunities to lower costs by practical harmonisation between Directives. Work undertaken through DG Enterprise has sought to highlight such practices and some examples are provided in Annex III to this briefing. These examples serve to illustrate the point that reducing the administrative burden can be a practical option for Member State action and not require a reliance on action at EU level.

[16] Taylor Nelson Sofres Consulting 2000. Cost-efficiency of packaging recovery systems. The case of France, Germany, the Netherlands and the United Kingdom. Report for DG Enterprise.

[17] EEA 2005. Effectiveness of packaging waste management system in selected countries: an EEA pilot study.

There have been a number of attempts to measure administrative costs in the Member States. Much now is based on the Standard Cost Model (SCM) developed in the Netherlands (but used elsewhere, such as in Denmark and the UK). COM(2006) 691[18] noted the following progress on measuring administrative costs in the area of environmental legislation in 16 Member States:

- Measured: Czech Republic, Denmark, the Netherlands, Sweden, and the United Kingdom.
- Planned or being measured: Austria, Belgium, Germany, and Poland.
- Not measured: Estonia, Finland, France, Hungary, Ireland, Italy, Latvia

It is important to note that most of this activity is focused on national legislation, such as the burdens of environmental permits in the Netherlands, etc. Of course EU law contributes to the requirements within the national law. However, in the operation of administration and costs to business, it is usually not possible to separate out the specific costs derived from the EU law itself.

COM(2006) 691 does, however, identify (in its Annex 2) a number of Directives which have been calculated as having some significant administrative burden in the Czech Republic, Denmark and/or the Netherlands. None of these are from the environment chapter of the acquis. Annex 3 identifies the top 20 priority areas at national level (based on Danish research) and this list also does not contain environmental measures. However, in the Netherlands (Annex 4) the sector with the fifth highest administrative cost is "environmental licences (general)". These results are, therefore, of limited usefulness to forming conclusions in this briefing.

It is important both to support the work on quantification of administrative burdens and express a note of caution. Identifying where burdens are imposed should guide initial efforts on simplification. However, considerable care should be undertaken to examine the burdens across many different Member States so that the assessment is not distorted by practices in one or two countries which might not be representative.

Thus the administrative (or other) costs of implementing EU (or other) legislation are important. However, simply comparing the costs between Directives (even across representative Member States) also does not provide the basis for simplification activity (although it could provide a first "screening"). The administrative burdens ought to be higher in some cases than in others. What is important is whether the degree of burden is proportional to the risk that the legislation is regulating.

The level of burden imposed on administrations and businesses should reflect the level of outcome expected. This is the principle of proportionality. EU law can take a poor regard to proportionality, particularly in comparison to some national legislation. For example, EU law can be more precise in defining the subject to which regulations apply. Some national legal systems can apply discretion to regulators, such *de minimis* provisions, whereby judgements can be used as to whether a regulation should be applied if no benefit is foreseen. Placing such discretion in EU law would increase the problems of compliance assessment by the Commission, however. A clear example of this is the lack of lower thresholds for a number of categories of processes in Annex 1 of the IPPC Directive, so ensuring that some small activities with little or no environmental risk are captured in the legislation.

[18] Commission Working Document. Measuring administrative costs and reducing administrative burdens in the European Union. COM(2006) 691. 14.11.2006.

Proportionality should also be focused on the objective of legislation. An environmental problem can be identified, but the mechanism chosen in a Directive might not be proportional to that problem. For example, the waste framework Directive required substances to be managed simply because they are waste rather than because they pose any risk to the environment.

There is yet to be a detailed study examining administrative burdens across Member States in a way that is truly comparable, taking account of differences in pre-existing national systems, constraints on instrument choices (including simplification measures), etc, and to consider the proportionality of the impact of EU law. Thus other than stress the importance of focusing simplification on measures with the greatest burden, while taking account of proportionality, it is difficult to lead to detailed recommendations in relation to the acquis.

5 COMPLEXITY AS A CRITERION FOR SIMPLIFICATION

5.1 Is "simple" the opposite of "flexible"?

EU environmental legislation has become increasingly "flexible" in its character. By this we mean that the obligations upon Member States can be expressed in broad terms and that they have flexibility in identifying how they are to achieve these obligations.

The great advantage of flexible approaches is that they enable Member States to determine the least-cost routes to implementation. The air framework, water framework, packaging waste and habitats Directives do not, respectively, tell Member States how to achieve air limit values, good ecological status, recycling targets or favourable conservation status. The appropriateness and cost of different measures will vary across the Union. Thus one can argue that such framework or flexible approaches assist in delivering the simplification objective of reducing the burdens on businesses.

While this is partially true, there are two significant problems with the delivery of simplification through this route. The first is that it assumes Member States will undertake the analysis necessary to determine least cost routes to implementation and follow these results. There are various ways of doing this, such as through an options analysis within a Regulatory Impact Assessment. However, research[19] undertaken for DG Environment suggests that many Member States do not do this, for the following reasons:

- There are pre-existing national practices and these are built upon, even if they are not cost-effective.
- There is not a culture of regulatory impact analysis.
- Undertaking detailed analysis is too onerous.
- There is insufficient information upon which to base an analysis.

Member States are improving their assessment of options during transposition and subsequent implementation. However, much remains to be delivered.

The second major problem occurs where the environmental objectives in the EU legislation are somewhat complex, such as with "good ecological status" or "favourable conservation status". It is clearly impossible to know what these mean, in practical terms, early in the stages of implementation, so determining least cost options can be problematic. This also poses problems for Impact Assessments of proposals at EU level (such as seen in the discussion of meeting "good environmental status" under the proposed marine strategy Directive). Businesses do not know what the legislation means for them - its consequences remain opaque. Such legislation is not, therefore, consistent with objectives of clarity, cost assessment, etc.

In total contrast to "flexible" legislation are laws which are highly prescriptive. The most obvious of such within EU environmental legislation are those setting operational standards for industry, such as emission limit values. These laws are criticised as being inflexible and inhibit governments or businesses adopting alternative solutions to the problems the legislation seeks to address, but which might be cheaper. Prescription does, however, have the advantage of clarity and certainty.

