

**Better
Regulation
Task Force**

Simple
Lihtne
Enkel

Vienkārds
Make It Simple

Simples
Helppo

Prosty

Semplice

Jednoduché

Paprastas

Egyszerű

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Eenvoudig

Jednoduchý

Preprosto

Let

Απλό

Einfach

Make It Better

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Annexes

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1 Foreword by David Arculus & Michael Gibbons

Make it Simple - Make it Better

- the benefits of simplifying EU legislation for citizens and businesses

The Better Regulation Task Force has produced this report as a contribution to the programme of activity aimed at achieving better regulation in the European Union.

Over the past seven years, the Better Regulation Task Force has been successful in securing improvements to the regulatory framework in the UK, mainly through acceptance, usually by Government Departments, of recommendations we have made in reports on specific issues. The Task Force has examined the implementation of EU law in the UK but, since about half of all major legislation in the UK originates in Europe, we thought that we should look at the European legislation itself to see what scope there was for 'better regulation'. We intend to produce a series of reports examining various aspects of this issue in the EU.

We wish to work in the same direction as current initiatives on better regulation in the EU. Simplification is a key element of both the European Commission's Better Regulation Action Plan 2002 and the Inter-Institutional Agreement on Better Law-making 2003. The Task Force decided that it would contribute to this work by focusing its first study on simplification.

Our work also complements the 'Four Presidencies' Joint Initiative on Regulatory Reform. Launched in January 2004, it involves the countries holding the Presidency of the EU in 2004 and 2005 (Ireland, the Netherlands, Luxembourg and the UK) in a coordinated drive to make real progress on Better Regulation at European level. Simplification is a key component in this too.

As part of the initiative, Council Conclusions issued under the Dutch Presidency have invited the



David Arculus
Chairman, Better Regulation Task Force

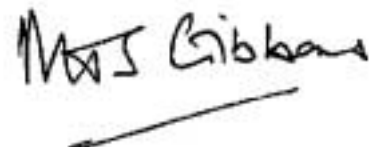
Commission to add specific items to their simplification programme. The Council Conclusions stressed the importance of giving renewed impetus to EU competitiveness, and a recent report by a High Level Group on the Lisbon Strategy, headed by Wim Kok, has cited 'improving the quality of legislation' as an area where action must be taken to achieve the aims of the strategy.

The Netherlands organised a conference on simplification - 'Simple is Better' - in October 2004 and many Members of the European Parliament to continue to promote the idea of better law-making. We hope that collectively we are helping to ensure that concrete action will be taken to 'simplify' EU legislation.

In the past, the European Commission has complained, with some justification, that general calls for simplification of EU legislation from Member States and others are usually not accompanied by specific suggestions. This report attempts to be specific and constructive by focusing on three areas - Data Protection, Food Labelling and Integrated Pollution Prevention and Control (IPPC).

It might be possible to achieve simplification within the present law-making process, but we strongly emphasise that simplification of EU law will not readily be achieved unless the EU Parliament and Council act on their own commitment to set up a procedure to expedite simplification proposals.

We hope not only that our recommendations will be acted upon, but that our report will encourage others to make simplification happen.



Michael Gibbons
Chairman, Sub-group on the
Simplification of EU Law

Make it Simple, Make it Better: Executive Summary

Why we are doing this work

The Better Regulation Task Force has produced this report as a contribution to the programme of activity aimed at achieving better regulation in the European Union

Over the last seven years the Better Regulation Task Force has examined the many aspects of regulation in the UK. However, since about half of all major UK legislation originates in Europe - as no doubt it does in other Member States - we decided to look at the European legislation itself to see what scope there was for 'better regulation'. We intend to produce a series of reports examining the issue at EU level - this, on 'Simplification', is the first.

In so doing we wish to work in the same direction as current initiatives on better regulation in the EU. Simplification is a key element of both the European Commission's Better Regulation Action Plan 2002¹ and the Inter-Institutional Agreement on Better Law-making 2003² which linked the Commission, Parliament and Council. Our work also complements the 'Four Presidencies' Joint Initiative on Regulatory Reform, which aims to give the process more impetus.

If the EU is to have long term credibility with its citizens the EU institutions have to show that they are capable of revising the existing body of law, some of which has, rightly or wrongly, gained the EU a bad reputation among the general public. Such flexibility will be increasingly important with the recent enlargement. It is not enough to improve the way in which EU law is made in the future - important though that is. It is also crucial that the work of simplifying and improving the enormous body of existing legislation is made possible and given priority by the EU institutions

In the past it has been said, with some justification, that calls for simplification of EU legislation from Member States and others are usually not accompanied by specific suggestions. This report attempts to be specific and constructive.

How we conducted the study

The Task Force began this study in October 2003 with a consultation exercise conducted in the UK to find out which areas the proposed study should look at. Based on the responses and further discussions with key stakeholders, we decided to examine:

- The Data Protection Directive (95/46)
- Food Labelling Legislation (2000/13 and others)
- Integrated Pollution Prevention and Control (IPPC) (96/61)

Since then we have met and received comments from a very wide variety of organisations and individuals in the UK, at EU level and in other Member States.

Our Approach

We do not aim to challenge the policy intentions of the Directives we are looking at. We simply ask whether the legislation achieves its intended outcome, not whether that outcome is the right one. In other words, we are not seeking to reduce the level of protection that the legislation was intended to give to individual citizens.

On the contrary, we believe that where the legislation is over-complex or confusing, in practice this can lead to less protection rather than more. For example:

- people may concentrate on paperwork rather than meeting the spirit of the law
- conflicting or confusing regulation is harder to enforce

¹ COM (2002) 278

² Official Journal of the European Union, C 321, 31.12.2003, page 1

- many will ignore the law
- small businesses in particular may struggle to comply
- where it is intended to promote a 'level playing field' across the EU this may not be achieved.

What is Simplification?

Our interpretation of simplification is 'to clarify and simplify legislation':

- where the wording of a Directive is confusing, outdated or open to misinterpretation (even allowing for the deliberate flexibility designed to help Member States when implementing)
- where a Directive requires administrative processes which are unnecessary or even detrimental to compliance
- where a number of pieces of legislation affecting the same processes, businesses or individuals impose burdensome requirements (through the cumulative effect) or conflicting requirements (through lack of consistency).

The three areas we have examined in this report provide examples of all these problems.

We have not considered the 'codification' of EU law, nor do we believe that simplification can be achieved only by concentrating on the way in which implementation has been carried out in Member States. We have identified enough difficulties with the EU legislation itself to justify a call for simplification.

Need for a Simplification Mechanism

Above and beyond proposals for simplification of legislation in individual areas, we found that it was very important that there should be an institutional mechanism to give effect to such changes.

At present the only way to change EU legislation is for revisions to be put forward as an amending Directive or Regulation, which has to go through the full process of negotiation and inter-institutional agreement. This process is complex and can be lengthy.

Therefore the EU needs to give urgent consideration to mechanisms that can enable 'simplification' to be done quickly without re-opening the fundamental political arguments.

The Inter-Institutional Agreement said that

'the European Parliament and Council . . . need to modify their working methods by introducing for example ad hoc structures with the specific task of simplifying legislation'.

Although proposals for achieving this were to have been produced within six months (from December 2003), we understand that so far little progress has been made. We believe that simplification is far more likely to be achieved if there is progress on this key issue.

We are advised that there is no provision in the EU Treaties to set up a completely new mechanism for this purpose. Therefore, in order to give effect to the Inter-Institutional Agreement commitment, the Council, Parliament and Commission need to ensure that simplification proposals could proceed by the quickest route possible under the existing Treaty arrangements

To make this work it would be necessary to ensure that all parties were committed to its smooth operation. There could be an informal body comprising representatives of all three institutions who could meet to agree on a list of simplification measures that did not reopen policy questions.

In this report we recommend that the Council and Parliament should meet their commitment under the Inter-Institutional Agreement to adopt 'ad hoc structures' to expedite simplification proposals, by mid 2005. (Gen 1)

In future, we believe that new EU legislation needs to be more flexible, i.e. build in scope for amendment, to enable changes to be made if a need for simplification arises. The possible need for revision/simplification, or indeed 'sunsetting'³, should be considered at the outset of negotiation on a new legal instrument.

Therefore, we also recommend that for each new legislative proposal, the document which sets out the rationale for deciding on what legal instrument is appropriate - the Impact Assessment or the Commission's Explanatory Memorandum - must include consideration of how the favoured instrument can be amended in future. (Gen 2)

Themes on simplification

On the EU legislation itself, apart from subject-specific analysis, we draw out a number of general themes which have emerged from our review of Data Protection, Food Labelling and IPPC. We recommend that these should inform the development of EU legislation. **We recommend that:**

- **Any proposal for new legislation should contain a holistic review of all relevant legislation applying to the activities to be regulated, and an explanation of how the new proposal will fit with the existing regulatory regime.** (Gen 3) In particular, there is a need for better liaison between different units in the Commission to ensure the coherence of new proposals with wider policy and existing measures;
- It follows from this that **more care must be taken to ensure consistency and clarity of common definitions in the different items of relevant legislation** (Gen 4) (Member States have a similar responsibility to ensure their 'experts' are aware of various pieces of legislation which apply to their areas);
- **Enforcement authorities should be consulted at an early stage on the practicalities of implementation;** (Gen 5)
- **Legislation should aim to reduce unnecessary administrative burdens by streamlining or eliminating the need to apply for multiple permits, authorisations, or make multiple notifications. In particular, to be consistent with the Single Market, it should allow single commercial bodies with operations in several Member States to make single applications/notifications.** (Gen 6) Several pieces of EU law do not appear to facilitate or recognise circumstances where companies have subsidiaries, branches or different operating outlets especially when these are in more than one country;
- **Where there are procedures aimed at supporting implementation by the issue of guidance or reference documents, the process must be transparent and conducted according to clear plans and timetables.** (Gen 7)
- **The ability of small firms to comply with the legislation needs particularly to be considered.** (Gen 8) Effective consultation is a key to this.

The individual case studies provide illustrations of where these recommendations have a specific practical relevance.

Data Protection Directive (95/46)

The Directive sets out arrangements for protecting the privacy of individual citizens by placing restrictions on the ways in which information held on them may be used, the purposes for which it is kept and the way it may be transferred. Although it provides an important and largely effective level of protection, some of its provisions do not reflect modern technologies and

³ The use of a legal instrument which is designed to remain in force for a limited period

it requires a number of unnecessarily bureaucratic procedures.

General themes which emerged from our review of the Data Protection Directive are:

- **Companies should be able to operate under a single legal regime, or to make single notifications/applications for authorisations in respect of a single corporate entity or data processing operation, when their operations cross the boundaries of several Member States;**
- **There is a need for greater clarity and consistency of definitions;**
- **Administrative procedures should be reviewed critically and unnecessary notifications, for example, removed;**
- **Procedures designed to facilitate implementation such as the Article 29 Working Party and the production of standard contractual clauses should be more transparent and better planned and timetabled.**

We make a number of detailed recommendations on individual Articles, which bear out these themes.

In 2005 the Directive will have been in existence for 10 years. **We recommend that it should be reviewed with the aim of simplification.** (DP 1) **This review should have clear objectives, a plan and timescale.** (DP 2)

Food Labelling

EU Directive 2001/13 aims to create a single labelling standard to protect consumers against misleading product descriptions and advertising on pre-packaged food. The Directive is also an Internal Market measure to prevent unequal conditions of competition between food manufacturers. In addition there are over 40 other pieces of legislation affecting food labelling.

