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Governing European Regulation: The Challenges Ahead

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Governing European Regulation:

The Challenges Ahead

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Abstract

In this paper[1] I examine the growth of regulatory policy in the European Union (EU) and review the initiatives for "better regulation" undertaken by European institutions. The main argument is that EU initiatives have been cast in a rather narrow conceptual framework, limited to issues such as simplification and "better law-making". Although important, these issues are only a component of the wider task of governing regulation. Therefore I introduce and discuss three proposals for re-casting the debate on EU regulation. First, the focus should be shifted from "better *law*-making" to "better regulatory *policy*-making". In essence, this corresponds to a shift from a legalistic conceptualisation to issues of single-market governance. Second, regulatory management, rather than simplification, should represent the strategic objective of EU institutions. Third, regulatory reform should be accompanied by administrative reform. Consequently, the relative impenetrability of the Commission to administrative reform represents a serious obstacle to regulatory reform.

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[1] Translated by Iain L. Fraser. I wish, without involving them in anything I have written, to express my gratitude to three Commission officials who were kind enough to supply material and discuss the issues of simplification in the European Union with me. Given that the Commission has been defined by Stevens and Stevens (1996: 11) as "male dominated", I am particularly delighted to thank two women and one man: Donatella Soria (Secretariat General), Ana Gallo Alvarez (DG XV) and David Lawrence (DG XXIII). I wish, finally, to thank Scott Jacobs, who heads the Public Management Division (PUMA) of the OECD, for discussing on several occasions the results achieved by the OECD and their implications for the European Union. Giuliano Amato kindly supplied several suggestions on a preliminary draft of the text. An earlier version of this paper appeared (in Italian) in S. Cassese and G. Galli (eds) *L'Italia da semplificare: le istituzioni*, Bologna, Il Mulino, 1998.
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INTRODUCTION

Not only does the European Union (EU) face the well-known democratic deficit, it is also challenged by a less known, yet substantial, management deficit (Metcalfe 1996). On the one hand, the growth of EU regulatory policies entails costs that have not been adequately governed. To cite one figure, the total costs borne by European firms every year to meet European Union regulations have been estimated at a figure of between 150 and 250 billion Ecus (*Single Market News,* April 1996). This cost has to be set against the efficiency gains and the fairness of a "level playing field" that sound regulatory policies yield for the society as a whole. However, for a single company and the individual, a rule is often a cost in terms of adjustment, compliance, and administrative burden.

On the other hand, governing European regulatory policies calls for wider goals. Indeed, an effective regulatory system requires – as will be shown below – a reinvention of the EU administration, particularly of the European Commission, and a new way of thinking about the rules affecting citizens and firms in the single market. This means that the theme of governing regulation taps into the wider issue of the single market governance. As such, it may prove decisive for the legitimacy of the European institutions.

This paper covers the two sides of regulatory policies (as a cost to be reasonably contained, and as a fundamental component of the governance of the single market) by raising the following questions:

- How and why is European regulation growing?
- What are the main proposals for governing EU regulatory policy?
- How have the Union's institutions, primarily the European Commission, equipped themselves to simplify rules and produce better regulation?
- Considering the distance still to run, what suggestions can be made?

The first question is tackled by conceptualising the European Union as a political system with a comparative advantage in the production of regulatory policy (Majone 1996). Once this relative specialisation has been explained, the following question arises: what problems do European rules create, in terms of quantity and quality? To answer that, I shall retrace the debate, starting in the early 1990s, on subsidiarity, simplification and 'better law-making'. Various member states and European interest groups have produced studies, suggestions or proposals that will be considered in brief, before going on to a critical review of the initiatives taken or under way in the Community's institutions.

One of my arguments is that both the debate and the initiatives have defined the problem, all in all, restrictively. The key issue has been how to improve EU legislation, but not how to govern regulatory policy. As argued below, treating the problem as one of law-making instead of regulatory governance yields a substantial difference in the type of issues tackled and the choice of instruments. For the question is not just "how much to regulate", but also "why to regulate", "how to administer existing regulation", and, ultimately, "how to govern the regulatory policies" of a multi-level political system like the EU. The concluding section will show the implications of a wider conceptualisation. I shall argue that the EU should go beyond legislative techniques, set objectives of regulatory management (and not just of simplification, which in a relatively "new" political system is not the most important problem either) and link regulatory reform to the administrative reform of the Commission.

1. THE REASONS FOR REGULATORY GROWTH

One error to avoid in conceptualising the European Union is to think in state-morphic terms. The EU is in fact not following, and probably will not, the typical trajectories of political development of the nation-states as we have known them in Western Europe. Not only is there (by comparison with the nation-state) a discontinuity in terms of institutional development (parliament, government and bureaucracy radically change form and substance as we move from national to union level), but specialisation in terms of types of public policies is very different too. While the nation-states developed and consolidated around distributive and redistributive policies (in brief, welfare and taxation policies), the EU - as Giandomenico Majone's studies have shown - has chiefly developed the regulatory dimension. Both the limited Community budget and the jealously held national powers in terms of social and tax policies have in fact prevented the growth of a European Welfare state.

Using the nation state as benchmark, the EU would seem entirely underdeveloped. But turning the attention to types of public policy, it can be easily seen that the EU is a political system specialised in the production of regulation. Even EU policies that, at first glance, seem typical features of an embryonic European Welfare state, such as social policies and direct taxation, are in fact policies containing rules. In the former case (social policy), rules that govern the labour market (Majone 1996), in the latter (taxation) rules that restore the neutrality of fiscal instruments by avoiding international double taxation of income (Radaelli 1997).

One can explain the growth of regulation at the European level in various ways. Following Majone, for instance, one can argue in terms of demand and supply (Majone 1996). On the demand front, European firms often consider with favour the adoption of a single European rule instead of fifteen, so as to be able to speak to the rest of the world with a single voice. At the origins, then, EU regulation is born as an exercise of drastic simplification and reduction of transaction costs in the single market. For the member states, the Union's regulatory policies are a response to those problems that cannot be solved by mere inter-governmental agreements.

A further factor is that the costs of European regulation are not undergone in the first instance by the governments. Indeed, firms and citizens have to pay the costs of adapting to a directive, let us say, on pesticides, or toy manufacture, or safety belts. This factor should be borne in mind, since it is representatives of national governments that sit on the Council. At the Council level, political agreement is easier where, in the first instance[2], firms and citizens pay adjustment costs. The proof is that in sectors where costs are paid directly by states (as with the abolition of double taxation on company profits, a measure that directly hits national revenues), Europeanization has been very limited (Radaelli 1997).

To complete the demand picture, it should be added that in some circumstances countries accept EU public policy as a way to get out of politically difficult national situations. These are the circumstances where European measures are a useful scapegoat, a way of avoiding direct political responsibilities in difficult areas like cutting back industries with excess capacity (Smith 1997) or structural readjustment of public finance (Dyson and Featherstone 1996). Summarising, the external obligation adequately protects governments from the accusation of seeking to penalise their own citizens and firms.