[19] Farmer, A., ten Brink, P. and Kettunen, M. 2005. Taking advantage of flexibility in implementing EU environmental law. *Journal for European Environmental and Planning Law*. 3: 395-405.

Businesses know what is required of them and can plan accordingly. There do not appear to be detailed studies on the attitude of industry in this regard. However, the attractiveness of prescription has been expressed in public fora by industry on a number of occasions.

Flexibility and prescription each have their advantages and disadvantages and each can contribute to simplification objectives as well as cause problems for delivering simplification. The objectives of simplification need, therefore, to find the correct balance between flexibility and prescription. This balance will vary on a case by case basis and, of course, the choice might not be driven by the simplification agenda (e.g. prescription might be necessary to ensure ease of compliance assessment by the Commission or a flexible approach needed because of the complexity of environmental issue across the Community).

Useful questions to consider, therefore, are:

- Is there existing EU environmental legislation which is prescriptive in a way which leads to implementation which is more costly than necessary?
- Is there existing EU environmental legislation which is so flexible that it introduces complexity and lack of clarity into the implementation processes leading to confusion for industry and others?

5.2 Complexity of implementation

A number of Directives impose considerable complexity in their implementation for Member State authorities and for businesses. Complexity is, in linguistic terms, the opposite of simple. However, it is important to consider whether such complexity is desirable or whether a "simpler" approach could be more applicable.

Complexity manifests itself in cases where legal obligations imposed at EU level are not able to be immediately implemented within a Member State, but require further analysis or interpretation prior to implementation.

Complexity can only be discussed with reference to specific examples. It will, therefore, be examined through two very different, yet complex, Directives – the IPPC and water framework Directives. Following this discussion, consideration will be given to the nature of complexity across the environmental acquis and, therefore, whether the simplification agenda should apply to it and, if so, where.

5.3 IPPC Directive

The IPPC Directive requires industrial operators to ensure that their activities operate according to the principle of Best Available Techniques (BAT). Authorities are required to issue permits containing operating conditions, such as emission limit values, based on that understanding of BAT. BAT is, however, not static and may change over time and it might also be appropriate to vary conditions because of local environmental concerns, for example.

In order to implement the Directive, therefore, Member State authorities need to develop an understanding of BAT across all relevant industrial sectors. They also need to develop systems for assessing and issuing permits and establishing monitoring and inspection regimes to ensure compliance with those permits. Authorities might also need to grapple with fundamental questions as to what is, or is not, included with an IPPC permit determination and how to relate such analysis to conditions imposed by other EU Directives on the same installation.

Where Member States have hundreds or thousands of IPPC installations, the complexity of technical and administrative approaches can, therefore, be significant. This is illustrated by the many years and huge resources that the Commission, Member States and stakeholders have put into the development of BAT Reference Notes (BREFs) through the Institute for Prospective Technology Studies, which only address part of IPPC implementation.

IPPC is, therefore, a Directive with a complex implementation process. Is this complexity justified and could it be "simpler"?

The very principle underlying IPPC is one which results in complexity – that of the integrated approach. By seeking to minimise and optimise the impacts of pollutants, for example, in air, water and soil, a complex analysis might be required. Bringing together the outputs of a process, its operation, its management and materials used – again to reduce and optimise outcomes – is also complex. Yet, this is an approach which has proved beneficial in a number of Member States prior to adoption of the Directive.

Thus one response to questioning the complexity of IPPC is – a complex approach is needed because the environment, as a whole, is complex and business operations are complex. Thus a simpler approach is sub-optimal.

A further consideration that has been raised in relation to IPPC, is - is it the most effective instrument for delivering environmental objectives? This question has arisen particularly in relation to the possible use of emissions trading beyond greenhouse gases, such as for nitrogen oxides. The argument for such an approach is that it is more economically efficient and will deliver benefits beyond the implementation of BAT. The argument has been made strongly by the Netherlands and has some wider support, such as from the UK. This report is not the place to rehearse all of the arguments made on this issue, which can be found, for example, within the context of the Commission"s current review of IPPC. Rather, it is interesting to note that there is widespread opposition to use of emissions trading as an alternative to IPPC for such pollutants, from Member States, industry and environmental NGOs. Reasons for opposition include:

- That changing the obligations on industry before IPPC has been implemented is disturbing to business planning.
- That making changes to IPPC to allow for flexible approaches undermines whatever "level playing field" it might deliver.

There are other reasons (such as wishing to be confident of the implementation of the current emissions trading Directive), but these two reasons are important for this discussion. The first argument is that businesses will not always welcome new legislation because it is "simpler" or "better". It can be unwelcome if it upsets their business planning due to them being used to the current regulatory environment. The second point is that some Member States and businesses are not so much concerned about the overall burden that is imposed by legislation, but on whether businesses are equally burdened across the EU. In both cases there will, of course, be individual views which differ from these.

This discussion has, to this point, suggested that the level of complexity and nature of the IPPC instrument is justified. However, this needs not always be the case. In particular, while the approach might be generally correct, it might not always be directed at the right "objects". This is most clearly evident in the case of small activities with little or no environmental impacts which are covered by the Directive (see the earlier discussion of the principle of proportionality).

In this case, it can be seen that a complex Directive might be necessary or justified (or at least left alone), but that does not mean that it should necessarily regulate all that it currently regulates.

This briefing will not make specific recommendations in relation to IPPC as this issue is currently the focus of a major European Commission review which is addressing these and many more matters. However, it is important that the Parliament considers both the importance of the simplification debate within the review process and outcomes, as well as the limitations of that debate.

5.4 Water framework Directive

The water framework Directive (WFD) is another complex Directive. However, in this case the complexity is expressed in a different manner to that of IPPC. The complexity of the WFD lies in the degree of analysis which is required before any stakeholder can be told what is required of them in order for the Member State to meet its obligations under EU law.

The Directive requires Member States to, inter alia,:

- Identify water bodies;
- Characterise them;
- Determine their chemical and ecological status;
- Assess the economics of water use;
- Identify the pressures on water bodies;
- Determine and impose measures required to deliver good ecological status; and
- Monitor and review plans.

Member States supported this approach in that it follows an ecosystem-based holistic thinking and does not impose specific obligations which might not be appropriate, but imposes a common approach to a common general goal. It is clearly evident that this is complex.