Many stakeholders told us that food labelling law has become more voluminous, more burdensome and less effective. Consumers find themselves faced with confusing food labels, where nutritional or ingredient information is often written in microscopically small print. We believe that consumers are not being informed and therefore not protected as intended. The present position is certainly not sustainable over the long term in an area where there is growing consumer and media interest and demands for more information will increase. The Commission (DG Sanco) is currently conducting a review of food labelling.

Accordingly, we recommend measures aimed at simplifying the food labelling regime:

- **There should be consolidation of the existing pieces of legislation.** (FL 1)
- **Food Labelling legislation and policy should be the lead responsibility of one Directorate General in the European Commission.** (FL 2)
- **The DG Sanco review should:**
 - **propose that no further mandatory label requirements should be issued unless it is clear how extra space on the label is to be created** (FL 3)
 - **issue proposals for making labels clearer, for example through a grid** (FL 4)
 - **propose that the information to be presented on food labels be prioritised, with information on allergens given top priority.** (FL 5)
- **The Commission should ensure that any new legislation that increases mandatory information requirements should allow for the information to be provided to the consumer in ways other than the label.** (FL 6)
- **Updates of EU law on food labelling should be consolidated so that implementation dates for changed pieces of legislation occur a maximum of once a year.** (FL 7)
- **The Commission should agree on a minimum period of two years for the implementation of new legislation, where no safety issue is involved.** (FL 8)

- **The Commission should review their process of consultation and provide more ways to ensure stakeholder involvement throughout the law-making process.** (FL 9)
- **Any new labelling proposals should be backed by EU-funded, independently conducted and comprehensive consumer research.** (FL 10)
- **The Commission should ensure that any new proposals for EU food law should follow the principles of its Better Regulation Action Plan.** (FL 11)

IPPC

The IPPC Directive aims to prevent, reduce and eliminate pollution at source through the efficient use of natural resources and the establishment of an EU wide "integrated" permitting system. It does not prescribe the technology to achieve the desired environmental outcome but creates a framework that requires Member States to issue permits which cover operating conditions and emission limits at industrial installations based on Best Available Techniques (BAT).

The IPPC Directive provides some good examples of several of our key general points about simplification, in particular the need for:

- consistency and clarity of definitions and terms
- 'joined-up' policy-making
- proportionality, allowing increased flexibility for low-risk activities
- those with enforcement experience to be involved in the design of the policy.

For example, differences in the meanings of terms in Directives - IPPC and others aimed at controlling pollution - which apply to the same activities, limit the scope for creating a single integrated system to apply them in practice. There are also overlaps and inconsistencies between different pieces of environmental legislation which regulate the same plant or processes. The effort that enforcing authorities have to make to reconcile these inconsistencies is counter-productive to the work of practical regulation. Therefore, in the long term, the inconsistencies in the regulation work against the interests of those it is intended to protect - the general public.

We make some detailed, and some general recommendations, which are as follows:

- **A full appraisal of all related legislation should be conducted by the Commission at the outset of any new proposal for environmental legislation. In particular it should consider the potential overlap in provision of information, reporting and monitoring requirements on the same processes/plant.** (IPPC 5) This may require the strengthening of internal consultation procedures in the Commission.
- **The impact of any environmental legislative proposal should be considered by reference to individual sites and the cumulative effect of the various legislative regimes, e.g. permitting, emissions limits that they have to comply with.** (IPPC 6) This may mean, inter alia, greater involvement of those with practical experience of enforcement and compliance in the decision-making process.
- **The Commission should produce a clear early conclusion on how to adapt IPPC to existing and potential future emissions trading legislation.** (IPPC 7)

Conclusion

We hope that this report will stimulate debate and concrete action on the simplification of EU legislation, and on the institutional mechanisms to make it happen. We are happy and willing to discuss our work with all who have an interest in this subject.

As we say in the opening chapter, it is vital that the EU shows that it can improve the quality of its current and future legislation if it is to have greater credibility with its citizens.

The Four Presidencies Initiative on better regulation in the EU, and particularly the identification of areas for simplification which has been conducted under the Dutch Presidency, has raised the profile of this important subject. In addition, the High Level Group on the Lisbon strategy has noted the importance of tackling the quality of regulation in improving EU competitiveness and boosting economic growth. The case for better regulation in the EU is clearly gathering momentum and the Task Force will contribute actively to the process - this report is the first of a series that we intend to produce on EU regulatory issues. We want our work to add impetus to the better regulation agenda in the EU, and contribute to achieving outcomes which will bring tangible benefits for EU citizens and businesses.

1 Introduction

1.1. The European Commission drew up a Better Regulation Action Plan in 2002⁴ and subsequently the Parliament and Council (Member States) were linked in an Inter-Institutional Agreement on Better Law-making⁵ in December 2003. In February 2003 the Commission published a 3-phase policy for 'Updating and Simplifying the Community Acquis' setting out proposed work until the end of 2004, which has led to a rolling programme of simplification. Simplification of EU law is therefore a key element of the EU Programme on Better Regulation (alongside improvements in the use and quality of impact assessments, better consultation and the use of alternatives to legislation). The Better Regulation Task Force⁶ concluded that its own study on simplification could contribute positively to this process.

1.2 In preparing this report, as with all our other work, we do not aim to challenge the policy intentions of the Directives we are looking at. We simply ask whether the legislation achieves its intended outcome, not whether that outcome is the right one. In other words, we are not seeking to reduce the level of protection that the legislation is intended to give to individual citizens

1.3 On the contrary, where the legislation is over-complex or confusing, in practice this can lead to less protection rather than more. For example:

- people may concentrate on paperwork rather than meeting the spirit of the law;
- conflicting or confusing regulation is harder to enforce;
- many will ignore the law;
- small businesses in particular may struggle to comply; and

- where it is intended to promote a 'level playing field' across the EU, this may not be achieved.

1.4 We observed that there is a lack of feedback to the Commission about some of the difficulties with legislation encountered by Member States. There is a disincentive for them to deliver such feedback because they perceive themselves to be at risk of legal proceedings if they draw attention to practical problems. This situation should be improved by better and more open consultation between the Commission and Member States.

1.5 This study looks at three areas - Data Protection, Food Labelling and Integrated Pollution Prevention and Control (IPPC). Neither we nor any of those we spoke to disputed the need for regulation in these areas nor did anyone question the general principles or objectives of the regulation. Against the background of this general goodwill it ought to be possible to make changes which would improve the quality of the legislation, and hence its effectiveness.

1.6 If the EU is to have long-term credibility with its citizens, the EU institutions have to show that they are capable of revising the existing body of law, some of which has, rightly or wrongly, gained the EU a bad reputation among the general public. Such flexibility will be increasingly important with the recent enlargement. So it is not enough only to improve the way in which EU law is made in the future - important though that is. It is also crucial that the work of simplifying and improving the enormous body of existing legislation is given priority by the EU institutions.

⁴ COM (2002) 278

⁵ Official Journal of the European Union, C 321, 31.12.2003, page 1

⁶ Hereafter referred to as 'the Task Force'

What is Simplification?

What it is

1.7 The European Commission's definition of simplification, as stated in their First Report on their Action Programme on 'Updating and Simplifying the Community Acquis'⁷, is:

'Simplification is to be understood in a wide sense, covering modification of legislation to apply more efficient or proportional legal instruments, but also simplification of the substance of our policies while preserving their essential elements.'

Our approach is consistent with this.

1.8 We have worked to a fairly broad interpretation of simplification. It is 'to clarify and simplify legislation':

- where the wording of a Directive is confusing, outdated or open to misinterpretation (even allowing for the deliberate flexibility designed to help Member States when implementing);
- where a Directive requires administrative processes which are unnecessary or even detrimental to compliance;
- where a number of pieces of legislation impacting on the same processes, businesses or individuals impose burdensome requirements (through the cumulative effect) or conflicting requirements (through lack of consistency).

1.9 The three areas we have examined in this report provide examples of all these problems.

What Simplification is not

1.10 The European Commission is carrying out codification and consolidation of existing legislation e.g. bringing together basic text and all subsequent amendments. These actions may make it easier to find references in the body of law but will obviously have no impact on the content of the legal instruments if they are confusing or contradictory. We have not considered that process in our work.

1.11 Simplification cannot be achieved only by concentrating on the way in which implementation has been carried out in Member States. It is said with some truth that many problems with the alleged complexity of EU legislation stem from the way in which it has been implemented by Member States. This is valid to some extent in the three areas we looked at. We have considered how the legislation in question has been implemented in Member States besides the UK in order to understand which problems were primarily 'domestic' and which were common to several countries and therefore more likely to be caused by the EU legislation. We concluded that it is clearly wrong to blame all problems on Member States and we believe we have identified enough difficulties with the EU legislation itself in those areas to justify a call for simplification.

How we conducted the study

1.12 The Task Force began this work in October 2003 with a consultation exercise conducted in the UK to find out which areas the proposed simplification study should look at. Some 200 external stakeholders

⁷ COM (2002) 71 of 11 February 2003

including Government Departments, industry associations, trade unions and voluntary organisations, were consulted and over 50 responses were received. Based on these and further discussions with key stakeholders we decided to examine:

- The Data Protection Directive (95/46)
- Food Labelling Legislation (2000/13 and others)
- Integrated Pollution Prevention and Control (IPPC) (96/61)

1.13 We announced our decision on 5 April 2004 and invited further views and comments.

1.14 Since then, we have met and received comments from a very wide variety of organisations and individuals in the UK, at EU level and in other

Member States. These are listed in Annex A. We are very grateful to all those who gave their time to speak to us and provide us with information, and to those in British Embassies and the UK Permanent Representative's Office in Brussels who have facilitated many of our contacts.

Our report

1.15 This report is divided into four parts. There are separate chapters for each of the three specific subjects we examined. In addition, however, we realised during our consultations that it was vital for us to consider not only the detail of simplification proposals, but also the process by which such proposals could be implemented. We begin by looking at this aspect of the problem.

2 Making it Happen

Simplification - desirable but too difficult?

2.1 Many stakeholders agreed with us that the simplification of an area of legislation would be a good thing, but expressed pessimism at the prospect of actually achieving change. This is because at present the only way to change EU legislation is for revisions to be put forward as an amending Directive or Regulation which has to go through the full process of negotiation and inter-institutional agreement. While this might work if there is political will, the process is complex, can be tortuous and can take several years to complete. For example, proposals for legislation subject to the Co-decision

procedure have to go through up to three readings in the Council and European Parliament, as well as (possibly) the conciliation procedure, with amendments and negotiations at every stage. Commission officials, MEPs and national civil servants are reluctant to re-open the policy and national interest arguments which surrounded the process of agreeing the original instrument in the first place.

2.2 However, it is unlikely that this time-consuming process can be continued if the EU is to remain competitive in dynamic international markets and protect consumers. More legislative flexibility is needed.

Example: Need for fast track process to amend legislation:

An MEP told us that EU attempts to strengthen consumer protection against 'time-share' deceptions have been ineffective because of the fraudsters' speed in developing new legal formulations to escape regulation. The process of making new EU legislation is too slow to keep up.