Continuing with the metaphor of demand for and supply of regulation, the Commission, as explained by Majone (1996), is in a formidable position in the 'supply' of regulation. The EU budget constraint bars the development of distributive and redistributive policies (since social policy programmes require large sums of money), but to write a rule that, say, lays down requirements for engaging in credit or for international mergers and acquisitions, the only resource needed is a thorough knowledge of the markets and the subjects to be regulated. The Commission is, without a shadow of doubt, one of the

[2] This emphasis is important. For it is well known that when it comes to implementing EU policies, governments and public administrations often find themselves facing costs. What we are referring to here is the perception of costs in the decisional stage of the EU public policy formation process.

bureaucracies where cognitive resources are most developed, to the point of often bringing it criticism for its technocratic tendencies. As far as the relationship with the subjects regulated is concerned, the very numerous working groups that meet every day at the Commission have extended the network of interactions. The Commission, moreover, like all bureaucracies, is oriented towards expanding its own powers (Majone 1996). The mission to promote and deepen European integration is even laid down in the Rome Treaty, and this is what is referred to when the Commission is spoken of as the 'engine for integration'[3]. Analysts of European public policies, finally, have highlighted the Commission's role as policy entrepreneur, a term designating a political subject capable of opportunistically exploiting and 'entrepreneurially' utilising the scarce resources at its own disposal in order to create new policies (Cram 1997).

But it is from this very entrepreneurial virtue that the flaws start to be seen. A first aspect is that this system of incentives to regulatory growth should also be considered from a more problematic viewpoint than Majone does. One could raise the question whether demand and supply of regulation could lead towards excessive 'production'. Are we in the presence of too much European regulation? Is the subsidiarity principle *de facto* exceeded by the Commission's daily entrepreneurial action? If so, who pays the costs of the excessive disequilibrium in the market for regulation? Should the EU regulatory system be radically simplified?

Further, the growth of regulation - apart from the points raised by Majone - can also arise from a manifest political asymmetry of the European political system.[4] At the national level, a minister of the environment willing to propose environmental policy rules has to deal, within the government, with his or her colleagues for industry, commerce and agriculture. These colleagues will assert the needs not to put too heavy a burden on companies, shops and farmers. Other colleagues in the treasury will preside over the economic compatibility of the proposals and therefore will press the minister proposing new environmental rules with requests for cost-benefit analysis. At national level, then, there is a political mechanism - the collegiate action of government - that brings a plurality of interests inside the policy formation process. If, however, the hypothetical environment minister decided to operate at European level, he or she would have to convince only his or her environment ministers from the other member states. It is certainly true that the proposals have to come from the Commission, which seeks, operating in collegiate fashion, to weigh the various

[3] But see the limits to this mechanistic metaphor pointed out by Metcalfe (1992).
[4] I am grateful to Giuliano Amato for having pointed this out to me in conversation.

demands and interests, but at the Environment Council it is only the environmental ministers who are in charge of the final decision. This asymmetry leads to a systematic bias towards the growth of regulation.

Nonetheless, simplification is an excessively reductive way of framing the debate. A broader topic, systematically neglected, is that of governing regulation. How are the regulations produced to be administered? The Commission's culture is totally biased towards policy entrepreneurship, whereas its management capacities are so reduced that some authors have written of a management deficit (Metcalfe 1992; 1996; Laffan 1997). The Commission has a high performance at 'invention': it formulates new ideas and solutions, launches proposals for new public policies, is often at the frontier of the new policy paradigms and best practices. However, its performance in terms of 'innovation', i.e. in terms of management processes that convert new ideas into practice and ensure effective implementation, are disappointing (Metcalfe 1992). Put differently, the Commission's leadership in the policy formation process is not accompanied by adequate management of institutional innovation.

On top of this comes a 'legalistic' mode of thinking. More often than not, EU public policy is equated with law-making, without at the same time asking whether the necessary management capacities are ready to support the legislative powers (Metcalfe 1996). Or, what is still worse, it is imagined that the only capacities needed are those of centralized type. By contrast, governing complex systems like European regulatory policies requires capacities - often necessarily decentralised - for leading and administering networks (Metcalfe 1992).

The Commission, faced with the challenge of moving from hierarchical powers to horizontal capacities, finds itself in a difficult position. Since its origins the Commission has been a hierarchical organization, vertically segmented into sections (the Directorates General, DGs) with slight capacities for horizontal intra-organizational control. The difficulties met with in producing a culture of budgeting and evaluation in the individual DGs are clear proof of this (Laffan 1997). In many areas, from the regulation of ownership in the mass media to special tax regimes, problems which by their nature cut across the whole Commission are initially parcelled out at the level of an individual DG. Cini observes that this step (that is, 'who is to hold the file') can be very problematic. She mentions 'a struggle for control over a dossier, especially where several

DGs see the possession of the proposal as part of a larger policy strategy' (Cini 1996:153)[5].

Once dossiers have been allocated to a DG and proposals have been fleshed out by the competent service, drafts are laboriously co-ordinated at the collegiate level of the Commissioners, so as to arrive at a more or less consistent line for the Commission as a whole[6]. One reason for this difficulty is that finding an equilibrium within the Commission also means satisfying the various policy options and differing models of capitalism. But another, and fundamental, sore point is that while the wind of administrative reform has swept through more or less all the countries in the OECD area, the Commission has to date remained impenetrable to the instruments and the culture of new public management.[6]

But the question is by no means confined to internal co-ordination in the Commission as a complex organization. Outside the Commission, as already mentioned, the main problem is governing implementation structures ranging from Brussels down to regional and local levels. With limited human resources (the Commission's staff is slightly bigger than the one of an ordinary city municipality) and an implementing process over which Brussels officials in any case have no direct powers (with the partial exception of competition policies), the quality of European regulation depends on multi-organizational implementing structures. And it depends particularly on the capacity to govern through collaboration, not hierarchy. If, for instance, there is a European regulation whereby pharmaceuticals can be marketed only if 'safe' and 'effective', consensus must then be created among the administrations of fifteen different countries about what those two terms mean in practice (Dehousse 1997:251). In this context the Commission cannot and should not act alone. Metcalfe has argued that while firms ought to aim at 'competitive advantage', overcoming the management deficit calls for building up a 'collaborative advantage' (Metcalfe 1996:5). Yet the Commission has shown poor capacity for monitoring and managing implementation structures.

One consequence is that states such as Germany, faced with the lack of uniformity among the various countries in terms of implementation, are pressing

[5] For an analysis of such a struggle over the media ownership dossier see Harcourt (1998).

[6] Timmermans (1997:6), of the Commission legal service, argues that discussion among the various chefs de cabinet supplies "a serious horizontal scrutiny of subsidiary, proportionality and, in certain respects, quality of drafting". However, this statement is over-optimistic. In reality it often happens that the Commission, given the hierarchical, compartmentalized way in which dossiers are distributed, finds enormous political difficulties in arriving at a clear collective option.