However, the complexity might only be experienced by the public authorities. In developing the programmes of measures, Member States can choose measures which are simple for those affected. The only problem for industry, farmers, etc, is that there is a considerable delay before they can be told what is required of them.

Thus one lesson from the WFD is that there can be a very different experience in the level of complexity between public authorities and businesses.

Unlike IPPC, the WFD is about as flexible as is possible in terms of the nature of the instruments used to control activities that adversely affect water status. The programmes of measures that river basin authorities must produce have, of course, to include any measures obligatory under other EU legislation, but then they are free to choose any that they consider will be effective. These can, therefore, be analysed to ensure they deliver minimum administrative burdens, least costs to industry, equity, proportionality, etc. Alternatively, Member States might choose measures that do not meet these criteria and, therefore, are not consistent with simple or better regulation principles. However, that is a matter for the Member State.

Interestingly, the proposed marine strategy Directive would impose a new obligation on Member States in developing programmes of measures for their marine regions. In this case they would be required to undertake cost-benefit analysis of any new measure that they propose to include. This would highlight those measures more consistent with simple regulation principles, although again the Member State is not obliged to follow the results of the cost-benefit analysis.

The approach taken by the WFD is, therefore, different in complexity to IPPC, where businesses affected do experience complex regulation. However, it is worth noting that the type of approach taken by the WFD means that it is impossible to undertake a detailed Impact Assessment at EU level prior to adoption of the Directive. This is most obviously seen also in the case of the proposed marine strategy Directive. Here the accompanying Impact Assessment provided some estimates of administrative costs, but could provide no indication of costs of businesses as this can only be calculated after Member States have undertaken their complex analyses of status and pressures.

In March 2007 the European Commission published a report on the implementation of the WFD. This demonstrates that a large proportion of water bodies are "at risk" and, therefore, that measures will need to be taken across many parts of the Union. This means that many businesses will be affected, although it is still unclear how many and by how much. A Directive like the WFD or the proposed marine strategy Directive can, therefore, have major consequences for costs to businesses, but Impact Assessment cannot address them. This approach to EU legislation does, therefore, have its limitations in terms of delivering some of the basic procedures of the simplification agenda of the EU institutions.

5.5 The wider environmental acquis

Complexity of different types is found across the environmental acquis. Brief comments are made here outlining this.

Nature protection. The primary (and most challenging) legislation in this section are the birds and habitats Directives. The complexity found here is similar in kind to the WFD. Member States have to designate sites and determine what is "favourable conservation status" for those sites. They must then identify what actions need to be taken in order to achieve or maintain this status. The complexity in implementation of these Directives has been added to by misunderstanding or misinterpretation of the Directives by Member States leading to failure to designate sufficient sites and, therefore, repeated complaint by the Commission, etc. However, even without this, the fundamental complexity remains.

Water. Simplification in this sector is the subject of a separate briefing[20]. However, it is worth stressing the difference between the WFD and other EU water Directives. The latter either set specific performance goals on activities (e.g. on waste water treatment or on farmers applying nitrogen) or set specific environmental quality standards, with the need for more limited actions than required by the WFD. Many are repealed by the WFD. However, there are details of implementation, such as on monitoring, that could be harmonised and simplified.

[20] Dwork, T., Kampa, E., de Roo, C., Alvarez, C., Back, S. and Benito, P. 2007. *Simplification of European Water Policies*. Study for the EP Committee on Environment, Public Health and Food Safety, IP/A/ENV/FWC/2005-35/C1/SC5.

Air quality. This sector is dominated by the air framework Directive and daughter Directives (mostly now subject to recasting). While the approach of setting environmental objectives and leaving Member States the choice of how to meet them is similar to the WFD, it is important to note a major difference. That is that the Directives specify precisely what those objectives are. Thus, in considering a new air limit value, for example, it is perfectly possible to determine the costs and benefits of such a proposal and, therefore, to undertake Impact Assessments at EU and Member State level as appropriate. This sector is, therefore, not particularly complex and has been subject to detailed recent review and is the subject of consideration by the EU institutions of a proposed recasting.

Industrial pollution control. This sector is largely dominated by IPPC. However, there are other important specific Directives, such as on waste incineration, accident prevention and emissions trading. The former is, in effect, a set of specific conditions to be applied within IPPC. The Seveso II Directive is different and imposes significant obligations on those activities to which it applies. However, given concern over accidents, it is not a candidate for simplification. The emissions trading Directive has resulted in significant administrative complexity. This is of a different kind to other Directives, in that there is a greater need to ensure the accuracy of emission information, as this has major economic value. It is likely that such complexity is a feature of this type of instrument and it will be important to understand the lessons from implementation of the Directive before further similar instruments are developed in other areas. This sector is driven by IPPC. This is already subject to review, including an examination of simplification issues. Therefore, this is a sector in which the issue of complexity and simplification should be further examined.

Waste. The waste sector is complex in that it contains Directives approaching waste management in different ways. The framework Directive sets general principles and goals. The landfill Directive sets goals and obligations on site management. The packaging waste Directive is specific for an individual waste stream as are Directives on end of life vehicles, refrigerators, etc. The sector itself is complex and interacts with other sectors. Thus landfill sites are largely within IPPC and the quality of waste can be driven by specific controls such as ROHS. The sector has been subject to review within the development of the Thematic Strategies. However, while this has addressed some issues (such as overall management goals and problems of inconsistency of definitions), it is not clear that this process has tackled the basic questions of the nature of the complexity of legislation and what is or is not appropriate within the context of the simplification agenda. This sector is, therefore, one that deserves greater examination in this regard.

Chemicals. Chemicals control has been complex and the REACH system was extensively debated in terms of whether its obligations were sufficient to protect health and the environment and whether they were overly burdensome on businesses in their administrative complexity. Given that this whole sector has just been through extensive review and highly charged political debate, there is no benefit in recommending that it is revisited so soon.

Noise. Noise legislation is not particularly complex in itself. The legislation either sets specific noise limits on machinery, etc, or assessment of ambient noise levels. The setting of product standards is not complex, nor is the ambient assessment process. This sector is not, therefore, recommended for examination in the simplification process for reasons of complexity.