2.3 And the problem remains of the existing legislation which is unsatisfactory. If some of this law is obviously unworkable in practical terms, even several years after a Directive was implemented and teething problems should have been sorted out, it is untenable to maintain that it cannot or should not be revised. In addition, some Members of the European Parliament have said to us that the EU needs to carry out more thorough 'post hoc' evaluations of EU legislation - and such evaluations would have to result in practical action to revise the law.

2.4 Therefore the EU needs to give urgent consideration to mechanisms that can enable 'simplification' - or updating or improvement for example -

to be done quickly without re-opening the fundamental political arguments.

'Ad Hoc Structures'

2.5 This matter has been recognised in the EU at the highest level. The 'Inter-Institutional Agreement' (see paragraph 1.1 above) said that:

'the European Parliament and Council . . . need to modify their working methods by introducing for example ad hoc structures with the specific task of simplifying legislation'.

Although proposals for achieving this were supposed to have been produced within six months (from December 2003), we understand that little progress has been made so far. We

believe that simplification is far more likely to be achieved if there is progress on this key issue.

2.6 Ideally, it would be possible to establish a completely new institutional procedure for agreeing 'simplification' or other 'fast-track' measures, distinct from the process for progressing new legislation or major amendments. Such a procedure could comprise, for example, a single reading in Parliament, time limits and/or limits on numbers of amendments.

2.7 We have received advice that it is not currently possible to establish such a procedure, as there is no provision for it in the Treaties which set out how the EU is run. The opportunity of setting up such a procedure has been missed in the current proposed amendment to the Treaties - the EU Constitution (though it is crucially important that it be included in the future). However, the Constitution includes a new possibility for Member States to propose amendments to it. If it is adopted, we very much hope that Member States take the opportunity to put forward proposals for a mechanism to expedite progress on 'simplification' changes to EU legislation.

2.8. In the meantime, under the present arrangements it is possible, via the co-decision procedure, for the Parliament to approve the Commission's proposal without amendment, the Council to agree and the proposal to be adopted immediately.

2.9 To make this work however it would be necessary to ensure that all parties - Commission, the Member States in Council and the Parliament - were committed to its smooth operation.

One suggestion is that there could be an informal body comprising representatives of all three institutions who could meet to agree on a list of simplification measures that did not reopen policy questions. It should have clear time limits and targets to deliver outcomes. It could work in a similar way to the procedure which currently exists to adopt the 'codification' proposals (although it is accepted that codification is more straightforward than simplification). This is that:

- the Commission produces a document which is considered by a Committee of the legal services of the Council, Commission and Parliament;
- a Council working group discusses the document;
- once agreed it is accepted by Parliament at first reading without debate; and
- adopted by Council.

2. 10 We do not intend to make detailed recommendations on such a body, but:

We recommend that the Council and Parliament should meet their commitment under the Inter-Institutional Agreement to adopt 'ad hoc structures' to expedite simplification proposals, by mid 2005. (Gen 1)

Simplification in future

2.11 In future, new EU legislation should be more flexible i.e. build in scope for amendment if a need for simplification arises. The possible need for revision/simplification, or indeed 'sunsetting'⁸ should be

⁸ The use of a legal instrument which is designed to remain in force for a limited period

considered at the outset of negotiation on a new legal instrument.

2.12 It has been put to us that in some circumstances a Regulation is preferable to a Directive because, being directly applicable in Member States, it gives greater clarity and certainty, and could be easier to simplify. At the other end of the spectrum, the greater use of Framework Directives by the EU could also help to avoid the need for regular EU-wide amendment. Whilst the choice between the two models is a significant issue, beyond the scope of this study, it is clear that both need to include provision for future simplification.

2.13 The process of comitology⁹ can also allow for flexibility to change some

aspects of a piece of legislation, to reflect changing circumstances or for example improved scientific knowledge. There are currently limitations however on how widely this process can be used to 'simplify' legislation as it is applied only to specific parts of a Regulation or Directive, such as an annex of items, and not to the body of the instrument itself. Also, it is a process in which the Parliament has limited involvement. Any process aimed at facilitating simplification has to allow for the entirely appropriate and necessary requirements of democracy to be reconciled with the need for more flexible mechanisms for improving existing law in the EU.

Example of flexibility in a legislative regime: In the financial services sector, the Lamfalussy arrangements provide for flexibility in the making of legislation by establishing different tiers at which measures can be agreed. The arrangements are:

- Level 1 - legislative acts (the Directives and Regulations) together with agreement on the nature of detailed technical implementing legislation;
- Level 2 - an EU-level Committee which advises the Commission in adopting the relevant implementing measures which can be used to ensure that technical provisions can be kept up to date with market developments;
- Level 3 - an EU-wide committee of regulators which has the objective of ensuring consistent implementation of Level 1 and Level 2 legislation in Member States
- Level 4 - the Commission, Member States and financial supervisory authorities work to ensure the implementation and enforcement of EU law.

2.14 To ensure that these issues are considered when new EU legislation is made:

We recommend that for each new legislative proposal, the document which sets out the rationale for deciding on what legal instrument is appropriate - the Impact Assessment

or the Commission's Explanatory Memorandum - should include consideration of how the favoured instrument can be amended in future. (Gen 2) This would mean for example more explicit use of review clauses or framing legislation in ways to enable revisions to be done easily. The Commission's Impact Assessment

⁹ Comitology is a process whereby the Commission is given the power to adopt legislation by procedures involving committees of Member State representatives who can exercise some degree of control over the powers delegated to the Commission.

Guide should include reference to this issue.

Lessons from the case studies

2.15 In terms of other recommendations, we draw out a number of general themes which have emerged from our review of Data Protection, Food Labelling and IPPC, and which should inform the development of EU legislation.

We recommend that:

- **Any proposal for new legislation should contain a holistic review of all relevant legislation applying to the activities to be regulated, and an explanation of how the new proposal will fit with the existing regulatory regime.** (Gen 3) In particular, there is a need for better liaison between different units in the Commission to ensure the coherence of new proposals with wider policy and existing measures;
- It follows from this that **more care must be taken to ensure consistency and clarity of common definitions in the different items of relevant legislation** (Gen 4) (Member States have a similar responsibility to ensure their 'experts' are aware of various pieces of legislation which apply to their areas);
- **Enforcement authorities should be consulted at an early stage on the practicalities of implementation** (Gen 5);
- **Legislation should aim to reduce unnecessary administrative burdens by streamlining or eliminating the need to apply for multiple permits, authorisations, or make multiple notifications. In particular, to be consistent with the Single Market, it should allow**

single commercial bodies with operations in different Member States to make single applications/notifications. (Gen 6)

Several pieces of EU law do not appear to facilitate or recognise circumstances where companies have subsidiaries, branches or different operations especially when these are in more than one country;

- **Where there are procedures aimed at supporting implementation by the issue of guidance or reference documents, the process must be transparent and conducted according to clear plans and timetables.** (Gen 7)
- **The ability of small firms to comply with the legislation needs particularly to be considered.** (Gen 8) Effective consultation is a key to this.

2.16 The individual case studies which follow provide illustrations of where these recommendations have a specific practical relevance. All of these conclusions are in line with the principles of the current 'Better Regulation' initiative within the EU. They should be embedded within the process of consultation, and within the impact assessment - which should be done throughout the process of negotiation, not just at the beginning, to check whether new drafts and amendments make sense in practical terms. Thus the chances of 'getting it right first time' will be increased and the need for future 'simplification' reduced.

2.17 We now move to the specific observations and recommendations we make on the three areas we have studied.

3 The Data Protection Directive (95/46/EC)

Background

3.1 The Data Protection Directive has its origins in a Council of Europe Convention (108) dating from 1981. Its objectives are to protect the privacy of individuals in respect of information held on them, and to facilitate the free flow of personal information between Member States as long as the appropriate protection is given. The Directive sets out arrangements for protecting the privacy of individual citizens by placing restrictions on the ways in which information held on them may be used, the purposes for which it is kept and the way it may be transferred.

3.2 The Directive applies to industries and ways of working which scarcely existed when its basic format was established. It also covers a field of rapid technological change. We have therefore found a great deal of interest from those involved who have made many suggestions for simplification.

3.3 Despite its problems the Directive has provided an essential framework for the protection of citizens' personal data in the EU and there have been few if any serious recorded misuses of that data. Everyone we spoke to fully accepted the need for protection of the privacy of individuals

3.4 Some businesses argue that there is a cost to them of compliance with the data protection legislation. This is necessary and appropriate. But we suspect that some unnecessary cost is incurred by business in this area due to the legal uncertainties of interpretation.

3.5 Where the legislation is over-complicated or outdated, the interests

of the individual are poorly served because attention is concentrated on compliance with inappropriate bureaucratic requirements rather than the spirit of the law. There is a danger of thus creating a 'paper compliance' structure in which superficially the legal requirements are met. In reality however, to facilitate the majority of routine data processing transactions, arrangements have been made to circumvent some of the rules. We draw attention to such inappropriate requirements in our detailed recommendations.

3.6 Ten years after the Directive was adopted - 2005 - would seem to be a good time for a review in order to simplify it.

The case for Simplification

3.7 In our discussions with stakeholders we have become aware of several important deficiencies in the Directive:

- First, the Directive was formulated at a time when an electronic data holding operation consisted of a single mainframe computer with access through a limited number of terminals. Although its basic principles of data protection remain valid, key elements (such as the arrangements for international transfers) now fail to reflect the much greater complexity of electronic computer data storage and communication, especially the internet and e-mail. Many of the difficulties now apparent stem from the lack of clarity as to how the legislation should apply to the current realities of data management. These lead to considerable lack of compliance.

- *Second, although the Directive is an Internal Market measure it has had to allow for so many different interpretations in Member States that it does not really create a 'level playing field' between them. In fact data management operations that cross national boundaries, both within the EU and outside it, are not facilitated by the Directive.*
- *Third, there is some concern that the complicated and bureaucratic nature of the Directive's data protection regime means that smaller companies are less likely to be able to comply. Where there are uncertainties the large companies, e.g. banks, telecoms firms can afford to employ their own specialists, or engage specialist lawyers. In Germany there is a system of 'privacy officers' who act for groups of companies. But in many if not all Member States the number of companies who notify the data protection authorities is likely to be much smaller than those who actually process personal data.*

European Commission review, 2002

3.8 The Commission conducted a review of the working of the Directive in 2002/03. This exercise involved a conference, written and on-line consultation, and the Commission's report to the Council was published in May 2003. It came out against making any changes to the Directive because it felt that on balance the majority of respondents to the consultation had not wanted changes, at least partly because many Member States had not yet had much experience of the Directive's implementation.

3.9 However, four Member States (Austria, Finland, the UK and Sweden) submitted a memorandum outlining practical problems with the Directive and offering specific drafting amendments to deal with them. We have spoken to other Member States who agreed with that document. A number of business organisations, including UNICE (Union of Industrial and Employers' Confederations of Europe), also made submissions drawing attention to broadly the same problems.

3.10 In its conclusions on the review, the Commission points out with justification that many of the problems that have arisen are the product of Member States' implementation or inconsistent/ineffective enforcement. The Commission also rightly draws attention to the sensitivities that surround data protection and the different ways in which various Member States tackle privacy and data protection. They rely heavily on the Article 29 Working Party to sort out the problems of practical implementation and interpretation.