[6] This is the conclusion arising from Stevens and Stevens' survey (1996)

for increasingly detailed directives, thereby contributing to over-regulation (Dehousse 1997). The question of over-production of rules thus does not (as a simplistic rhetoric would suggest) exclusively concern the inclination of 'Brussels mandarins' to harmonize everything possible (once *The Economist* wrote that the Commission's attitude was: 'if it moves, harmonize it!', 21 March 1992), but is interwoven with the poor performance in terms of implementation.

Concluding this examination, political incentives (demand and supply of regulation) lead to the relative specialization of the Union in the production of European regulatory policy. The system of incentives is such that regulatory policies whose costs fall in the first instance upon firms rather than on states are more developed than others. The growth in regulation raises problems that do not just concern simplification but involve internal co-ordination within the Commission, the management deficit and implementation failures. Tackling these problems properly calls for an approach in terms of public policies, not just of legislation. It remains to seen, then, whether the debate between political and institutional actors has treated these issues sufficiently broadly, and whether the initiatives taken in the 1990s are able to cope with the challenges of governing regulation.

2. THE DEBATE

2.1. The key issues

The debate on governing European regulation has evolved around the question of the 'quality' of European legislation[7] and 'better law-making'[8] . The very terminology brings out how the debate on EU regulatory policies risks being levelled down into one on mere legislative techniques. But before considering this aspect, we must consider what are the key issues in the political and institutional debate. We will then turn to the initiatives taken by EU institutions, often in response to precise criticisms made by the member states and the business community.

The pressure for a critical rethinking of European regulation has a starting point, i.e., the tormented process of the Maastricht Treaty ratification. In this

[7] The quality of internal market legislation was the theme of an important international conference promoted by the Dutch government during its six-month Union presidency (23-25 April 1997) with the explicit aim of influencing the intergovernmental conference.

[8] This is the title of the annual report of the Commission on the application of the principles of subsidiarity and proportionality and on simplification and consolidation. See European Commission (1996)

period, at the Edinburgh European Council in December 1992 the British presidency put the question of regulatory production on the agenda. But what are the most important studies and the issues which have been raised since the Edinburgh Council? In very general terms, the most-felt political concern has been to ensure that EU rules proceed appropriately and proportionately in relation to the objectives, without going beyond the guiding principles of subsidiarity and proportionality. The countries that have pushed hardest in this direction have been Germany, Holland (Koopmans Report 1995) and the United Kingdom. For France the Conseil d'Etat has intervened in the debate. The business community has presented a document of analysis and proposals, the Unice report on regulation (1995)[9]. EU institutions have produced the Sutherland Report on the internal market (Commission 1992), which had *inter alia* the merit of stressing the need for administrative partnerships between the Commission and public administrations, and the report by a group of independent experts (set up by the Commission) on legislative and administrative simplification (the so-called Molitor Report, Commission 1995).

What are the problems raised by these studies? Summarising, the following key issues have been identified:

- As already hinted, the lack of respect for the principle of subsidiarity, and hence excessive centralization. The EU political system is much more recent than the nation-state ones, so that one cannot blame the EU for over-regulation (*Normenflut*) in absolute terms, especially bearing in mind, for example, the figure of some 150,000 laws existing in a country such as Italy[7]. Compared with national production, the EU legislative stock is modest in bulk. This does not alter the fact that in some circumstances there can be over-regulation in the sense of European rules going beyond the subsidiarity principle. For instance, Germany asked the Commission to give an account of a list of measures incompatible with the subsidiarity principle[10] . The Koopmans Report (1995:15) also cites the case of such detailed rules (as in the case of the directives on hazardous substances) as to take away all room for the national political systems in transposition and implementation. As previously mentioned, certain directives suffer from excessive detail.

[9] It should be noted that the Unice Report does not confine itself to considering European Union rules, but also includes national regulation. Similarly, the 1998 three-volume study funded by the Italian confederation of industry (Confindustria) is mainly, although not exclusively, concerned with regulation and regulatory reforms at the national level (see Cassese and Galli 1998).

[7] On regulatory inflation in Italy and estimates regarding the number of laws existing in this country see Cassese and Mattarella (1998).

[10] See document C(94) 1251 final.

- Lack of clarity and invisible legislation. Not only are EU rules hard to interpret, but the lack of explanatory memorandums on certain proposals makes the policy formation process opaque (Koopmans Report 1995:10). Moreover, some decisions, communications and recommendations are not published, so that we are in the paradoxical position, as the Conseil d'Etat has noted, of being governed by invisible legislation. Many decisions on state aids, to give only one example, have never been published, so that it is impossible to know the reason for certain special fiscal regimes. Clarity is also endangered by a growing confusion between directives and regulations, and by certain acts with uncertain legal status, like the Council's 'resolutions', the Commission's 'communications', the 'directions', and the 'codes of conduct'. There are two reasons for this lack of clarity. First, the Community legal system is based on the combination of elements, concepts and notions 'imported' from national systems that differ greatly among themselves. Second, EU rules result from a process of inter-governmental negotiation where reasons of diplomacy and political compromise have the upper hand over those of law.

- Accessibility. Codified texts are often lacking, and this makes it particularly hard to access the legislation. The rules of the Common Agricultural Policy are a thicket of decisions stratified over time and repeatedly amended and adjusted. For this reason too, getting a clear picture of the rules in force in a given sector, in the absence of codification, may prove a very hard undertaking.

- The Achilles heel of many European rules is poor performance in the implementing stage. Sometimes this depends on poor preparation and lack of commitment by national administrations and legislators, but other times the flaw is in the origin: the rules have been badly thought up and drafted, without asking what implementing difficulties might arise. Moreover, the European Court of Auditors reports have shown the presence of massive fraud[11] , from the 61 per cent of projects for inter-regional collaboration between Eire and Northern Ireland that have no inter-regional nature at all to the 88.9 million Ecus spent by Greece to fund courses for civil servants rather than for unemployed youths (Court annual report for 1994). In short, the criticism is that that scant attention is dedicated to the drafting of 'fraud-proof' rules. As already seen, the implementation problem is in fact even broader, calling for capacities to manage administrative networks and partnerships among diverse organizations.

[11] According to the European Court of Auditors 1996 Report, published in November 1997, fraud and irregularities reached 5.4 per cent of the budget.

2.2. The proposals from member states, employers' organizations and experts

Faced with these criticisms, member states, employers' organizations and groups of independent experts (such as the group chaired by Molitor, Commission 1995), have put forward a variety of proposals. I shall start by considering the proposals, then look at how the EU institutions have equipped themselves, and then, in a later section, assess the proposals presented.