Horizontal legislation. Some legislation in this sector is simple in approach, if potentially complex in individual circumstances, such as requirements on freedom of access to environmental information. However, it is not suggested that a review here is needed. EIA and SEA, however, impose specific process obligations on developers and public authorities.

The precise complexity of implementation is often set out by the Member States. However, there are arguments that separate impact assessment Directives or processes are unnecessary and benefits from integration might result. This is, therefore, an area that could be examined further within the simplification agenda.

5.6 Conclusions

Complexity, therefore, has benefits and disadvantages. It also varies in its nature. Some EU law should be complex, some could possibly be made simpler. It is not possible to identify individual Articles in individual Directives across the entire environmental acquis which deserve simplification. However, the following sectors are the most likely to benefit from a further study of their level of complexity, whether this is appropriate and how, if necessary, it can be simplified:

- Industrial pollution control;
- Waste;
- Nature protection; and
- Horizontal.

Two of these sectors are subject to current review and, therefore, it is apposite to engage the simplification agenda with these reviews at this time. These recommendations do not, however, address wider issues. For example, it might be considered too politically sensitive to "open up" the habitats Directive to debate and review, just as it would be unacceptable to propose re-opening REACH. However, examining the political acceptability of taking forward simplification has been beyond the scope of this briefing, although it will need to be considered.

6 SUBSTITUTING DIRECTIVES WITH REGULATIONS

In its 2005 Communication[21], the Commission stated that "replacing directives with regulations can under certain circumstances be conducive to simplification as regulations enable immediate application, guarantee that all actors are subject to the same rules at the same time, and focus attention on the concrete enforcement of EU rules".

There have been no proposals for changing any environmental Directives into Regulations, nor are any such changes planned. It is not, therefore, worth examining this issue in great detail. However, some specific points can be briefly made:

- Regulations are not necessarily more precise in their obligations than Directives. The Rural Development Regulation, for example, requires interpretation and development of national approaches, while a Directive can be highly prescriptive.
- For the same reason Regulations do not necessarily impose common rules across the Union.
- Regulations do not require transposition per se, but can require national legislation/action to become effective (such as the provision of certifying bodies under EMAS).
- Regulations do not need transposition, so are less likely to be "gold plated".
- Regulations do not need transposition, so are less likely to be integrated into existing national (including transposed EU) law in a way that can be beneficial to business.

The environment chapter of the Acquis has few Regulations. There is no reason for changing this situation within a simplification programme (or otherwise).

[21] Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – Implementing the Community Lisbon Programme – A strategy for the simplification of the regulatory environment. COM(2005) 535. 25.10.2005

7 IMPACT ASSESSMENT AS A TOOL TO AID SIMPLIFICATION

Impact Assessment (IA) is a critical important tool in delivering simplification. Its importance has been stressed by a number of institutions and stakeholders, not least by the European Parliament such as through the Dorn (Annex I) and McCarthy (Annex II) Reports. These stress the need for clear, consistent and quality IAs, applied to all relevant legislation, including that adopted through Comitology.

This briefing makes recommendations for simplification in certain areas and for future work. Any such change should be accompanied by an IA in order to assess the benefits and disbenefits of change. Equally, IA should be used to identify aspects of proposed legislation which are costly, disproportionate or otherwise not consistent with simplification objectives. Stakeholders will not look well upon the EU institutions if they focus simplification measures on existing legislation and yet adopt new measures that fail to meet simplification criteria.

While there has been much progress on IA, there is, however, much that should be done to improve the process. The Commission Guidelines[22] set out the procedures which should be followed by all Commission staff while conducting an IA. However, at the same time, they state that "each DG is free to choose how to organise its IA work and support internally. There is no one model applicable to all services". Wilkinson *et al* (2004)[23] comment on the difference between DGs in some operational areas such as: the transparency of the IAs in 2004 (in terms of whether they were available on the DG website[24]); the willingness of different DGs to become involved in inter-DG consultation on IAs; and resource allocation. Renda (2006)[25] also points to *prima facie* evidence that some DGs are better equipped than others for undertaking IAs, with DG Environment, performing less well (Renda 2006).

Also Nielson *et al* (2006)[26] present results on the extent of quantification of economic/ environmental/ social impacts by DG. They conclude that DG Environment tends to include more monetary quantification of environmental effects than other DGs and more quantification in other domains than in its own main area. This contrasts with Renda (2006) who does not rank DG Environment among the best performers in terms of quantification. Mather and Vibert (2006)[27] also raise some interesting points regarding the different institutional contexts of DGs for carrying out IAs. They find that "not all Commissioners or DGs are seen to be equally enthusiastic about the role of impact analysis".

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[22] CEC (2005) Impact Assessment Guidelines. (SEC (2005) 791). European Commission. Brussels.

[23] Wilkinson, D., Fergusson, M., Bowyer, C., Brown, J., Ladefoged, A., Monkhouse, C., and Zdanowicz, A. 2004. Sustainable Development in the European"s Commission"s Integrated Impact Assessments for 2003. Institute for European Environmental Policy. London.

[24] IAs were not displayed in a central Commission website until August 2004.

[25] Renda, A. 2006. Impact Assessment in the EU: the state of the art and the art of the state. Centre for European Policy Studies. Brussels.

[26] Nielson, U., Lerche, D.B., Kjellingbro, P.M., and Jeppesen, L.M. 2006. Getting the Proportions Right – How far should EU Impact Assessments Go? Environmental Assessment Institute. Copenhagen.

[27] Mather, G. and Vibert, F. 2006. Evaluating Better Regulation: Building the system. European Policy Forum. London.

Organisational changes have taken place in 2005/6 within some DGs introducing an internal management and supporting system for the operational units carrying out the IAs. This is an improvement to earlier years when typically there was only a desk officer in each DG acting as a focal point for IAs[28]. This internal management and support unit now in place in DGs generally takes the form of an Economic Analysis Unit.

The Commission"s Guidelines (2005) set out the criteria for selecting proposals for impact assessment. These state that an IA is required for items on the Commission"s Annual Work Programme, including all regulatory proposals. The SeCGeN has sought to address the issue of which proposals should be selected for IA by advancing the principle of proportionality. This requires an assessment only "to focus on the most significant impacts and the most important distributive effects, and the depth of analysis has to match the significance of the impacts". However, deciding what constitutes proportionality is problematic: how does a Commission official know what will be the most significant impacts unless s/he undertakes a full IA first?