Article 29 Working Party

3.11 Because of the problems with interpretation and implementation of the Directive, the advisory committee of national data protection authorities - the 'Article 29 Working Party' - has had a key role in providing guidance and agreeing arrangements under which the Directive is being implemented. This role is possibly more important than originally envisaged because of the scale of the problems. It has attracted criticism from many of those we have spoken to because of the slowness of its deliberations, its lack of

'transparency' and the uncertain legal status of its conclusions. These do not have the force of law, as it is an advisory body, but are often treated as such in the absence of any more authoritative source. The Directive makes it clear the Working Party's decisions are only advisory and passed to the Commission as opinions, for the Commission to take forward if appropriate (Article 30).

3.12 In its defence, the Working Party has been faced with a very extensive programme of work, and is troubled with resource issues. For example, like other such bodies it has to compete for translation and conference facilities, which can result in meetings being hard to arrange and papers being circulated at short notice. This in turn makes it harder for participants to consult their stakeholders on the issues under discussion. However, it has recently made efforts to be more open, for example by publishing its work programme, and these efforts need to continue.

General Recommendations

- In 2005 it will have been in existence for 10 years. **It should be reviewed with the aim of simplification.** (DP 1)
- **This review should have clear objectives, a plan and timescale.** (DP 2)
- If simplification is achieved the work of the Article 29 Working Party would be more efficient and have more impact. **The Article 29 Working Party should make its deliberations more transparent, for example by conducting consultation exercises on the issues it discusses, publicising details of its discussions and reporting progress on its work programme more regularly, and the Commission should support it in doing so.** (DP 3)

Other relevant legislation

3.13 Subsequent EU legislation has been introduced on privacy and electronic communication (2002/58/EC Directive concerning the processing of personal data and the protection of privacy in the electronic communications sector). This is more up to date and explicitly takes account of e-mail and the Internet. It states that it is 'without prejudice' to the Data Protection Directive whose provisions still apply. However it is not clear whether the relationship in practice between the Data Protection Directive and the new Directive has been considered in any detail.

3.14 We **make both general and detailed recommendations about the Data Protection Directive.** The general recommendations are:

Data Protection: Detailed Recommendations

Article 2 - Definition of Personal Data

3.15 It has been put to us that the definition of personal data, and what constitutes anonymous data, is unclear. 'Personal data' is defined differently in

practice in different Member States. Although the Directive suggests that anonymised data should not be subject to protection measures, in practice the definition is wide, does not reflect the reality of modern technology and means that the controller has to try to give subject access even where it is extremely difficult to do so.

Example of difficulties with 'anonymised' data: Customers purchasing pay-as-you-go mobile phones are known only to the phone company by a number and yet the data cannot be treated as anonymous and individuals i.e. 'data subjects' have the right to demand access to it. In these cases the company incurs considerable cost and trouble in meeting them because of the difficulty in verifying the identity of the applicant as the user of the mobile number in question.

3.16 Also, we understand that individual e-mail addresses have been classed as personal data even when

part of a general company address. This introduces a degree of difficulty to routine business transactions.

Recommendation

It is recommended that the definition of 'personal data' be reviewed and an EU-wide definition established, in particular to reflect recent technological developments, and clarify the boundaries of what constitutes anonymous data. (DP 4)

Article 4 - Applicable law

3.17 Many stakeholders, including the Commission, told us that these provisions are widely regarded as unsatisfactory. In its review of the Directive (see above, 4.7) the Commission admits that it was the most widely criticised Article.

3.18 Article 4 provides that if a data controller is established in the territory of several Member States, he must comply with the data protection law in each one. This provision can result in the same activity, if carried out in several Member States, being regulated according to several different legal regimes (and possibly different levels of protection).

Recommendation

A single 'country of origin' should be designated for the law applicable to data processing operations which straddle more than one Member State. That which applies to a designated 'head office' in one State should apply for all others (a similar principle to that applying to notification and permitting for international transfers, see below). (DP 5)

3.19 Article 4 also states that if the data controller is not established on EEA¹⁰ territory, but makes use of equipment on Member States territory for data processing, s/he must be bound by Member State data protection law. This takes no account of operations

such as Internet use through servers all over the world, or phone data being passed through global relays. In the latter case it is impossible for data protection authorities in Member States to enforce their law on data controllers in other non-EU countries.

Recommendation

This provision should be revised in the light of the practicalities of enforcement, and maybe dispensed with altogether. (DP 6)

Article 8 - Sensitive data - 'Special categories'

3.20 This Article:

- Provides that Member States should prohibit the processing of personal data relating to racial/ethnic origin, political opinions, philosophical/religious beliefs, trade union membership, and health/sex life.
- provides exemptions from this prohibition, for example where the data subject has given 'explicit consent'; and in other circumstances including the need to comply with employment law, provision of health care, legal/security reasons.

3.21 In reality it is the context of the use of such information which is key, rather than the nature of the information itself. For example:

- details about ethnicity may be unproblematic if kept by a voluntary organisation to demonstrate it was serving a diverse community, but harmful if collected by an extreme political organisation.
- some 'sensitive' information e.g. dietary requirements (which could give indications of racial origin or health issues) might be kept for the

benefit of the individual and therefore it makes little sense for them to be potentially subject to the restrictions of the Directive.

- in other circumstances data which are not sensitive as defined here, could be, depending on the context - for example, records of an individual's financial dealings.

3.22 In practice some Member States themselves have further defined what is regarded as sensitive data, including a variety of issues - for example information on individuals' newspaper reading preferences.

3.23 As noted above, one of the circumstances in which the processing of such information is allowed is when the 'data subject', i.e. the individual, has given his 'explicit consent'. This results in considerable bureaucracy as individuals' 'explicit consent' is sought to use their personal data for the very purpose for which they have divulged it, for example to book a holiday or join a club.

3.24 The Dutch Confederation of Employers and Industry (VNO-VRW) has suggested that it would be better to make a general rule that all personal data should be processed fairly. This would enable issues of sensitivity in any

¹⁰ EEA: European Economic Area – the EU plus Norway, Iceland, Liechtenstein

context to be considered, without trying to define what they were. The law would then concentrate on defining and penalising abuses rather than uses of personal data. This type of approach has also been advocated in Sweden. However, to recommend such a change goes beyond what might be termed simplification, as it would fundamentally alter the nature of the legislation. It would not fit well with the legislative systems of many Member States and would therefore be very contentious, so we do not make a recommendation about it here.

3.25 However, it should be possible to improve the level of real protection to the individual and avoid unnecessary regulation of information where privacy is not threatened. We think this should be reviewed, to allow for 'context' to be considered.

Recommendation

We recommend that the Directive should say that in these circumstances all such information about the data collection should be made available to the subject 'within a reasonable period'. (DP 7)

3.28 More generally, there are some circumstances in which personal data are passed between the 'data controller' and third parties in a purely routine way which does not endanger

Articles 10 and 11 - Information for data subjects

3.26 Article 10 obliges the data controller to tell the 'data subject' from whom information has been collected, details of the data controller, the use to which the data is put, and other matters including rights of rectification. Article 11 extends that obligation in respect of data which has been collected from a third party rather than the subjects themselves. Article 11 provides that the controller must, either at the time of recording the data or if it is intended to disclose the data to another party, provide details to the data subject no later than the time of the first disclosure.

3.27 Article 11 appears unnecessarily complicated, and unhelpful to the data subject. It allows the provision of information to the data subject to be postponed until the data is about to be disclosed, even if it was collected with that intention and even if the disclosure is a long way into the future.

data protection, for example when booking a family holiday or providing details of other drivers when hiring a car.

Recommendation

An exemption for this type of transaction is needed, for example by reference to the performance of a contract or where making the information available is not necessary to guarantee fair processing. (DP 8)

3.29 Finally, compliance with these Articles - although obviously crucial to the protection of individuals' privacy - requires the supply to individuals of lengthy printed conditions about the application of the data about them. There is some concern that the vast majority of individuals do not bother to read this and indeed find it an irritant. One way of simplifying this would be - as has been done in Poland - for national authorities to shorten and standardise the 'small print'. This

should help data controllers to comply more easily and make the information more understandable to the public.

3.30 In addition, the information for the data subject could be conveyed in a variety of ways, whilst still maintaining the protection of individuals' rights. For example it could be conveyed through an explanation provided by the data controller to the data protection authority, which could be signalled to and accessed directly by individuals.

Recommendation

We recommend that the Directive should allow information for the data subject to be 'provided' in a variety of ways such as informing the data subject where it can be found. (DP 9)

Article 12 - Subject Access

3.31 Article 12 gives the 'data subject' - the individual on whom data has been collected - the right to obtain information about the nature and uses of the data held, and the right of rectification if they are wrong.

Any such rectification must also be notified to third parties to whom the data has been sent.

3.32 We have received representations about the cost to business of the number of frivolous and vexatious requests made under this legislation.

Example: Frivolous requests; We heard of an instance when an art student deliberately entered a bank to be recorded on a security camera and then demanded a copy of the image (defined as personal data) for an art project.

However, on the evidence we do not believe that overall these represent a significant burden, and do not much affect small businesses. We believe that such apparently vexatious enquiries are the price to be paid for having a system which allows individual people the right to see the data held about them and that it would be very difficult to deter the unjustified claims without also discouraging the legitimate ones.

3.33 The main genuine difficulty in this area lies in the lack of clarity in the definition of what constitutes personal data (see 3.15 above). Related to this is the question of how far data controllers are expected to go into their records to find information which may only incidentally contain references to the data subject - for example, recorded phone calls, e-mails, back-up copies of documents etc. In a recent case in the UK (the 'Durant' case) the Court of Appeal provided a definition of

what might constitute personal data, but it is likely to be further tested in higher courts. Our view is that clarification of the definition of personal data is the appropriate way to tackle problems in this area.

Articles 18 and 19 - Notification

3.34 Articles 18 and 19 provide that any data controller must notify the data protection authority in a Member State if an automatic data processing operation is to be carried out. A number of exemptions are allowed e.g. if the information processed is public. The minimum information to be given in notifications is detailed.

3.35 Different Member States require varying levels of detail in notifications; in Germany companies covered by a registered Privacy Officer do not have to notify a data protection authority. Companies based in more than one Member State have to make multiple notifications (although in practice some get around this by e.g. issuing contracts to foreign employees from a single 'host' country). We have been told that in many cases there is no purpose to notification; in practical terms it is hard to see what benefit is gained by providing detailed information to the data protection authority, as it is unlikely to have the resources to pursue any shortcomings. Moreover the information given is not helpful to a data subject pursuing a particular privacy issue.

Recommendations

We recommend that:

- **the amount of information required in notification should be reduced, or even eliminated altogether.** (DP 10)

- **if notification remains, a company processing data in more than one EEA country should not have to notify in more than one country.** (DP 11) This would extend the principle proposed in relation to 'applicable law' and to international transfers, of designating a single unit in companies with outlets in several Member States as the focus for regulation of their data processing operations. A key to this working effectively is harmonisation of conditions between Member States. This recommendation, and that in paragraph 3.43 below, would be robust drivers towards harmonisation.