A first series of proposals is of a managerial nature. The Unice Report (1995:55) proposes devolving responsibility for the whole regulatory process to a single Commissioner. Currently, co-ordination of the process is handled by the Commission Secretariat General (Article 15 of the Rules of Procedure). Decisions taken by written procedure cannot go further until there is a favourable opinion from the legal service. Another co-ordination mechanism (this is sometimes, indeed, a mechanism that brings out very sharp conflicts) is the Commission's collegiate procedure on the basis of which proposals for directives must be supported collectively by the Commissioners. Furthermore, the Commission has internal rules that require various services (DG XI, XIX and XXIII) to consult each other when preparing impact analyses.

A second series of proposals concerns the need to harness the rule-making procedure within a single set of guidelines. The Koopmans Report points out that machinery of this type exists in the various EU institutions, starting with the Commission and Council. However, the Report maintains, this is 'fragmentary and rather inconsistent' machinery (Koopmans Report 1995:38). Hence the suggestion to harmonize the guidelines for Community legislation with particular attention to the criteria already highlighted in the Sutherland Report, namely necessity, efficacy, proportionality, consistency and communication. The Koopmans Report recommends an inter-institutional agreement ensuring the applicability of the harmonized guidelines to all the institutions (Commission, Council and European Parliament).

A second series of options is of a more political nature. An idea floated by the French Conseil d'Etat, taken up by the Koopmans Report and pushed (unsuccessfully) by the Dutch EU Presidency at the inter-governmental conference in 1997 is to create a body of 'guardians of the rules' that could perhaps take the shape of a 'European Conseil d'Etat'. In a milder version, this body could be limited to a consultative body somehow linked with the European Court of Justice. In short, in one way or another, an independent legal review body would be created: a group of independent experts able to choose a number of proposals for directives on which to give their opinions (Koopmans

Report 1995:46-47). The idea is to make this body capable of intervening at the stage where the Commission sends a proposal to the Council and the European Parliament. In its more institutionalized form, that is, the 'European Conseil d'Etat', EU treaties would need amendment. This was what the Dutch government was aiming at in the first six months of 1997, but after the conclusion of the inter-governmental conference this prospect has been shelved, at least until the next inter-governmental conference where treaties will be discussed again. In the shape of a small consultative committee of wise men, the proposal could be taken up again at any time, even though it cannot be seen - to anticipate my assessment - how a body of this nature could make its mark on such a complicated policy process as the EU one.

A third argument aired in the debate is the necessity to simplify in order to promote growth and employment. This is an argument of high political profile, although its implications in terms of concrete initiatives are not clear and beyond dispute. The Molitor Report (Commission 1995) links administrative simplification to growth in employment, even if, as noted by the Commission (SEC 95, 2121 final, 29 November 1995), the experts headed by Molitor have not done specific analyses but merely postulated the aforesaid link. There are, however, a variety of economic studies available on the theme (Koedijk and Kremers 1996). The thorny question is giving content to this strategy. The Molitor Report, indeed, contains a number of proposals, but some of these proposals have generated disagreement even within the expert group itself, as indicated by the 'dissenting opinions' at the end of the report. For instance, the Report suggests that in order to simplify industrial relations some fundamental rights of workers directly applicable in member states ought to be inserted in the Treaties. This proposal has been accused of being contradictory with the aim of simplifying the functioning of the single market.

Finally, a fourth series of proposals concerns codification, seen as an instrument to improve the accessibility of EU legislation (Commission 1997b). Conventionally, formal codification, on the basis of which the codified text contains the rules previously included in a variety of texts concomitantly abrogated, is distinguished from informal consolidation, where for documentation purposes legislative texts that still continue to be fully in force are brought together in a single volume. This is an area where the EU institutions have moved through an inter-institutional agreement between Council, Parliament and Commission to speed up codification[12]. On the basis of this agreement, the Commission presents a codification proposal which is then considered by a consultative working group made up of representatives of the

[12] Inter-institutional agreement of 20 December 1994, Official Journal C293/2, 8.11.1995.

three institutions' legal services. If this group considers that the Commission, in its proposal, has not gone beyond the limits of codification (that is, considers that the legislation whose codification is being proposed is not essentially altered), then Parliament and Council apply a simplified decision procedure. By April 1997, the consultative group had considered fourteen proposals which, were they adopted, would lead to the elimination of 215 acts (Timmermans, 1997:19). This result is hardly exciting, but it should be borne in mind that, as Timmermans notes, the need to include Swedish and Finnish since the last enlargement of the Union has made the work of translation still more complicated. But codification has already brought us within the sphere of the initiatives taken by the EU institutions (especially the Commission), to which we shall now turn our attention.

3. INITIATIVES OF THE EU INSTITUTIONS

What has been the response of the European institutions to the criticisms and the suggestions? In this section I shall first consider the initiatives of a macro-political nature. Second, I shall review the programmes and actions undertaken by the Commission, with special reference to simplification of the internal market and to small and medium-sized enterprises (SMEs).

As mentioned above, the starting point for the road to Community simplification was the Edinburgh European Council, where the principle was laid down that specific decisions should be taken regarding clearer, simpler legislation truly respectful of subsidiarity. The principle of subsidiarity - introduced by the Maastricht Treaty, article 3b - requires asking, before creating a Community rule, what is the actual Community dimension of the problem, what is the most effective solution given the means available to the Union and to member states, and what is the real added value of Community action by comparison with isolated action by member states (Commission 1993).

One of the elements of the macro-institutional framework within which the action of simplifying and improving the quality of legislation is taking shape is represented by the inter-institutional agreements. The one on codification has already been mentioned. The accelerated working method enshrined in this agreement undoubtedly has a potential. This potential, however, has not been entirely expressed to date. On 25 October 1993, the Union's three main institutions (Council, Parliament and Commission) initialled an agreement on the subsidiarity principle. The agreement on subsidiarity contains two main ideas: (a) the Commission undertakes to justify its own legislative initiative in terms of subsidiarity, and (b) Council and Parliament become the addressees of

an annual report intended to show how the Commission has conformed with the subsidiarity principle. The Commission presented two reports on subsidiarity, in 1993 and 1994, while since 1995 the annual report has been extended from subsidiarity to the wider issue of 'better law-making' (Commission 1996). In the same vein of general political commitments to 'better law-making' is the Council resolution of 8 June 1993 (OJ C 166 93/C) on the quality of legislative drafting. This resolution has been followed by guidelines on law-making and checklists on the quality of legislation.

Another step in the direction of general political commitments was made with the Amsterdam Treaty. The Treaty devotes an entire chapter to the quality of Community legislation and one to the principles of subsidiarity and proportionality. The Amsterdam Treaty encourages EU institutions to arrive at a common agreement on guidelines. This invitation seems to correspond with one of the proposals put forward in recent years, that is, to have fairly similar guidelines for the three main EU institutions[13] . The Treaty, moreover, taking account of the Union's institutional development in the 1990s, includes the Committee of the Regions and the Economic and Social Committee among the addressees of the Commission's annual report on subsidiarity. The aim is to expand the political debate on what the Commission does from year to year, using the annual report as an engine for learning mechanisms among the EU institutions. Finally, the conclusions of the Amsterdam European Council (16 and 17 June 1997) set at the centre of the debate the question of simplifying the administrative environment in which SMEs operate. Accordingly, the Commission is requested to set up a task force to do this job. Hence the *Business Environment Simplification Task Force* (Best), which has focused so far on questions of the administrative and fiscal constraints on recruitment of new staff, training, access to research and technology and relations with credit and finance institutions.