It is important, therefore, for the European Parliament not only to support IA for the general purposes of improving legislation and simplification, but also to seek to improve the details of how the IA process can be improved. This, in particular, sets a challenge for how the Parliament will address the impact of its own proposed amendments to proposals. However, some key points more generally that should be supported include:

- To ensure that IAs are applied where needed.
- To ensure that IAs are of adequate scope and coverage and hence ensure adequate resources (time, timescale, money) given to their analysis.
- To ensure that IAs addresses balance of issues – economic, social and environmental.
- To ensure transparency and public / stakeholder inputs.
- That IAs improve cross-DG co-operation and inputs.
- To address inter-generational equity.
- To build in innovation benefits (impacts on innovation and impacts of innovation on costs).
- To ensure that IAs are broad enough in scope, i.e. to take account of interaction between legislation and variation in the nature of existing Member State circumstances.

[28] Wilkinson, D. 2005. WP1A Final Report. Impact Assessment in the European Commission: Institutional Aspects. Unpublished report prepared under the IQ Tools Research Project Funded by DG Research.

8 OTHER ISSUES

8.1 The implementation deficit

EU environmental legislation is often poorly implemented by the Member States. Often this is deliberate, sometimes it occurs through misunderstanding. In any case it is important that such legislation is implemented to ensure the protection of health and the environment and ensure that there is no distortion within the single market.

This briefing is not the place for a major examination of the problems of implementation and their solutions. However, the Commission"s Communications on simplification barely address the problems of the failure of implementation (as opposed to the costs of implementation). However, there are factors concerning simplification that relate to the implementation deficit.

The following are some of these factors:

- Does the complexity of EU law result in transposition delays? The requirements set out in a Directive can be sufficiently complex to result in the need for considerable consideration within a Member State if it is to get the transposition correct. It is likely that the failure for many Member States to transpose the water framework Directive on time was due, in part, to this.
- Do national "better regulation" processes cause transposition delays? EU institutions promote and support national initiatives on better regulation, but these can delay transposition. For example, the UK has failed to meet the deadline for transposing the environmental liability Directive. However, this has been due, in part, to the need to undertake a series of impact assessments and consultations.
- Is the EU law so complex that it is difficult to know if it has been implemented? For example, how will the Commission know that every IPPC installation is operating to BAT? This might be achieved through random sampling and reliance on complaints. However, Member States and stakeholders need to have confidence that the Commission at least knows the level of implementation.
- Are the administrative requirements to ensure implementation so onerous that compliance cannot be guaranteed? For example, if requirements in a Directive would ideally require extensive monitoring and inspection, this might be beyond the resources of a Member State.

These are just a few examples of the interaction between simplification issues and the implementation deficit. However, it is important that the question of "how will the Commission monitor compliance?" is adequately integrated into any changes that result from the simplification process.

8.2 High Level Groups

The Commission has introduced the use of "High Level Groups" to address specific topics largely with the aim of examining current and future EU policy and deliver some form of better regulation outcome. CARS 21 address the issue of vehicle emissions and the High Level Group on Competitiveness, Energy and Environment is currently deliberating.

Participants in these groups seem to consider that they might achieve more than they actually can. In effect they are advisory groups for the Commission and they could certainly influence its decision-making, for example in relation to balance of opinion between different DGs. However, they are not an alternative for the normal Community Method of law making, not least because they are not transparent in their deliberations and they fail to include the necessary stakeholders in the process (industry representatives tend to dominate).

For the purposes of this briefing, therefore, High Level Groups provide a context for the simplification agenda. It is likely that they will make conclusions in relation to specific Directives or issues. However, whether they will have taken a wide enough perspective on what is required by EU law and how this integrates with the simplification agenda remains to be seen. It is recommended, therefore, that conclusions from the High Level Groups are tested against independent criteria (such as on simplification, effectiveness, etc) prior to being accepted.

9 DG ENVIRONMENT FUTURE PLANS

DG Environment has identified the following items/areas of legislation as those which it is a priority to examine and critically review, examining implementation, effectiveness, etc:

- Waste Framework Directive (2006/12/EC) and related repeal of Waste Oils Directive (75/439/EEC) and Hazardous Waste Directive (91/689/EEC);
- Legislation on industrial emissions, including the IPPC Directive (96/61/EC) and other pollution specific legislation – possibly leading to a streamlining of reporting requirements or clearer provisions on inspection and permitting and pointing to areas where Member State implementation could be more efficient;
- The Ecolabel Programme (Regulation (EC) No 1980/2000 on a revised Community eco-label award scheme) – looking at harmonisation so that businesses could apply for their national labels and the EU Ecolabel together with only one application and validation procedure;
- The EMAS Scheme (Regulation (EC) 761/2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme) – increasing its user-friendliness and "affordability" for participating organisations, notably SMEs;
- The Regulation on substances that deplete the ozone layer (EC No 2037/2000) – wide-ranging review of administrative procedures including exemption processes;
- The Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment (ROHS) (2002/95/EC) exploring possible harmonisation of definitions and exemption procedures;
- The Waste Electrical and Electronic Equipment (WEEE) Directive (2002/96/EC) - a more harmonized registration scheme;
- The Titanium Dioxide Directives (78/176/EEC, 82/883/EEC, 92/112/EEC) – which could be recast into one Directive or incorporated in the IPPC Directive;
- The Environmental Impact Assessment Directive (97/11/EC) and the Strategic Environmental Assessment Directive (2001/42/E) - addressing the information requirements on businesses and public authorities;
- The Wildlife Trade Regulations (Regulations (EC) 338/97 and (EC) 865/2006) implementing CITES – review of the effectiveness of the legislation, cost-benefit analysis of measures, development of options for simplifying, reducing administrative burden and ensuring that controls are proportionate;
- The Biocidal Products Directive (98/8/EC) – clarifying provisions on data protection;
- A thorough review of reporting across policy areas, feeding streamlined obligations into a Shared Environmental Information System. The reporting requirements under the Habitats Directive (92/43/EEC) and the Birds Directive (79/409/EEC) will be looked at.