International Transfers - Transfer of data to third countries

3.36 Articles 25 and 26 of the Directive provide that

- personal data can only be transferred to countries outside the EEA if those countries have an adequate level of data protection;
- there may be exceptions to this

- rule in certain circumstances e.g.
- o the subject has given 'unambiguous' consent,
 - o public interest grounds,
 - o to 'protect the vital interest of the subject',
 - o 'for the performance of a contract in the interests of the data subject and a third party';

- *the Commission has the power to determine whether a third country has sufficient protection;*
- *Member States may give specific authorisation to transfers to a third country without adequate protection if 'adequate safeguards' have nevertheless been provided.*

3.37 A major problem with these provisions is that they do not recognise the development of the internet and e-mail, where data are constantly transferred across the world; and other technology such as mobile phones where messages and data are transferred often through relays in a large number of different countries.

3.38 In addition, these arrangements do not reflect the reality of present day commercial operations, particularly those of companies with branches or regular business partners in both the EEA and third countries. Obviously, such companies will wish to pass a huge amount of 'personal data' between their various outlets and the vast majority of these transfers would be uncontroversial. In order to facilitate this and yet remain within the legislation it seems that they are circumventing the procedures, which make it less likely that any serious breaches would be identified and pursued.

Example of the type of operation that currently takes place - a telecoms firm using Indian sub-contractors to help build new systems:

- *The international transfer regulations work well in the case where the new billing system is created entirely in India and the team require example data to help test it. The data would be destroyed after testing and the EC's model data transfer clauses work well on this.*
- *However a grey area arises if the team is based in India, but has remote access to the firm's systems in the UK. Under the Directive, that still constitutes a data transfer, even if the transfer is 'virtual' and appears on the screen of the second organisation without ever being stored locally. The company currently has to send out security officers to check the storage of the data, which are never physically stored at that location.*

3.39 As reflected in the Commission's review of the Directive in 2003, opinion is divided on whether the arrangements for international transfers should be enforced more strongly or replaced by a more targeted system. We have received evidence that much of the activity involved in gauging the purpose of international transfers and the adequacy of safeguards centres around irrelevant detail e.g. who owns the building in which the data processing is to take place. We also question whether individuals really want or

expect to know that their personal data are being transferred abroad - indeed in such activities as booking a holiday they expect it.

3.40 The Commission itself said in its review that 'more work is needed on the simplification of the conditions for international transfers' and we agree. There is no point in persisting with a system which is not being operated effectively and thus may well not be serving the interests of the individual in cases where protection of personal

data is really needed. Subject to the need for a more fundamental review, we suggest some measures which in the short term could simplify the process.

Authorisation of data transfer to third countries without adequate protection

3.41 A very small number of authorisations of data transfers to third

countries under this provision have been issued. It is not credible that such a small number of transfers meeting the criteria of Article 26 have in fact taken place. One reason is that, our evidence suggests, national authorities are finding other ways of managing the protection of data transferred abroad. This is not satisfactory, and the data protection authorities agree.

Recommendation

We recommend that this procedure should be reviewed. (DP 12) *The best long term solution would be that if most routine data transfer operations could be covered by approved agreements such as contracts, binding corporate rules etc., the need for these specific authorisations should decrease. If the system is to continue in its present form, however, consideration should be given to its usefulness and the type of information that should be provided to explain the reasons for the authorisation.*

3.42 Meanwhile the present authorisation process could be simplified.

3.43 Authorisations for transfers to third countries have to be issued from each Member State for each transaction. Companies with branches or subsidiaries spread across several Member States, which may all be participating in a single data processing

operation, cannot obtain a single authorisation for it from one Member State's Data Protection Authority, which would then be accepted by all others. In this, as with other aspects of the Directive, it would be simpler to allow authorisations to be issued by one Authority in the EEA, not in each and every Member State - to facilitate the operation of the single market.

Recommendation

We recommend that the Directive should allow for a single authorisation to be issued covering a data processing operation based in more than one Member State. (DP 13)

Safeguard arrangements for data transfers to third countries

3.44 There exist a number of devices for facilitating the transfer of data to third countries, such as:

- Commission approval of outside countries which it judges to have adequate data protection safeguards;
- Model Contracts containing adequate safeguards for transfers to outside countries which do not have approved data protection arrangements;
- the Safe Harbour scheme which allows certain US companies (but not banks, credit unions or insurance companies) to transfer personal data in and out of the EEA.

Recommendation

We recommend that the Commission should make more transparent the process and criteria for approval of third countries as having adequate data protection safeguards, and set and adhere to a target time for approvals. (DP 14)

3.46 In the longer term it might be more effective to simplify this process further by **allowing** data transfer to **all** third countries **unless** there are specific grounds, as defined in the legislation, for not doing so.

'Contractual clauses'

3.47 The Directive provides that an EEA-based data controller wishing to transfer personal data to a third country without adequate data protection, must have adequate safeguards, which may include 'appropriate contractual clauses' with those receiving the data. This is burdensome when applied to companies in the same group who have branches or subsidiaries inside and outside the EEA, and are frequently

3.45 However these arrangements have been represented to us as cumbersome. The procedure for approval of third countries as having adequate data privacy safeguards requires those countries themselves to apply to the EU. It may require Council agreement if there is disagreement between the Member States and the Commission and is lengthy. Since the Directive was adopted a limited number of countries and jurisdictions have been thus approved - Hungary (now in the EU), Canada, Switzerland, Argentina, Guernsey, the Isle of Man, the US Dept of Commerce Safe Harbour Scheme and the US Customs and Border Protection Department for the transfer of Passenger Name Record data.

transferring data between them. In some cases it is technically impossible because formal contracts cannot be made between branches of the same legal entity. In practice company policies or codes of practice may be developed to a sophisticated level and would equally serve the purpose though not meet the requirements of the Directive as currently drafted.

3.48 To facilitate the establishment of these 'appropriate contractual clauses', the Commission may decide on standard contractual clauses, which must then be used in the relevant areas. We received evidence that because the 'standard clauses' are so cumbersome, many data controllers avoid this requirement by deeming that

their data transfer operations are not for 'processing' and thus are not subject to these rules. Thus this provision is not working as intended by the framers of the legislation. The Article 29 Working Party and the Commission have made provision for the drawing up of 'Binding Corporate Rules', which companies or groups of companies may agree with

the Commission to enable them to transfer data internationally without requiring further authorisation. However, we have been told that these are especially demanding and take a long time to agree - in one case discussions with one company lasted four years - and may not be recognised legally in some Member States.

Recommendations

We recommend that the Directive should make it clear that other measures besides 'appropriate contractual clauses' may satisfy the need for adequate safeguards, for examples company rules. Such measures should need to be approved by one Member State only; and if so approved, should allow transfer from branches of the same company in all EEA states as well as the one issuing the approval. (DP 15)

We also recommend that the Commission should streamline the procedure for agreeing Binding Corporate Rules and set target times for agreement. Binding Corporate Rules should not have to be agreed separately by all Member State Data Protection Authorities where the company in question has branches. The country where the HQ is sited should be able to issue an approval covering all branches. (DP 16)

3.49 There are certain administrative arrangements prescribed in the Directive which appear to add nothing to practical data protection and appear to be largely ignored. Specifically:

- Member States and the Commission are to inform each other of outside countries where protection is inadequate*
- Any authorisations of transfers to outside countries without adequate*

safeguards are supposed to be notified to the Commission and other Member States, who may object to the transfers.

3.50 In practice the passing of information about third countries does not happen. And there seems no point in passing round information about authorisations in this way rather than to a central point.

Recommendation

We recommend that both types of information should be provided to a central point (the Commission) and made available from there. (DP 17)

Circumstances in which data transfers to third countries without adequate protection are allowed

3.51 Suggestions have been made for expanding Article 26 to allow for the transfer of routine information such as internal directories, and reflect the reality of present day international

transactions such as e-mail, internet use and mobile phone data. This may go beyond the remit of 'simplification', but nevertheless it should be reviewed.

Recommendation

We recommend that the scope of the Directive in relation to the transfer of routine information should be clarified. (DP 18)

3.52 On a specific drafting point, the Directive allows for these transfers 'to protect the vital interests of the data subject'. If 'or another person' were added it would align this provision more closely with parallel provisions on

Article 8 about processing of sensitive data. It would help to clarify that data could be transferred for example in the interests of medical research which would benefit people other than the data subjects themselves.

Recommendation

We recommend that to the provision on the vital interests of the data subject should be added 'or another person' (DP 19)

Common themes

3.53 In conclusion, there are several general themes emerging from our review of the Data Protection Directive, which echo those we highlighted at the beginning of this report. These are:

- Companies should be able to operate under a single legal regime, or to make single notifications/applications for authorisations in respect of a single corporate entity or data processing operation, when their operations cross the boundaries of several Member States;

- There is a need for greater clarity and consistency of definitions;
- Administrative procedures should be reviewed critically and unnecessary notifications removed;
- Procedures designed to facilitate implementation, such as the Article 29 Working Party and the production of standard contractual clauses, should be more transparent and better planned and timetabled.

4 Food Labelling Legislation

Background

4.1 The preamble to the European Union Directive¹¹ that lays out the legal basis for food labelling in the Community states that:

The prime consideration for any rules on the labelling of foodstuffs should be the need to inform and protect the consumer.

4.2 EU food law aims to create a single labelling standard so that consumers are protected against misleading product descriptions and advertising on pre-packaged food. This Directive is also an Internal Market measure to prevent unequal conditions of competition between food manufacturers.

4.3 The Task Force's enquiries suggest that current labelling legislation is in danger of failing to meet these primary goals. Many stakeholders - including representatives from the Commission, the food industry and consumer groups - have told us that as European food labelling legislation has developed and the number of legislative instruments has multiplied, food labelling law has become more burdensome and less effective.

4.4 Modern consumers are faced with confusing food labels, where nutritional or ingredient information is often written in microscopically small print. The food industry claims that the complexity of EU legislation and the lack of harmony between Directives operate against this information being presented in a simple and coherent fashion.

4.5 No holistic review of all European food labelling legislation has been undertaken in the 25 years following the implementation of the first Food Labelling Directive in 1979. Technology, methods of communication and customer awareness of the issues surrounding food safety and food labelling have progressed significantly in that time.

4.6 A recent report into European food labelling law, commissioned by the European Commission's Directorate General of Health and Consumer Affairs (DG Sanco) merely "estimated" the number of EU legislative texts presently in force in the area at "over 40".¹² A European Commission Green Paper on "The general principles of food law in the European Union" commented as long ago as 1997 that:

Community food law has developed piecemeal, over time, and there is no central unifying text setting out the fundamental principles of Community food law and clearly defining the obligations of those concerned.¹³

4.7 Knowing exactly what to put on food labels is a particular problem for smaller enterprises, which form a large proportion of manufacturers in the food sector. These are usually unable to afford legal advice to help them comply with the legislation, unlike larger companies who tend to have dedicated departments to ensure compliance. As we point out in our opening chapter, where there is complexity in legislation, non-compliance - and loss of protection to the individual - is often a direct result.

¹¹ Directive 2000/13/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs.

¹² http://www.europa.eu.int/comm/food/food/labellingnutrition/foodlabelling/effl_conclu.pdf

¹³ The General Principles of Food Law in the European Union-Commission Green Paper. COM (97) 176, 30 April 1997

4.8 Despite widespread acknowledgement of the problems, no-one has been able to identify clearly where food labelling law could be simplified, nor how labelling regulation should evolve in the future. Consumer groups believe strongly that information on foodstuffs must be given to the consumer and that the label is currently the best place to do so. Industry groups are concerned that additional labelling requirements will add regulatory burdens to their operations. There is reluctance from all parties to reopen hard-fought legislative compromises reached after long institutional debate e.g. the Chocolate Directive. As one stakeholder put it to us:

'There are always discussions surrounding simplifying food labelling, but nobody knows how to do it.'