The same European Council supplied political support to the Commission's *Action Plan for the Single Market*[14] . The plan lists four strategic objectives: making the rules more effective, dealing with market distortions, removing barriers to market integration, and finally ensuring an internal market that benefits all citizens of the Union[15] . The quality of rules, accordingly, has now become one of the four strategic goals for the completion of the single market by 1999. Alongside specific initiatives on simplification, reviewed below, the action plan has also brought in the 'scoreboard' for member states' degree of compliance with the internal market, a measure strongly advocated by

[13] One possibility, as mentioned, is to arrive at an appropriate institutional agreement.
[14] Document CSE (97) 1 final, 4 June 1997.
[15] This strategic objective refers to DG XV's *Citizen First* programme.

Commissioner Monti to help make member states more responsible in this area[16].

To complete the macro-political picture, it should be noted that the European institutions have agreed[17] that simplification ought not to encroach on the so-called *acquis communautaire*. In essence, simplification is to be prevented from acting as a passkey to calling in question again harmonization reached in sectors like health protection, worker and consumer protection, environmental policy and free trade. Simplification - this is the idea - should become a resource for completing the internal market, not for dismantling it.

Apart from macro-political initiatives, the Commission has also developed a series of initiatives that can be fitted into the following categories:

- guidelines for preparing legislative proposals and intensifying consultation;
- *ex ante* impact assessment of proposed legislation, with especial attention to SMEs;
- self-limitation of legislative activity (less legislative initiatives and consideration of alternatives to regulation);
- simplification and *ex post* evaluation of existing rules.

Following the OECD experience[18], the Commission has equipped itself with various instruments for the *ex ante* analysis of legislative proposals, such as checklists, rules of procedure, the legislative drafting manual and the compendium on 'information, communication and openness'. The point, though, as clearly recognized by President Santer's memorandum on *General Guidelines for Legislative Policy* - SEC(95) 2255 - is that once the principles have been fleshed out there are still a number of steps to be taken in order to be ensure that these principles are being correctly and systematically applied. President Santer's guidelines insist on the need for 'legislative texts to be of a quality and consistency of their own, for the drafting procedure to be open, planned and co-ordinated and for monitoring and assessment to be more incisive'. The memorandum suggests consistency (closer respect for the rules, including those on co-ordination among services), rationalization of impact

[16] By 1 November 1997 there were 359 (out of a total of 1339) internal market directives not implemented by European countries (25 per cent of the total). The most critical sectors are transport (60 per cent unimplemented), public procurements (55.6 per cent), and industrial and intellectual property (50 per cent).

[17] See Commission (1993) and the Council resolution of 8 July 1996 (OJ 224/03 96/ series C).

[18] On which see the two volumes of the OECD Report on Regulation (OECD 1997).

assessment, systematic evaluation of EU regulation, possibly even in its secondary effects, and more intense consultation with interested parties.

As for the checklists, the Commission has laid down the following principles. To begin with, a clear justification and the objectives of the proposals for new EU law must be spelled out. The Commission is also obliged to stick to simplicity of presentation, to prefer simplicity of rules whenever possible, to respect subsidiarity and proportionality, to promote (rather than hinder) consistency with other Community policies, to legislate only after extensive consultation, to produce impact assessment, to check on fraud risks, and to think through the main financial implications (including administrative resources, when needed). Finally, the use of 'white papers' and 'green papers' as means of consultation to stimulate the widest possible debate is highly recommended[19].

The actions identified by the Santer memorandum are a fairly faithful reflection of the Commission's present problems in governing regulation. To start with, the DGs still have a very imperfect degree of co-ordination among themselves. Typically, this is one the key causes of low quality of EU regulation. Second, *ex ante* assessment of costs and benefits for SMEs is far from being fully satisfactory, as recognized by the Commission legal service itself (Timmermans 1997:13) and by DG XXIII (Schulte-Braucks 1997). The European Parliament has also intervened on this issue, asking the Commission to give official (i.e., legal) status to business impact assessment . The most frequent criticism is that the Commission, though the *fiche d'impact* was introduced as long ago as 1986, does not follow the "think small first" philosophy when preparing new proposals for directives. Third, systematic evaluation of regulatory policies is still limited: to anticipate one conclusion, more often than not policy evaluation is limited to financial controls. To put it differently, evaluation is conceptualised as a component of budgetary control, whereas it should be widened to include the comprehensive analysis of the results achieved by EU regulatory policies.

SMEs are possibly the weakest entity in EU regulatory policies. A series of studies (Commission 1997a) estimates that the average cost of the administrative burden on SMEs is six to thirty times higher than for bigger firms. The Commission has recently drawn up a recommendation (Commission 1997a) to simplify the procedures for starting up a new firm. However, this is essentially a recommendation addressed to member states. The different

[19] According to the Report *Better Law Making* 1996 (Commission 1996) in the first eleven months of 1996 thirteen green papers were presented.

problem of simplifying the regulatory environment created by the cumulative effect of Community rules is instead still far from satisfactory solution. DG XXIII is currently engaged in reviewing the techniques of regulatory impact analysis. One of DG XXIII's main ideas is to stress the "think small first" philosophy, and raise at the very preparatory stage of EU proposals the question whether they are compatible with SMEs. If they are not, the procedure should be to consider thresholds below which the proposed regulatory policies do not apply, or alternatively introduce specific derogations for SMEs (Schauter-Braucks 1997). As in other cases, the internal fragmentation of the Commission is a serious hurdle. Different DGs draw up draft directives in themselves perfectly compatible with the objectives and administrative culture of a particular DG (for instance an environment protection proposal drawn up by DG XI), but compatibility with SMEs needs (presided over by DG XXIII) is by no means ensured. The question of bringing the "think small first" philosophy into proposals of each and every DG is closely bound up with the internal co-ordination mechanisms. The by no means heavyweight position of DG XXIII (which tends to be regarded as a much less powerful DG than others) does not help the cause of SMEs. Thinking of the future, specific measures for monitoring the impact of legislation on SMEs should arise from the third multi-annual programme for SMEs in the EU - COM(96) 98 final - forwarded to the Council on 22 March 1996, which covers the years from 1997 to 2000.