This agenda is important in considering the priorities for simplification for the European Parliament. It indicates that there will be considerable opportunities to engage the simplification with three important areas that have been identified in this report:

- Industrial emissions through IPPC (and review of related Directives);
- The waste sector – with revision of the framework Directive and review of waste stream Directives, etc; and
- Horizontal sector – with review of EIA and SEA.

It is, therefore, recommended that issues relating to simplification in these sectors and individual Directives are raised at an early stage with the Commission so that they are included within the fundament discussion on the future of these legislative areas.

10 CONCLUSIONS AND RECOMMENDATIONS

This briefing has identified a number of opportunities for furtherance of the simplification agenda within the context of the environmental acquis. However, there are also constraints in taking this forward. These constraints include:

- The context of the legislation – has it recently been revised;
- The political sensitivity of an issue; and
- The level of information available upon which to make sensible judgments.

Generally, it is important for the European Parliament to support the following:

- Simplification should have a broader objective – to support sustainable development;
- Simplification needs to address the implementation deficit and address the practicability and enforceability issues; and
- Simplification should be on a case-by-case basis on true merits of reform in light of broader objectives of regulation.

Codification is an important part of the simplification programme agenda. The criteria set out by the Commission for codification should be supported, but further criteria could be developed, such as on the "volume" and "nature" of amendment. Parliament should seek for DG Environment to develop a Communication or staff working document discussing its understanding of codification priorities and how these fit into its wider legislation development and review programme. The following conclusions and recommendations are reached in relation to codification:

- Codification has proceeded further in the case of water law than other sectors;
- Currently, there are proposals within pollution control and air sectors;
- The sectors with Directives with the most amendments without proposed codification are nature protection, noise and waste; and
- In other sectors, Directives where codification seems most relevant are those on GMOs and vehicle emissions.

Greater consideration should be also be given to recasting. Where a new Directive is an amendment to an earlier single Directive, full consideration should be given to whether a completely revised text should be adopted.

As legislation is adopted, reviewed, revised, recasted, etc., full consideration should be given to its interaction with other EU law and attention paid to improve coherence and consistency. Adoption of new laws that are not harmonised with existing law should be avoided without a clear statement of why this should be the case.

The environment chapter of the acquis has fewer Regulations than Directives. There is no reason for changing this situation within a simplification programme (or otherwise).

The basic complexity of EU law can be problematic. This briefing has sought to distinguish the benefits and disbenefits of complex, yet flexible, law for the Member States. It is not possible to identify individual Articles in individual Directives across the entire environmental acquis which deserve simplification.

However, the following sectors are the most likely to benefit from a further study of their level of complexity, whether this is appropriate and how, if necessary, it can be simplified:

- Industrial pollution control;
- Waste;
- Nature protection; and
- Horizontal.

It is important to note that three of these areas are subject to review processes at present and, therefore, there may certainly be opportunities for the Parliament to promote simplification:

- Industrial emissions through a review of IPPC (and review of related Directives);
- The waste sector – with revision of the framework Directive and a review of waste stream Directives, etc; and
- Horizontal sector – with a review of EIA and SEA.

There is yet to be a detailed study examining administrative burdens across Member States in a way that is truly comparable, taking account of differences in pre-existing national systems, constraints on instrument choices (including simplification measures), etc, and to consider the proportionality of the impact of EU law. Thus it is important that research continues in this area and that care is taken of how this important issue guides specific simplification action.

Also in supporting the simplification process, Impact Assessment is critical. However, there are concerns over the current scope and quality of some IAs and, therefore, it is important for the Parliament to support the improvement of the IA process. Some specific recommendations in this regard include:

- To ensure that IAs are applied where needed;
- To ensure that IAs are of adequate scope and coverage and hence ensure adequate resources (time, timescale, money) given to their analysis;
- To ensure that IAs addresses balance of issues – economic, social and environmental;
- To ensure transparency and public / stakeholder inputs;
- That IAs improve cross-DG co-operation and inputs; and
- To ensure that IAs are broad enough in scope, i.e. to take account of interaction between legislation and variation in the nature of existing Member State circumstances.

In conclusion, considerable analysis has been undertaken by a number of bodies to advance the simplification process. There are clearly a number of opportunities to deliver simplification outcomes as important review processes take place in the near future. However, there are still important gaps in the knowledge of the assessment of burdens, costs and benefits with which to make detailed and confident proposals for change in some cases. Therefore, efforts to take such work forward (by the Member States, Commission and others) should be supported in order to ensure a better targeted simplification agenda in the future.

ANNEX I: DORN REPORT RECOMMENDATIONS

The Doorn Report On Better Lawmaking[29]

A. whereas, in its Communication on better regulation for growth and jobs in the European Union, the Commission makes a clear link between achieving the Lisbon objectives and better regulation,

B. whereas impact assessment in the context of new legislation and simplification of existing legislation helps to reduce the administrative burden that undermines the competitiveness of European businesses, in particular small and medium-sized enterprises (SMEs),

C. whereas the reputation of the European legislature among citizens and businesses in the EU leaves much to be desired and this sense of dissatisfaction reinforces a negative attitude towards the EU as such,

D. whereas, in the drafting of legislation, the Commission gives interested parties the opportunity to react, but whereas there is insufficient transparency concerning the substance of these reactions and the manner in which the Commission has followed them up,

E. whereas in its above-mentioned resolution of 20 April 2004 the European Parliament declared itself, by a large majority, in favour of the use of impact assessment in the EU in order to improve legislation, and whereas the Council and Commission have underlined the importance of impact assessment in numerous documents,

F. whereas the impact assessment carried out by the Commission does not consistently follow the same methodology and is therefore of varying quality, and whereas the impact assessment often resembles a justification of the proposal rather than an actual objective assessment,

G. whereas a great deal of legislation is adopted through the comitology procedure, without any chance for it to be subjected to any form of parliamentary control or impact assessment,

H. whereas legislation is partly is a learning process in which it is possible to learn from mistakes made; whereas the impact of legislation is not made sufficiently transparent and whereas reports by the Commission on the implementation of Community legislation are confined to implementation in the Member States and do not give an insight into whether, in practice, the legislation has met the objectives set,

1. Notes the need for every legislative proposal to be accompanied by an impact assessment, which is defined in its above-mentioned resolution of 24 March 2004 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;

[29] Draft Report on Better Lawmaking 2004: application of the principle of subsidiarity - 12 annual report (2005/2055 (INI)) Committee on Legal Affairs, January 2006.