4.9 Obviously the current situation is not satisfactory; consumers are not being informed clearly and therefore not protected as intended. The present position is certainly not sustainable over the long term in an area where there is growing consumer and media interest. In this chapter we highlight areas where simplification would improve both the quality of the legislation and the effective implementation of the EU's policy.

EU Food Labelling Law - background and structure

Horizontal framework

4.10 The central framework of EU food labelling law is EU Directive 2000/13/EC¹⁴ which establishes general requirements for the labelling of all pre-

packaged food sold in the EU. The Directive was intended to constitute a single "horizontal" legislative framework for the labelling of foodstuffs, that is to say a framework which applies to all foods in all product sectors.

4.11 The Directive aims to ensure the consumer is able to find out the exact nature and characteristics of a product by reference to information on the label. Labels must be easy to understand, and the particulars must be easily visible, clearly legible and indelible.

4.12 According to this Directive, the following information is compulsory on the labelling of foodstuffs:

- Product name;
- List of ingredients;
- Net quantity (and quantity of certain specified ingredients);
- Date of minimum durability ("best before" or "use by");
- Any special storage conditions;
- The name and address of the manufacturer;
- Place of origin - in cases where the absence of such information may mislead the consumer;
- Instructions for use of the product where necessary;
- Alcoholic strength by volume (where greater than 1.2% ABV).

Producers and manufacturers are then free to provide whatever additional information they wish, provided that it is accurate and does not mislead the consumer.

Vertical framework

4.13 The Framework Directive is complemented by a plethora of other

¹⁴ Directive 2000/13/EC replaced the original horizontal Directive 79/112/EC by a process of consolidation of the many amendments that had been issued since 1979, incorporating them in a number of annexes, but not simplifying or changing structure or content.

pieces of legislation which relate to specific food commodities and miscellaneous characteristics of food. These "vertical" Directives contain separate marketing provisions for commodities such as cocoa and chocolate products, olive oil and jams, jellies, marmalades and sweetened chestnut puree. Other specific Directives cover requirements to label additives, colourings and sweeteners in foods, or for labelling of dietary foods for special medicinal purposes.

4.14 Proposals for new "vertical" Directives originate from three different Commission Directorates General: Health and Consumer Protection (DG Sanco), DG Agriculture and DG Fisheries.

Proposals for new legislation

4.15 In addition, there are current proposals which would add to the mandatory food labelling requirements. For example, DG Sanco has proposed a regulation on nutrition and health claims made on foods. The Commission is also reviewing the Council Directive governing the nutrition labelling of foodstuffs. At present, nutrition labelling is optional; it only becomes compulsory when a nutrition claim is made in the labelling, presentation or advertising of a foodstuff. The Commission is likely to consider the extension of mandatory nutrition labelling to all pre-packaged food and to modify and simplify the existing format of nutritional labels.

European Commission review of Food Labelling (2003)

4.16 The European Commission agrees with the need for change. In 2002, DG Sanco commissioned an evaluation of

all European food labelling legislation (see paragraph 4.6 above).

4.17 The evaluation reported that the current mandatory labelling provisions do not meet policy needs, due to overlapping legal texts, unclear rules and terminology and over-complex legislation, but it did not recommend any fundamental changes to the legislation. Although the report reflected criticisms of the present system, a chance was missed to examine the scope for more radical proposals for reform.

4.18 The Commission has announced its intention to take forward the work of the evaluation report by reviewing the suggestions proposed and inviting contributions from Member States and interested parties. The Commission hopes to produce a discussion document in 2005 outlining proposals for the modernisation of EU labelling law. The project is anticipated to be long term, with an expected completion date of 2010.

The future agenda: case for simplification

4.19 The plethora of vertical and horizontal labelling Directives in EU food law prevents consumers obtaining clear and legible information on the products they are consuming. The amount of information now put onto food labels often means that key information on particulars, such as nutritional content or warnings for allergy sufferers, is printed in illegibly small print. There is some concern that when consumers are faced with a lot of detailed, and what they may perceive as mostly irrelevant information, they simply disregard all of it.

4.20 *The number and complexity of legal texts which apply to food labelling are also a matter for concern for business, especially, as noted above, small and medium-sized enterprises*

4.21 *Today's consumers take an increasing interest in the composition of their food. There is growing awareness in European society of the links between diet and health and a demand for more information on the nutritional value of food products. Currently those demands are mainly considered in the context of providing the consumer with clear, precise and meaningful information on food labels. There is a strongly held belief amongst consumer groups that the label is the best place for a consumer to find this information. But additional demands in future for the consumer to be given more information to reflect, for example, developing scientific knowledge about foodstuffs or new technologies in food production will put even more pressure on the label.*

4.22 *Either food packagers will cease to comply with the law or the information will become increasingly microscopic. Either way, the consumers will lose out because they will not get the information or the protection that the law is intended to convey. Although it is doubtful whether most consumers take much notice, it is clear that a minority - for example allergy sufferers for whom knowledge of what they*

consume can mean the difference between life and death - care very much indeed.

4.23 *The Task Force supports the case for consumers to be protected, but it is also legitimate for food manufacturers to have space on packaging to market their produce in a way that distinguishes them from their competitors. It is not reasonable that mandatory labelling requirements should accumulate without review.*

4.24 *DG Sanco's current review of the legislative structure needs to follow the Commission's Simplification Programme by considering how measures to alter the existing framework can introduce clarity to food labelling. In this report the Task Force hopes to contribute actively to the review process.*

Consolidation of vertical and horizontal labelling laws

4.25 *EU food labelling law is complex in its existing form. There is considerable overlap and tension between horizontal and vertical legislation. The recent Commission-sponsored report commented that partial derogations in both vertical and horizontal directives, together with unclear rules and terminology, mean that the legislation is open to different interpretations across Europe.*

Example: Where a certain ingredient is emphasised on the packaging of olive oil for marketing purposes, EU law requires the quantity of that ingredient to be indicated. The producer can indicate this information either directly after the product description or in the ingredients panel. In practice, most retailers include the information in the ingredients panel.

However, the EU regulation on olive oil marketing standards obliges food manufacturers who want to highlight olive oil to label the quantity of oil used directly after the product description.¹⁵ This inconsistency between Directives can mean that consumers are faced with, for example, choosing a pizza and finding information about the quantity of tomatoes and ham on the ingredient label, and then having to refer to the product description to find the same information on olive oil.

Example: The Scotch Whisky Association has identified more than a dozen different EU Directives and Regulations which have a bearing on the labelling of alcoholic drinks.¹⁶

4.26 There is a precedent for the consolidation of a complex set of laws in the area of EU food law. Until a recent simplification process was undertaken, EU legislation on food hygiene and the organisation of food safety checks and inspections was based on seventeen Directives, some of which dated from 1964. The Commission reviewed the whole hygiene package with a view to regrouping the legislation, making it more coherent and better suited to meet demand for better food safety and consumer protection. The Council recently gave its backing to proposals by the European Commission for four new regulations and one directive in order to meet these goals.

4.27 This was however no more than a basic codification process. Certain directives have been added to the annex of the new horizontal regulations, without attempts to integrate and harmonise the content into provisions within the central proposal.

4.28 Given that there is already a considerable overlap between existing Directives in the food sector, the Commission should be more ambitious when considering simplification plans for food labelling. A more frequent consolidation of EU food law would help those seeking to understand legislative requirements and avoid the necessity of referring to a lengthy list of separate amendments.

Recommendation

- **We recommend a consolidation of the existing pieces of legislation, through a process of both codification and simplification to bring the legal texts into an accessible form and to group together the separate amendments.** (FL 1) The aim should be to provide a simpler, more transparent and coherent legal basis for food labelling, and not to undertake a simple codification exercise.

¹⁵ Commission Regulation (EC) no 1019/2002

¹⁶ Including: Directives 2000/13/EC, 75/106/EEC, 87/250/EEC, 86/396/EEC, 94/54/EC, 2002/67/EC, 90/496/EC, 94/62/EC and Regulations 1830/2003, 1898/87, 1829/2003, and 1576/89.

Improved coordination within the European Commission

4.29 It has been put to us that EU food labelling legislation has been built up in a complicated and piecemeal fashion partly because of poor coordination between the Directorates of the European Commission which have a locus in food labelling legislation (principally, DG Sanco and DG Agriculture). DG Agriculture issues a number of vertical labelling Directives relating to product marketing standards which either duplicate or impinge on labelling conditions laid out in other Directives prepared by DG Sanco.

4.30 DG Agriculture tends to be more

concerned with protecting the fair level of competition amongst food producers within the Internal Market, whereas DG Sanco focuses more on providing sufficient food labelling requirements to protect consumers. These two goals should not be mutually exclusive. Problems arise when different areas of the Commission introduce legislative proposals without adequately considering the implication on overall policy. Sharing the responsibility for food labelling between different DGs and insufficient inter-service cooperation has led to a fragmented approach to the legislative framework, which serves neither the interests of the consumer nor those of industry.

Recommendation

- **We recommend that food labelling legislation and policy should be the lead responsibility of one Directorate General in the European Commission.** (FL 2)

Clarify the information on food labels

4.31 As consumers become more knowledgeable and interested in the food they select, there is a demand for more specific information to be provided on the label. In recent years, this demand has led to further legislation on the labelling of food allergens, and on foods containing genetically modified organisms (GMOs).

4.32 No-one the Task Force spoke to disagreed with the underlying principles of the Food Labelling Directive 2000/13/EC and the mandatory labelling requirements it establishes.

However from the limited consumer surveys that have been carried out in this area, it appears that consumers themselves do not understand much of the information already on food labels, particularly with regard to nutrition. For example, giving information "per 100 grams" can be helpful for making comparisons between products but can be difficult if the actual portion of food consumed is not 100 grams. Equally, it is not certain that many people understand scientific terms such as carbohydrates or proteins. To explain these properly would take more space than is available on most labels.

Example: The legal framework for nutritional information, where it is provided, currently requires sodium to be declared. However the term "sodium" does not represent the salt content of a product, e.g. 6 grams of salt a day represent only about 2.5g of sodium. Adults are recommended to consume around 6 grams of salt per day. It makes little sense to advise consumers using one term, and to label using another.

4.33 In addition to mandatory requirements, there must also be enough space on the label for the brand name and bar codes as well as other particulars such as marketing information or storage and cooking

instructions. Labelling legislation must strike the right balance between mandatory core labelling requirements and allowance for the use of voluntary information.

Example: Recent guidance issued by the Food Standards Agency in the UK recommended that a font size of 10 point should be used on packaging, with an absolute minimum of 8 point. Companies have complained to us that if they followed that guidance, particularly on smaller products (despite the existence of partial derogations for some small products), they had difficulty finding enough room on the label to include all the information that is both required by law and requested by their consumers. This illustrates the difficulty in reconciling legibility with space availability on some products.

4.34 There is a danger that further mandatory requirements on food labels would serve to confuse consumers and add incremental burdens on industry. It is likely that more consumer food "scares" and scientific research will continue to put pressure on legislators to respond with more regulation. The already complex legislative structure will then increasingly risk failing to safeguard the founding principles of food law.

help to alleviate some of the difficulties. The top priority should be to provide information of 'life and death' importance for consumers, such as allergen details.