More encouraging results come from the slowdown imposed on legislative output (Commission 1997b). One very interesting indicator is the number of proposals withdrawn for being incompatible with subsidiarity principles, or because they are technically obsolete, or finally because they are not politically acceptable. In 1993 the Commission withdrew 150 such proposals, in 1996 48, and in 1997 30 (Commission 1997b). It should be noted, however, that these figures include both proposals withdrawn because of their incompatibility with the subsidiarity principle and initiatives presented long ago and simply lying before the Council with no political interest shown by member states. Various proposals for tax co-ordination, for example, have been withdrawn not because they violate subsidiarity, but because of lack of political will at the Council level.

There is also a fall over time in new legislative initiatives presented by the Commission. In 1990 there were 185, in 1994 only 51 (Commission 1994; Laffan 1997). In 1997 the Commission stopped at 7 new legislative proposals. However, the figure is destined to rise for 1998, given the major reforms under way in structural funds and in the Common Agricultural Policy (Commission

1997b:2)[22] . This tendency seems to reflect one of President Santer's slogans, 'less but better law-making'. Undoubtedly, by comparison with Jacques Delors' political entreprenurship, the Santer Presidency is at pains to show the relevance of, as another slogan puts it, 'putting the common house in order'.

Recently, alternatives to legislation have also been explored. One example is the agreement negotiated with the European industry on environment policies (Commission 1996:3), the codes of conduct (like the on tax competition among member states[8]) and forms of self-regulation by both sides of industry offered by the Maastricht Social Protocol.

The *ex post* monitoring and evaluation of Community legislation is structured into a variety of projects and initiatives including codification and the SLIM programme (*Simpler Legislation for the Internal Market*). Codification has already been mentioned, and here it is worth noting that this work is only in its infancy. Further, what is called informal consolidation is nothing but an exercise in mere publication in volumes (usually series C of the European Community Official Journal) of regulations that have appeared at various periods in time. The object of the exercise is to provide easy-to-access documentation. The Commission has however launched more incisive projects, known as recasting. Through recasting the Commission intends not just to rationalize what already exists in a single text, but also to review the regulations and suggest appropriate amendments to the Council. In 1996 changes were *inter alia* proposed to the Television Without Frontiers Directive (89/552/EEC), to the norms on agricultural tractors (which at the moment include a framework directive and 23 directives), and a recasting of directive 88/379/EEC on the classification, labelling and packaging of hazardous preparations. However, these amendments to existing legislation have to go through the EU policy process, with the same political obstacles that new directives have to face at the Council level.

Recasting and codification are not the only ways old legislation can be eliminated and hence the EU regulatory environment simplified. The Commission has thus undertaken to remove legislation rendered obsolete by the principle of mutual recognition, by technical progress, by the Court of Justice's

[22] It should be noted that the Commission has made only seven proposals for new legislation, but also 34 proposals for 'continuation of measures' by other means, 23 proposals for revising legislation, 88 implementing measures and 183 proposals regarding international relations (Commission 1997b:12).

[8] The code was agreed upon by the Council on 1 December 1997. See *Agence Europe*, no.2061, 3 December 1997.

case law and by the 'new approach' based on minimum common standards to which mutual recognition rather than harmonization applies.

Turning to pilot projects on simplification, one interesting experiment is the SLIM initiative[23] . With SLIM the Commission means to show that practical results in terms of simplification can be achieved. The quantitative importance (in the sense of the number of regulations considered) of SLIM is actually slight, but as with all pilot projects the object is to create a 'demonstration effect', that is, to indicate a working method that can supply appreciable results. The SLIM method is based on three main ideas:

- choice of specific work areas (the four projects completed concern Intrastat, ornamental plants, mutual recognition of qualifications, and technical regulations in the building industry);

- small working groups. Each of the working groups that finished their work in 1996 consisted of a chair appointed by the Commission, an equal number (four or five) of representatives of member states and the industries concerned (in some cases including representatives of SMEs and consumers) and a number of Commission officials with observer status. The limited number of participants meant that the working groups did not become mere inter-governmental committees with the fifteen states fully represented. Instead, the groups facilitated a co-operative working method among experts;

- a limited period of time to work out problems and bring forward solutions referring to a clear simplification objective.

The results of the SLIM method are encouraging, and show how participation can help to solve problems in specific cases. In addition, the methodology of consensus-building intrinsic to the working groups has been of great value. However, one should not ignore the qualifications to this successful experience. First, the Commission needs political support from the member states in order to go beyond the first four projects and bring the SLIM methodology under full steam. Political support came from the Council, which in March 1997 agreed to the Commission's request to extend SLIM. However, the Belgian, Italian and Portuguese delegations put a damper on enthusiasm by declaring, as reported by *Agence Europe* (no. 6936, 17-18 March 1997), that simplification should not become a way of dismantling Community legislation. Frankly this is not a likely danger, given that the SLIM working groups operate with an eye to solving problems in limited, clearly defined areas.

[23] On which see documents COM(96) 204 final and COM(96) 559 final.

But the Council's political support is essential for another reason too. Once their job is done, the working groups make a series of proposals. If the Commission accepts them, they must still go before the Council for the normal process of Community law-making. The SLIM groups are laboratories for building consensus among member states, the industries concerned and the Commission, but it is the Council that ultimately has to decide on the proposals. It would be naive to assume that consensus reached on the working groups can automatically be extended to the Council. But to see this one need only await the outcome of the proposals drawn up by the first working groups that have already completed their work.

Another puzzle lies in the pre-conditions for the success of SLIM. To date SLIM has been a feather in the cap for DG XV, competent for the internal market, in the area of simplification. However, in order to extend the SLIM methodology, other DGs should embrace the philosophy of the programme. There is no way to simplify the rules on industrial policy, research and development or environment without involving other DGs. Recent signals tend to suggest that getting the message throughout the entire Commission is anything but easy. What is happening in the Commission is a sort of Nimby (Not In My Backyard) phenomenon: 'simplify everywhere, but not in my DG!'. The officials competent for industrial policy (DG III) have already indicated their doubts about the creation of SLIM working groups on policies within their domain[24] . These are episodes that bring out the typical intra-bureaucratic conflict in complex organizations with high fragmentation and highly differentiated administrative cultures.

4. ASSESSMENT AND POLICY PROPOSALS

The simplification of EU regulation, the creation of user-oriented policy, and the modernization of the stock of rules represent a formidable task. The European Union, however, has two points of advantage by comparison with member states. First, the EU is a relatively 'new' political system, and therefore in quantitative terms EU rules do not even remotely emulate the age-old stratification of regulations in member states. Second, many of the Community rules, like those making up the so-called *acquis communautaire*, were originally introduced specifically to simplify, through a single European rule, a panoply of domestic rules distorting free trade and the free movement of labour and capital.

[24] *European Voice*, 10-16 April 1997, 'Internal battle delays bid to cut red tape'.