2. Stresses the need for the clear guidelines and structures for impact assessment, published by the Commission in June 2005, to be implemented uniformly in all DGs without delay;

3. Stresses that the Commission must put into operation as quickly as possible the method it has developed for calculating administrative burdens in quantitative terms as part of the impact assessment. Notes that such a method is needed in order to gain an understanding of the costs associated with applying and implementing legislation; a definitive methodology must be incorporated into the impact assessment by 2006 at the latest;

4. Considers it essential, in the interest of a uniform application by the Commission of the impact assessment, that the quality of the latter be submitted to an independent agency. The European Parliament will not consider any proposals without their being accompanied by an impact assessment approved by the independent agency;

5. Considers it necessary that, during the preparation of legislation and the impact assessment, interested parties should be given the opportunity, and adequate time, to make their reactions known, and that the Commission should inform interested parties in what way their reactions have been processed in the proposal; in this connection the Commission shall observe maximum transparency by publishing the reactions of interested parties and the impact assessment in a publicly accessible register;

6. Notes that much secondary legislation comes into being via the "comitology procedure"; considers that such legislation must meet the same quality requirements as primary legislation and that it must therefore also be subject to impact assessment; considers, further, that Parliament should have the right, in the context of quality assurance for European legislation, to subject comitology legislation to Parliamentary approval should an impact assessment indicate that this is necessary; calls on the Council and Commission to enshrine this procedure in an inter-institutional agreement in the near future;

7. Reiterates that Parliament and the Council also make their significant amendments to Commission proposals subject to an impact assessment and stresses that such an impact assessment only makes sense if the same methodology is used as in the case of the Commission;

8. Calls on the Council and Commission, in the context of inter-institutional consultation, to develop in the near future a Community method and procedure for the application of impact assessment within the European policy process and to arrive at concrete agreements by September 2006;

9. Calls on the Member States to exchange experiences with the use of impact assessment, and also to apply such assessments to national legislation;

10. Calls on the Commission to report to Parliament, no later than three years after the entry into force of new legislation, on the impact of the legislation in practice; is above all interested in the question of whether the legislation has fulfilled the original purpose and how the legislation is complied with in practice; also calls on the Commission to subject the quantitative results of the impact assessment to a regular critical analysis with a view to ascertaining whether the methodology used produces reliable predictions, and to report to Parliament on the results;

11. Stresses the need for Parliament, and in particular the rapporteur responsible, to play a more active role in monitoring the implementation of European legislation in the Member States, with the rapporteur being enabled to make use of the network between the European Parliament and the national and/or regional parliaments;

12. Calls on the Commission to repeat annually its critical evaluation of the list of pending proposals;

13. Recalls the interesting perspectives opened by the "open method of coordination" in the context of the Lisbon Strategy; stresses the interest of the European Parliament on being fully informed on the development of this practice; calls on the Commission to submit a report on the progress accomplished until now by this method and insist that the open method of coordination must not evolve into a parallel, but covert, legislative procedure which subverts the procedures laid down in the EC Treaty;

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

ANNEX II: MCCARTHY REPORT RECOMMENDATIONS

The McCarthy Report on Transposition[30]

A. whereas in the Interinstitutional Agreement of December 2003 the Parliament, the Council and the Commission gave a commitment to the better regulation agenda,

B. whereas in the re-launched Lisbon Agenda the Commission put better regulation at the heart of the drive for jobs and growth in the European Union,

C. whereas improved European lawmaking assists the European Union in gaining a more competitive edge in the global economy,

D. whereas pursuit of the objective of better regulation must not lead to the undermining of environmental, social or consumer standards,

E. whereas citizens and businesses will benefit from good, clear and simple internal market laws, which will facilitate implementation and enforcement,

F. whereas stakeholders have raised concerns regarding difficulties experienced as a result of unclear, incomplete concepts, definitions or provisions in Community legislation,

G. whereas problems of transposition and implementation often result from poorly drafted legislative texts,

H. whereas textual ambiguities generate legal uncertainties and discrepancies, when texts are transposed into national law, with the potential for distortion of competition and fragmentation of the internal market,

I. whereas the better regulation agenda must prioritise the implementation and transposition of existing legislation in order to avoid discrepancies undermining Europe"s competitiveness and consumers" and businesses" ability to take full advantage of the internal market,

J. whereas successive internal market scoreboard reports show that transposition continues to be a serious problem in several Member States,

K. whereas better regulation requires both *ex-ante* and *ex-post* impact assessments to test whether objectives can be or have been achieved,

L. whereas Parliament, Council and the Commission have recognised the need to use alternative regulation mechanisms in suitable cases and in cases where the EC Treaty does not specifically require the use of a legal instrument,

M. whereas, under the Interinstitutional Agreement, such mechanisms will not be applicable where fundamental rights or important political options are at stake or in situations where the rules must be applied in a uniform fashion in all Member States,

N. whereas, no formal mechanism exists to inform Parliament before it is proposed to use alternatives to legislation, or to consult Parliament on the measures that will be delivered by alternative regulation, and this absence of checks and balances undermines the democratic prerogative of Parliament,

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[30] Report on the Implementation, Consequences and Impact of the Internal Market Legislation in Force (2004/2224(INI)). Committee on the Internal Market and Consumer Protection. Rapporteur: Arlene McCarthy. 23.3.2006.