4.35 We have been told by consumer groups that a system of prioritising the most important items of information and presenting them in an easily recognisable, uniform, manner would

4.36 Suggestions on presentation have included the establishment of a European "grid" of essential information for consumers. This "grid" would form an instantly recognisable information source, akin to the American uniform system of labelling. In addition, existing statutory requirements which can be demonstrated as not adding constructively to consumers' understanding of food labels should be scrapped.

Example: The e-mark is a mandatory requirement on food labels. It appears after the weight of a product (e.g. 500g e) is given on a label and indicates that each product from a batch will on average equal the declared quantity, but that the weight of each pack may vary slightly. Consumer awareness of this symbol is low¹⁷ and it is questionable whether this information tells the consumer anything more about the product.

4.37 Our consultations have illustrated the difficulty of forming a consensus on this issue, and indeed the workshop discussions on food labelling at the recent Dutch Conference on Simplification of EU law¹⁸ revealed a variety of views. However we believe that action is required. We propose that the European Commission should recognise that no further mandatory labelling requirements should be issued unless either existing requirements can

be removed from the label, or there are overriding concerns specific to serious medical conditions - a 'risk-based' approach should be taken. Any new demands should be encouraged to be met by alternative means (see section below). An appropriate forum for such discussions is the expert panel convened by DG Sanco to take forward their review of food labelling law.

Recommendation

We recommend that:

- **the current DG Sanco review should propose that no further mandatory label requirements should be issued, unless it is clear how extra space on the label is to be created; (FL 3)**
- **it should issue proposals for making labels clearer, for example through a grid; (FL 4)**
- **it should propose that the information to be presented on food labels be prioritised, with information on allergens given top priority. (FL 5)**

4.38 Some producers, for commercial or cultural reasons, provide the information on food labels in several languages. We accept their reasons for doing so but believe it is vital in these circumstances that the writing is legible.

consumer. Less information could be provided on the label itself and the use of new technology could allow some of the more complex details to be presented in an alternative fashion without impinging on individuals' rights to be informed about the food they consume.

Alternative ways of providing information

4.39 Several stakeholders have told us about the potential for innovation and experimentation to convey information about pre-packaged food to the

4.40 The conference 'Simple is Better' in October 2004, organised under the Dutch Presidency of the EU, discussed the possible use of information technology to provide consumers with information about packaged food other

¹⁷ As mentioned in the European Evaluation Consortium report on food labelling for DG Sanco http://www.europa.eu.int/comm/food/food/labellingnutrition/foodlabelling/effl_conclu.pdf

¹⁸ Conference: "Simple is Better", Effective regulation for a competitive Europe, 7th and 8th October 2004, Amsterdam

than via the label. This included the use of new technology as well as a possible 'traffic light' scheme, favoured by the Dutch consumers' organisation, to convey nutritional information (on the label) in a simple way.

4.41 Ideas that have been brought to our attention include:

- Electronic scanners using radio frequency identification (electronic bar-codes) in supermarkets could be developed to give customers information about individual foods, for example to avoid allergens, and are already quite commonly used to provide price information in Belgium.
- Off-the-shelf labelling or reference booklets at the point of sale.
- Free phone lines.
- Internet web-sites, which have the potential to hold much more information than the labels themselves.

4.42 A move away from giving information on the label may be of concern to some consumer groups on the grounds that any solution based on technology could reduce the ready accessibility of information to consumers and isolate poorer sections of the population.

4.43 That said, after an initial capital outlay for such technology, as well as necessary legislation to enforce its provision, further changes to product description could be completed much more easily, more cheaply and in particular enable the consumer to be provided with more detailed and relevant information. There are numerous practical questions around this - does it give an unfair advantage

to big companies/supermarkets? If products came with bar-codes, how would a smaller shop afford a reader? But that would be a problem for the market to resolve, and we should not necessarily make assumptions about what is likely to be practical and affordable.

4.44 A further option would be to introduce EU-wide symbols to highlight certain labelling requirements and food characteristics. This would have the advantage of creating customer friendly "signposts" to enable customers with particular needs or preferences to ascertain quickly which products they could consume. An example of such a symbol would be the "Crossed Grain" logo that has been patented by Coeliacs UK for food that is recognised as gluten-free. This logo is already used in some EU countries, for example in Finland.

4.45 On the other hand there are intrinsic difficulties in using symbols to highlight certain labelling requirements at a European level, as these can have different connotations in different cultures. It would not be easy (but perhaps not impossible) to assign one symbol that could be easily understood by the whole of the EU. Also there is concern that labels could become overloaded with a large number of symbols that the average consumer would have difficulty identifying. In terms of the presentation of information, we were also told that consumers can find numerical information difficult to handle and that graphic presentations (e.g. to illustrate the nutritional content of a product as a proportion of Recommended Daily Allowance) would be more helpful.

4.46 *If the Commission made a commitment to legislate in this way in the future, it would encourage investment in the use of such alternatives. With such a commitment in place, the food industry could confidently increase its research*

spending to encourage innovative technical ways of providing customers with more detailed and relevant information. These alternatives would then become more acceptable as consumers could be judged to have equal access to the information.

Recommendation

We recommend that the Commission should ensure any new legislation that increases mandatory information requirements should allow for the information to be provided to the consumer in ways other than the label. (FL 6)

Reduce the cost impact of new legislation on business

4.47 *We have received suggestions that a sensible short-term approach to reducing the administrative burdens of food labelling would be to harmonise the implementation dates of impending legislation so that producers only have to change their labelling provisions once a year.*

sophisticated labelling machines and do not have regulatory expertise. A single date per year for legislative changes to be brought in would ensure that businesses could prepare and plan for changes and reduce unnecessary expenditure printing labels that would soon become invalid. Producers also stressed the importance of a longer lead-time for the implementation of EU legislation so that they have adequate time to prepare for changes and can ensure the minimum wastage of existing stocks.

4.48 *This is an especially important consideration for SMEs, many of whom cannot afford the latest and most*

Recommendations

We recommend that:

- ***Updates of EU law on food labelling should be consolidated so that implementation dates for changed pieces of legislation occur a maximum of once a year. (FL 7)***
- ***The Commission should agree on a minimum period of two years for the implementation of new legislation, where no safety issue is involved. (FL 8)***

The consultation process

4.49 A common message we received from stakeholders was that both consumer groups and industry bodies

feel frustrated by the lack of access they have to officials and decision makers in the EU. At present this is especially true for the new accession countries.

Example: The European Association of Craft, Small and Medium-Sized Enterprises (UEAPME) drew our attention to the Commission's consultation with stakeholders on the amendment of the Nutrition Labelling Directive.¹⁹ A questionnaire on changes to existing rules was only available to be completed online. UEAPME, a recognised European Social Partner, which represents over a million SMEs, believes only 34% of its members have access to the internet. SMEs could claim to be disadvantaged by this method of consultation, particularly as it pertains to the formulation stage of a key DG Sanco policy.

4.50 There also seemed to us to be a lack of effective communication between business, trade associations and consumer bodies. In particular, consumer groups and industry make competing claims about consumer views based on their own separate research. We have heard that food manufacturers are unwilling to share such information in an open forum with consumer groups, possibly through fears of losing competitive advantage and/or issues of confidentiality.

there is not enough information available about what consumers want to see on food labels. They have commissioned a report involving consumer groups from all 25 Member States, which is due in late 2004.

4.51 Many groups seen by the Task Force raised concerns about the lack of consumer research about food labelling. The European consumers' organisation (BEUC) has admitted that

4.52 Under such circumstances the Commission must ensure better involvement of interested parties through a more transparent consultation process. Accurate and comprehensive consumer research should be a prerequisite for any strategic review of European food labelling legislation, by providing a stronger evidence base for making policy.

Example: The Commission-sponsored report into food labelling (see above) was supported by consumer research involving interviews with only 90 individuals. Such research, carried out in "London suburbs and Birmingham, Paris suburbs and Montpellier and Rome suburbs and Turin" could not have been representative of the views of European Union consumers.

¹⁹ Council Directive 90/496/EEC on Nutrition Labelling

Recommendations

We recommend that the Commission review its process of consultation and provides more ways to ensure stakeholder involvement throughout the law-making process. (FL 9) All Commission DGs currently having a locus in food labelling should demonstrate how their consultations fulfil the stated EU policy on "reducing the risk of the policy makers just listening to one side of the argument or of particular groups getting particular access".²⁰

We recommend that any new labelling proposals should be backed by EU-funded, independently conducted, and comprehensive consumer research. (FL 10) DG Sanco should undertake a comprehensive review of what is necessary and meaningful to consumers to inform its proposed review of food labelling.

All new proposals should be compliant with the Commission's Better Regulation Action Plan

4.53 It is the Commission's responsibility to ensure that any new legislative proposal is properly scrutinised to ensure that action is needed at the Community level. This can be a difficult task in an area as politically sensitive as food labelling. For example, the Foot and Mouth crisis, the debate over GMOs, and the current discussions on obesity have all produced demands to change the way food is labelled and pre-packaged. In such climates it is all too easy to respond automatically by making mandatory labelling requirements for every new proposal. Sometimes this will be justified, but it can also become counter-productive.

4.54 The Commission Directorates responsible for food labelling should make increasing use of impact assessments to promote evidence-based policy making. We are

concerned that impact assessments are not yet embedded within the culture of the European Commission and other EU institutions. Impact assessments help to determine whether the benefits of a proposal outweigh the costs, whether particular sectors are disproportionately affected and to identify alternative options for achieving policy goals. Any new proposal should include an analysis of all the existing legislation that applies to the same area and explain how it will fit in, ensuring that it does not add unnecessary burdens to the regulatory framework already in place.

4.55 The Commission is committed to producing draft initial impact assessments on food labelling proposals. Although this is a positive step, the potential of these initial assessments is limited if they are not followed up with more detailed extended impact assessments including quantitative and qualitative analysis of the costs and benefits at later stages of negotiations.

²⁰ pg 5 com (2002) 277 final.

Example: The Commission's initial assessment on Health and Nutritional claims did not, for example, attempt to quantify the impact of the proposal on small and medium-sized enterprises, nor did it attempt to examine the scope for alternative means of achieving the policy goals

4.56 We recognise that the Commission has made efforts to involve stakeholders in improving initial proposals for legislation. When the new EU Directive 2003/89/EC on allergen labelling was initially proposed, it contained provisions for the presence of all ingredients containing one of 12 scientifically recognised allergens to be clearly marked. However, the proposal referred not only to ingredients found in the final product, but also food derived

originally from major allergen groups but then highly processed. Allergen experts and industry groups protested that in many of these cases the processing of the initial allergens removes the allergenic protein. Therefore, under the initial proposal, products that were perfectly safe for allergen sufferers to consume would have been labelled as containing allergens.

Example: If the European Commission had not amended the original allergen labelling directive following communication with stakeholders, many popular sweets would have unnecessarily contained a wheat allergy warning (as they contain glucose syrup). Moreover, vegetable oil, sometimes produced from a nut base, could have been inappropriately labelled as being unsuitable for nut allergy sufferers.