Despite these positive features, serious problems still need to be tackled. EU institutions have operated with unequal success in the components of regulatory reform, and the search for innovative methodologies - such as SLIM - is still in hand, given the obstacles facing their spread. Moreover, proposals presented by member states are, taken together, limited. The idea of creating a European Conseil d'Etat is limited in a political sense, given that only a future inter-governmental conference can amend the Treaties. But it is also limited in a technical sense since the risk exists that this body of 'guardians of the rules' may act either too soon or too late in the complex process of Community policy formation (Timmermans 1997). An opinion on the quality of legislation regarding a proposal for a directive supplied at the moment of presentation by the Commission might increase the complexity of the Community political process and have little influence on subsequent developments in Parliament and at the Council level. The Commission and Council legal services are probably in a better position to smooth out technical imperfections and suggest improvements in informal fashion and at any moment.

A European Conseil d'Etat might alternatively act in the last stage, but it remains hard to imagine how in the stages of tumultuous negotiations (and political agreements that remain secret) preceding adoption of a directive room can be left for a technical and legal assessment. There remains only the possibility of intervening through an examination of legislation once agreement has been reached on Council. However, at this point the whole exercise would amount to a sort of report on things already done, perhaps in reference to directives that have cost a lot in terms of political compromise and ought to be revised to take account of the opinion of the European Conseil d'Etat. Were the proposal for the European Conseil d'Etat instead downgraded to a committee of wise men, it is unclear what specific weight it might have. Committees of experts are all too numerous in the EU political system, and one new consultative body would have trouble becoming institutionalized.

As far as the tone of debate and the Commission's initiatives are concerned in more general terms, their main weakness is an approach still limited to legislative issues rather than the broader goal of governing regulatory policies. Below I shall accordingly indicate some proposals for reformulating the debate on simplification and the quality of European regulation, divided into three key shifts: from legislation to the governing of regulatory policy; from simplification to regulatory management; from regulatory reform to administrative reform.

From legislation to public policy

Hitherto the problem of EU regulation has been defined essentially as one of legislation. Great attention has been paid to the design of new legislation, and, using methodologies like SLIM, to simplifying laws. But the really crucial point is whether and how EU regulatory policies are to be governed.

Treating regulation as a public policy means monitoring all stages of the process, from the design of directives to implementation and evaluation. The instruments needed are legislative technique, but also economic analysis, regulatory impact tools and systematic evaluation[25] . Not all difficulties can be anticipated at the design stage of legislation, so that there is a need to ensure control extended to national administrative practice and to the results actually achieved by regulatory policies. The editor of the journal *Evaluation* (no.2/1997), Elliot Stern, in his interview with Commissioner Liikanen, renders the idea well by stating that 'public policies are like throwing a big stone into a pond to make circles': it is only when the circles are there that you know what specific actions are possible and necessary.

Future thinking on regulation as public policy should proceed in two directions. First, the systematic evaluation of results reached by policies. Experience with regulatory review in some OECD countries (OECD 1997) indicates that the assessment of existing regulations, if well done, is not limited to considering technical legislative obsolescence but covers systematic measuring of the 'circles', to keep to the metaphor, generated by public policy. Reconsidering the *laws* round a table, even with the aid of consultation processes, is not enough; it is better to measure what objectives have actually been reached by *policies*, also bearing in mind the unforeseen effects of public action. At the present stage, there is no evaluation culture extended to all Commission services (Vanheukelen 1995). Moreover, much of the evaluation done by the Commission is dominated by a financial-budgetary approach, whereas evaluation correctly understood goes beyond the question of efficiency (how financial resources have been employed) and asks about the efficacy of policies, that is, their capacity to reach objectives. Finally, cases where evaluation studies have tangible effect on the reformulation of policies remain rare (Vanheukelen 1995:40). This means that the feedback on policy design generated by policy evaluation is still too slight[27] .

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[25] On policy evaluation, see inter alia Radaelli and Dente (1996)

[27] It is interesting to note that Article 2 of the Financial Regulations on financial management requires the utilisation of evaluation studies in budget programming. On this point and the SEM 2000 programme (*Sound and Efficient Management*), see the interviews with

Second, transparency and efficacy of regulatory policies can also be secured by removing some regulatory functions of the Commission and entrusting them to independent agencies. There are at present ten European agencies[28] . Various merits are offered by the model of independent agencies at European level. Perhaps the most important comes from the experience with the internal market. From the Single European Act until now, experience has shown that it is not possible to create a market by just knocking down internal barriers to trade. The qualitative leap in fact needs substantive convergence of administrative action, be it, to take a few examples, the administration of the Common Agricultural Policy, implementation of the freedom of establishment, collaboration in indirect taxation, or even, looking beyond the internal market, implementation of the common policy on immigration.

However, the delegation of so many direct administrative powers to the Commission is politically inconceivable, and perhaps not even desirable (Dehousse 1997). The agency model, by contrast, represents an acceptable solution to the problem. Another point is that while Commission decisions are often highly politicized (think of the decisions on mergers and acquisitions) and marked by complex mediations among Commissioners, agency decisions are more protected from interference by political considerations and more attentive to considerations of efficiency. Another reason to support the development of regulation going beyond 'the' individual regulator (that is, the Commission) is that agencies base their reputation on the scientific correctness of the prerequisites for their action and on the dissemination of information (Dehousse 1997)[29] . Conversely, inside the Commission checks on proposals being worked on are often devolved to the highly opaque network of the 'comitology' system, that is, the working groups where Commission officials and those from national public administrations work together (Pedler and Schaefer 1996). This network lacks the credibility and stability to instil a culture of 'sound regulation' and 'good communication' into all those involved. To conclude on this point, in this case too I stress the difference between an approach in terms of legislation and one in terms of public policies. For the first approach, the discourse stops with the production of laws that remove the main barriers. There remains some way to go in this direction, as indicated by the Commission's action plan for the internal market, but as the second approach warns, one should not ignore administrative issues in the governance of the internal market. These issues are well known to scholars working on EU public policy but so far have been

Commission's Management Control Chief Alan Pratley and Commissioner Liikanen, published in *Evaluation* in issue 2, 1995 and issue 2, 1997, respectively.

[28] However, not all have regulatory tasks.

[29] Dehousse notes that the dissemination of information as a strategic task goes as far as carrying out policy studies and prior impact assessments.

neglected by the policy-makers engaged in the debate on the quality of EU regulation.

From simplification to regulatory management

Once conceptualized as public policy, regulation has to be governed. In this connection, the recent OECD report on regulation shows how various countries are at three different levels of development (OECD 1997). The first stage is that of *deregulation*: meaning simplifying, cutting away the legislative undergrowth, and liberalising markets. Deregulation, however, can act only on the past, not the future. Thinking of the EU, examples of deregulation are not lacking, even if typically EU action takes the form of deregulation followed by re-regulation, as indicated in the telecommunications, energy and mass media sectors. The SLIM programme is, in methodological terms, one of the most evolved examples of simplification.