O. whereas, it is vital that all three institutions invest resources and staff in establishing "better regulation" task forces,

1. Stresses the need for a common approach to better regulation, based on a core set of regulatory principles namely, proportionality, accountability, consistency, transparency and targeting;

2. Stresses the need for the Parliament, Council and Commission to establish "better regulation" task forces, and to set up an inter-institutional working group to develop training, skills, and quality control, and to share and benchmark better regulation best practice;

3. Requests that the Commission carry out both *ex-ante* and *ex-post* impact assessments on legislation, to assist in identifying whether key policy objectives have been met and to assist with the regulatory review process;

4. Believes that impact assessments should undergo a mandatory peer-review process and that Parliament must be involved in the nomination and selection of peer-review panels and in the setting of evaluation requirements;

5. Insists that all legislative proposals forwarded to Parliament include an executive summary of the impact assessment;

6. Stresses that the Council - and the Member States represented therein - must ensure that, when Community legislation is amended, they are not adding to the transposition and implementation problems;

7. Insists that the Commission must continue to consolidate, simplify and codify Community legislation so as to improve accessibility and legibility;

8. Requests that the Commission comes forward with new proposals for more effective stakeholder consultation;

9. Urges the Council and the Commission to consider the option of setting up an implementation and enforcement agency, to assist in improving transposition rates, sharing best practice between the Member States, and introducing sanctions for non-compliance;

10. Insists that Parliament is provided with a list of policy measures in which the Commission has used alternative regulation mechanisms, that includes an evaluation of the failure or success of such measures and best practice and lessons learned from the process; insists that this information be incorporated in the Commission annual report on better lawmaking;

11. Insists that, in the Annual Work Programme, the Commission provide a list of those proposals which may be the subject of alternative regulation;

12. Insists that alternative regulatory proposals include clear objectives and defined deadlines for action, as well as sanctions for non-compliance;

13. Proposes that Parliament"s Committees set up robust review mechanisms to evaluate and monitor the implementation and use of alternative forms of regulation with a view to ensuring legal redress for consumers where operators fail to meet their commitments, under such alternative regulatory proposals;

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

ANNEX III: EXAMPLES OF MS BEST PRACTICE SIMPLIFICATION

Examples of best practice cases of simplification initiatives from European countries identified by the DG Enterprise BEST Project which relate to reducing the burden of the implementation of environmental law, including that derived from the EU[31].

Case	Focus
Austria	
European Data Interchange for waste notification systems	An Information Technology (IT) tool that reduces the administrative burdens of waste shipments. In particular it is innovative, increases efficiency, has an ease of implementation and is readily transferable to other Member States.
Belgium	
Integraal milieujaarverslag: the integrated environmental reporting system in Flanders	A major IT tool that increases the efficiency of data reporting by companies. It has particular benefits to SMEs and is relatively innovative.
Simplification of permit schemes in Walloon	A comprehensive approach to integrating different permitting regimes, unifying administration and speeding up processes. The approach increases efficiency, reduces costs, has particular benefits to SMEs and its scope is innovative.
Electronic systems for monitoring and reporting in Walloon - REGINE	A major IT tool that increases the efficiency of data reporting by companies. It has particular benefits to SMEs and is relatively innovative and transferable to other countries.
Finland	
Simplifying the Permit Procedure and Administration	A comprehensive reassessment of permitting requirements linked with extensive administrative structural reform. It leads to significant cost savings to business, has a particular focus on SMEs and is innovative.

[31] Source: http://ec.europa.eu/enterprise/environment/index_home/best_project/best_2006_simplification_final_report.pdf

Case	Focus
Germany	
Simplification and Acceleration Measures	A legislative change which results in a speeding-up of the permitting process. It is simple, clear, easy to implement and readily transferable to other Member States.
Simplification and Streamlining of Environmental Requirements for Companies	A management approach to assisting companies through the permit process through use of a "project pilot". It is clear, increases efficiency, is easy to implement and benefits SMEs.
Ireland	
Risk-based approaches to enforcement	A strategic approach to reviewing regulation resulting in a quantified risk-based approach to permitting and inspection. It is clear, increases efficiency, transferable and can benefit SMEs.
EnviroCentre	An SME support tool based on an information web-site with supporting activities. It is innovative, benefits SMEs and is readily transferable to other Member States.
Italy	
One-Stop-Shop for Productive Activities	A legislative initiative that requires authorities to consolidate administration to reduce burdens. It increases efficiency, benefits SMEs, is transferable and has quantified measurements of outcomes.
Lithuania	
Eco-mapping – simplification of EMAS implementation in SMEs	An initiative focused on a number of countries that simplifies EMAS requirements for SMEs. It increases efficiency, is designed to be transferable, has ease of implementation and is innovative.
Netherlands	
Simplification of permitting	A major initiative to consolidate a large number of permits into one system and remove bespoke permitting requirements where possible. It has major cost savings, has benefits to SMEs, is based on quantification. It has clear objectives and is ambitious.
Poland	
“One permit one site”, permitting IPPC and non IPPC installations on the same site	A simple initiative which consolidates permit requirements for selected installations. It reduces costs, is clear, simple and can benefit SMEs. It is readily transferable to other Member States.

Case	Focus
Portugal	
Simplifying industrial licensing	A initiative which introduces risk-based approach to permitting and inspection. It simplifies permitting requirements. It has cost-savings to business, is transferable and has benefits to SMEs and is innovative.
Spain	
Hercules Project – IT tools: electronic reporting	An IT tool for the movement and management of hazardous waste replacing paper systems. It reduces costs, is clear, benefits SMEs and is innovative.
Sweden	
The "FMH" project	An initiative to simplify permit schemes through introducing notification. It is quantified, clear and is specifically targeted at benefiting SMEs.
United Kingdom	
Risk-based regulation – OPRA	An initiative focused on quantitative analysis of risk to direct different regulatory issues (permitting, fees, inspection). It eases costs, is transferable, is quantified and innovative.
The environmental permitting programme	An initiative to consolidate different permitting regimes. It aims at reducing costs, has clear objectives and benefits SMEs. It also has detailed quantitative analysis of costs underlying its detail.
NetRegs support for SMEs	A major web-based compliance support tool for SMEs. It is particularly extensive and has innovative features. There is also extensive supporting analysis. It is innovative, clear and focused on cost reduction.

ABBREVIATIONS

CITES	Convention on International Trade in Endangered Species
EIA	Environmental Impact Assessment
EMAS	Environmental Management and Audit Scheme
EU	European Union
GMO	Genetically modified organism
IA	Impact Assessment
IPPC	Integrated Pollution Prevention and Control
IT	Information technology
NGO	Non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
REACH	Registration, Evaluation, Authorisation of Chemicals
ROHS	Restriction of hazardous substances
SEA	Strategic Environmental Assessment
SME	Small and medium-sized enterprise
WEEE	Waste electrical and electronic equipment
WFD	Water Framework Directive