A more advanced stage in governing regulation is that of improving *regulatory quality*. This aims at broader access to legislation, at systematic consultation, and at measuring the impact of new proposals. The EU has begun to codify and the Commission has learnt to consult better than in the past. Further, the issue of the costs of new proposals - especially for SMEs - has gained agenda status. In short, the Union is at the beginnings of this stage.

However, regulatory reform is complete only when there is a move from an approach based on individual instruments to a systematic approach, based on the entire life-cycle of regulatory policies (OECD 1997). This third stage, dubbed by the OECD *regulatory management*, is no longer centred round individual measures. Instead, it seeks coherence in the overall regulatory system. This can be achieved considering first and foremost whether regulation is truly the most effective way of solving the problems at issue. Other fundamental components of regulatory management are the analysis of interactions among different rules, the examination of direct and indirect implications for firms and citizens, the assessment of results, and the provision of transparency and accountability mechanisms. The point of arrival for regulatory management is not even to 'use regulation better', but to solve problems more effectively. The 'regulator' is replaced by problem-solving institutions, and regulation is seen as one of many policy instruments that can be creatively combined (OECD 1997).

Within the perspective of regulatory management, and bearing in mind the evolution towards independent administrative authorities, one of the challenges for the Commission is to abandon some 'central' control functions of regulation

and equip itself to govern networks 'horizontally', ensuring coherence and reliability to networks and implementation structures (Metcalfe 1996:5). In Metcalfe's words, 'the Commission's core competence' has to be defined in terms of developing capacities 'to co-ordinate organizational networks' rather than to seek to act directly: 'teamwork instead of central control' (Metcalfe 1996:7).

In this respect, the models requiring considerable improvement are those of administrative partnerships, so far tried out with modest success in the management of the structural funds (Levy 1997). A similar approach could be experimented for fiscal authorities, checks on fraud, customs services, immigration policies, police services, and collaboration among government statistical organizations and the Commission (Metcalfe 1996:6; Laffan 1997). Stopping fraud[30] is a task going well beyond asking, as the Commission's checklists require, whether the regulation being proposed is abstractly flaw-proof. Fraud can be stopped in practice (not abstractly) by co-ordinating networks, from regions to national capitals. The European agencies themselves, finally, should interpret their role as co-ordinators of networks instead of as small 'central' regulators (Dehousse 1997:259).

From regulatory reform to administrative reform

The Commission is a complex organization which, in its daily conduct, resembles a political system where actors with varying preferences compete to control the agenda and the decisions. As explained above, many of the obstacles to regulatory reform have to do with the Commission's low capacity for self-co-ordination. Even the most innovative methodologies, like the SLIM programme, have already encountered the problem of getting the administrative reform message down through all the Commissioners and DGs.

While countries in the OECD area have more or less successfully embarked on administrative reforms, the Commission has remained entirely impermeable to the 'new public management'. Its predisposition to political activism, to inventing and launching new ideas - factors that reached their apogee in the years of Jacques Delors's Presidency[31] - have created low interest and little

[30] There is no legal definition of 'fraud', so that the European Court of Auditors prefers to use the term 'irregularity' in its annual reports.

[31] Stevens and Stevens (1996:15) note that Delors was 'not interested in administrative reform, and his personal style was inimical to concepts of rational managerialism'. A so-called 'screening exercise' that is, a service by service assessment of the internal operation of the Commission, was conducted after 1991. Some 700 interviews took place (Cini 1996:192).

legitimacy (among Commission's officials) for administrative reform. Despite a few initiatives in the early 70s, such as the Spierenburg Report, the conclusion of Stevens and Stevens' systematic survey is clearly negative: the Commission is 'rigid, very hierarchic, fragmented, compartimentalised in complex ways, sometimes incoherent, and strongly male dominated' (Stevens and Stevens 1996:11). Anthropologists and public policy analysts add that the various DGs have now developed profoundly different administrative cultures[32] , which creates daily blocks, conflicts and poor internal co-ordination. My conclusion is that regulatory reform should go hand in hand with administrative reform. Perhaps the Santer Presidency, with its intention to do 'less but better', is in a favourable position to supply adequate leadership for the attempt to link administrative reform and regulatory reform.

5. CONCLUSIONS

This paper arises out of a series of questions on the importance of regulatory policy for the EU, the instruments for governing regulation developed by the European institutions, and what remains to be done. The EU has not, and probably will not in the future, followed in the footsteps of the European nation states, consolidated through the tax system and the Welfare state. But it is in regulatory policies that the Union has experienced truly exceptional development. If the EU is before anything else a political system that regulates (and not a system that taxes and offers social protection), the first priority of single market governance concerns the quality of regulation.

Facing the challenges of governing regulation, the EU has moved with some notable initiatives, within the framework provided by the principles of subsidiarity and proportionality. These initiatives range from checklists for preparing new proposals to the intensification of consultation, from the use of more flexible instruments (such as codes of conduct) to the attempt to place simplification of the administrative environment - particularly for SMEs - at the core of European policies, from simplification to the systematic assessment of existing norms.

Much ground is still to be covered, if we think only of how decisional procedures have been made more complex by the Maastricht Treaty without the recent Amsterdam Treaty having brought concrete progress. We are facing a paradoxical situation. On the one hand, growing complexity of decision-making

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However, 'the ultimate objective had to be the creation of a momentum towards reform, a momentum that in fact never materialised under Delors' (Cini 1996:193).

[32] See the studies in Nugent (1997).

processes may even take legitimacy away from the Union's actions. On the other, the European Union's very democratic deficit creates a heightened need to seek the broadest possible consensus among Commission, European Parliament and Council. In turn, this creates complexity, poor transparency, incomprehensibility of processes, and finally erodes the legitimacy of European action.

But over and above decisional procedures, there remains the problem of a still far too limited view of the challenges ahead, centred on legislation (and not on regulation as public policy), and on simplification (but not on regulatory management). Further, the Commission demands new competencies for governing the single market, rather than focusing on administrative reform. On this Commissioner Monti is undoubtedly right to note that the Commission's powers of verification and action against states not complying with internal market rules are much less effective than the Commission's powers in competition policy (*Agence Europe*, 6 November 1997). Consequently, he demands new legal instruments to govern the internal market.

However, the notion of regulatory quality is something conceptually distinct from the concentration of powers in the hands of a specific regulator. The Commission has more need to reinvent itself as a network organization at the centre of horizontal, co-operative administrative mechanisms than to centralize new functions. In any case, the transfer of powers to Brussels makes sense only if accompanied by the building up of specific management capacities. This means tackling a theme - the administrative reform of the Commission - that has not yet reached adequate maturity of proposals and political commitment. The prospect should be to build up intelligent institutions capable of learning, not just to simplify legislation while keeping the institutions unchanged.

The governance of regulation is decisive for the functioning of the internal market and for the legitimacy of the European Union. An internal market 'for thr citizens and the firms of the Union' means democracy by results, transparency and capacity for resolving collective problems. These ends, in conclusion, justify mobilising the major political and administrative commitment implied by the challenges of governing EU regulation.

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