4.57 In response to these concerns DG Sanco granted a one-year exemption to enable manufacturers and ingredient trade associations to submit dossiers on allergen-derived ingredients to a European Food Standards Agency expert panel. If the allergen-derived ingredients can be shown to cause no harm to allergen sufferers they will be exempted from allergen labelling requirements. In addition to this, the

final Directive contains a mechanism for the panel to add or remove allergen types from the Directive's list, subject to proper scientific and medical scrutiny, to take account of future changes to allergy levels. This is an example of how better regulatory practices can remove some of the unintended consequences of policy designed without complete scientific and technical information.

Recommendation

We recommend that the Commission should ensure that any new proposals for EU food law should follow the principles of its Better Regulation Action Plan. (FL 11) The Commission should commit to producing extended impact assessments on all food labelling proposals. The legislators must consider whether there are alternatives to classic forms of regulation that will achieve the same policy objectives.

Common themes

4.58 In conclusion, we pick up some of the themes which emerge from our study of food labelling and have a relevance to other areas of EU law:

- *the need for better coordination of legislation particularly by the Commission;*
- *those with practical experience of enforcement should be involved in the development of legislation;*
- *the circumstances of small firms must be specifically considered.*

5 IPPC Directive (96/61/EC) - Integrated Pollution Prevention and Control

Introduction

5.1 The Task Force has not attempted a comprehensive review of the IPPC Directive and its operation, but has concentrated mainly on its relationship with other EU Directives regulating environmental pollution. We believe that this aspect of the IPPC Directive serves well to illustrate the points we have made elsewhere in our report about problems caused by inconsistencies between legal instruments which attempt to regulate the same operations. It is also a good illustration of the lack of a consistent approach to policy-making in the EU. As an example, therefore, it bears out our overall conclusions as set out in Chapter Two.

Aims and principles

5.2 "The aim of IPPC is to prevent, reduce and eliminate pollution at source through the efficient use of natural resources and the establishment of an EU wide 'integrated' permitting system."²¹

- The Directive does not prescribe the technology to achieve the desired environmental outcome but creates a framework that requires Member States to issue permits, which cover operating conditions and emission limits at industrial installations based on Best Available Techniques (BAT). These permit conditions have to be based on BAT and also have to take into account the technical characteristics of an installation, its geographic location and local environment conditions. The implication is that the environmental impacts of industrial activities should be managed holistically with

economic and social considerations in order to achieve sustainable development.

- Article 2(11) of the Directive defines "available techniques" as "those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages... as long as they are reasonably accessible to the operator."
- The Directive covers activities in the energy sector, the production and processing of metals, minerals, chemicals, waste management, textiles, tanneries, paper, intensive agriculture and food processing. Around 60,000 installations in the EU will be required to operate under IPPC permits by October 2007.

The definition of BAT means that they should represent technologies and organisational measures that minimise the overall environmental impact, and that are available at an acceptable cost. BREFs (BAT Reference Documents) are the product of reports on a Europe-wide exchange of information between Member States and the relevant industries on BAT and should act as a benchmark. They are produced by nominated experts convened in sector specific technical working groups. Eighteen of these are still outstanding, despite the fact that they are intended to form the basis for what the Directive requires of operators (fifteen have been finalised).

²¹ European Commission, DG Enterprise website

- *Permits include requirements for the protection of air, water and soil, waste minimisation, accident prevention, use of raw materials, energy efficiency, noise, and environmental accidents.*
- *Permit conditions must be based on BAT. Annex IV of the Directive contains considerations to be taken into account when determining BAT to assist permitting authorities.*
- *Article 9 of the Directive establishes that permit conditions must take into account (a) the technical characteristics of the installation, (b) its geographical location and (c) the local environmental conditions. At the same time, Article 18 of the Directive recognises that there also may be cases where common and fixed EU emission limit values are justified.*
- *The Directive applies to all installations new since October 1999 and existing installations that intend to carry out significant changes. Other installations existing before October 1999 have until October 2007 to receive a permit, recognising the need for adaptation to the BAT based permitting system. Permitting of existing installations is patchy to date across Member States.*
- *The principle behind this approach is that by requiring all installations to have a permit, and setting out how the permit conditions should be established, the Directive aims to achieve a common standard of regulation throughout the EU.*

Commission Communication

5.3 The European Commission published a progress report²² on implementation of the IPPC Directive in June 2003 which invited responses from stakeholders and Member States. Its conclusion thus far was that Member States need to make more progress in implementation before firm conclusions could be drawn about any future changes to the Directive. In early 2004 the Commission published on its web site the nearly 80 responses it received. At the time of writing, a discussion paper based on the responses to the consultation is awaited and may inform a possible revision of the IPPC Directive.

5.4 The problems the report recognised with the obligation to implement BAT by 30 October 2007 were:

- *the definition of "best available techniques";*
- *the means of determining an installation's production capacity;*
- *technical coherence between IPPC and other environmental legislation; and*
- *the relation between the Directive and the national emission trading schemes.*

Interaction between IPPC and other Directives

Large Combustion Plant Directive (LCPD) (2001/80/EC)

5.5 The (revised) Large Combustion Plant Directive (LCPD) aims to reduce, by 2008, the emissions of SO_x (sulphur oxides), NO_x (nitrogen oxides) and dust from large combustion plants licensed before July 1987. Emissions of SO_x and NO_x are already controlled under

²² "On the Road to Sustainable Production. Progress in implementing Council Directive 96/61/EC concerning integrated pollution prevention and control".

IPPC. Although LCPD is not supposed to prejudice IPPC, and vice versa, there is still the potential for overlap and inconsistencies between the two Directives. It is possible also for the LCPD to be implemented through an emissions trading system even though this comes up against IPPC's site-specific requirements and the fact that it requires emission limits to be based on BAT. This raises the question of the consistency of approach between, on the one hand, the principle in IPPC that BAT should have primacy, and LCPD where there is more scope for emissions trading.

5.6 The links to IPPC have introduced an element of difficulty for businesses with large oil and coal fired electricity generation sets (e.g. chemical manufacturers, sugar refiners, primary and secondary iron and steel producers, and paper manufacturers) during the implementation of LCPD. Although they will receive a single permit for their operations, the flexibility of either Directive could restrict the other. Unlike IPPC, the LCPD requirements do not take account of the site-specific circumstances at each plant.

[*Waste Framework Directive \(WFD\) \(1775/442 as amended by Directive 1991/156\)*](#)

5.7 There is uncertainty about the interpretations of the "waste", "disposal" and "recovery" definitions given in the Waste Framework Directive which are referred to in section 5 of Annex I to the IPPC Directive (various ECJ rulings have not alleviated this as they have left or created other uncertainties).²³ The interaction of the Waste Framework Directive with other

specific waste directives, such as the Hazardous Waste and the Landfill Directives is unclear. The European Commission's recently published (2003) Waste Thematic Strategy mentions IPPC, but does not explain very well how it links with other waste-related legislation. The Commission needs to ensure that work on waste and IPPC is 'joined up' and uses consistent definitions.

5.8 Specifically, there is a difficulty in aligning Annex 1 of the IPPC Directive (the activities which are subject to IPPC) with the scope of the Waste Incineration Directive, which is mainly determined by the Waste Framework Directive definition of 'waste'. For example, there is uncertainty as to whether materials produced by the food and drink industry are 'waste' or 'by-products' - if they are 'waste' they are covered by IPPC and also attract other regulation. In other words, because it is not clear whether the material produced is 'waste', it is not clear if IPPC applies.

[*Waste Incineration Directive \(WID\) \(2000/76/EC\)*](#)

5.9 The WID sets specific emission limits and other operating requirements for incineration and co-incineration plant. There is potential inconsistency here as IPPC allows, through the use of BAT, for costs and benefits to be considered, whereas WID prescribes standards. The UK response to the June 2003 Commission Communication on IPPC said that IPPC should be the preferred instrument for control of emissions through BAT, rather than through further industry specific Directives, unless there are very clear benefits for the latter.

²³ ECJ cases on the definition of waste: Zanetti-Federal Republic of Germany, C-206/88, C-207/88 and C-359/88; Tombesi-Savini, C-304-94, C-330/94 and C-224/95; Wallonie, C-129/96; ARCO Chemie, C-418/97 and C-419/97; Palin Granit Oy C-9/00.

Landfill Directive (1999/31)

5.10 Landfill sites are regulated under a range of Directives besides IPPC: Environmental Impact Assessment, Groundwater, Habitats and Waste Framework Directives. Regulators may seek therefore to deliver the requirements of these Directives through a single permit. Although this depends on the approach to domestic implementation, there are difficulties in doing this where the Directives themselves are not clear and consistent.

National Emissions Ceilings (NEC) Directive

5.11 The NEC Directive sets a total mass limit for certain pollutants and it is up to Member States how to implement it. However, it may be necessary to set certain limits in IPPC permits to ensure compliance with the NECD. Also, the LCPD covers some of the pollutants specified in the NECD. It is not easy for enforcing authorities to reconcile these interactions in an implementing regime.

Recommendation

We recommend that the Commission's review of the IPPC Directive should produce proposals for the alignment of inconsistent requirements in environmental legislation (IPPC 1) (it is understood that waste definitions are likely to be tackled in the context of separate work by the Commission on a Thematic Strategy on Waste).

General Observations

5.12 The rationale for IPPC of having an integrated approach that manages industrial activities in a holistic way, in the interests of sustainable development, appears to be undermined by inconsistencies in the requirements of overlapping Directives. For example, some Directives (WID and LCPD) set minimum standards which are overruled by stricter BAT assessments under IPPC, while others (e.g. the Landfill Directive) contain technical requirements that apparently obviate the need for a BAT assessment. This reinforces the notion that there is no overall strategic approach to environmental legislation. We have been told that the 'piecemeal fashion' of producing EU environmental legislation is believed to inhibit the development of coherent integrated legal frameworks at national level and makes it difficult for Member States' regulators to maintain a single, coherent regulatory regime. This can also make it difficult for industry because it is sometimes faced with ambiguous or conflicting legal requirements. The IPPC Directive is a clear example of where inconsistencies particularly arise when activities fall under a number of different Directives.

Uncertainties over definitions in IPPC

5.13 There are several areas of uncertainty with the definitions in the IPPC Directive:

- *Inconsistencies in the meaning of the term 'installation' between the IPPC Directive, the Solvent Emissions Directive and the Control of Major Accident Hazards Directive.*
- *'Existing installation' is defined in the IPPC Directive but subsequent Directives e.g. on Solvent Emissions introduced a different test, leading to confusion.*
- *'Pollution' is defined in different ways in the IPPC and Water Framework Directives.*
- *'Substantial change' is defined in different ways in the IPPC, Solvent Emissions Directive, Public Participation Directive and Waste Incineration Directive.*
- *A Decision was adopted under the IPPC Directive to adopt a European Pollutant Emission Register (EPER). This aims to provide the public and policy-makers with information*

about industrial pollution. It requires reporting of emissions from the 'facility' without defining what that means, although it implies that a 'facility' could contain several 'installations'. The IPPC Directive itself does not use the term 'facility' as it regulates the 'installation'.

- *The EPER reporting requirements only recognise the possibility of a 'facility' having a single parent company, whereas even a single IPPC installation can have different companies operating different parts. A 'facility' with several installations would of course be even more likely to be operated by more than one company.*

5.14 *As with the inconsistencies between the actual operating requirements made under different Directives, the lack of clarity and consistency in definitions need to be addressed in the interests of providing a truly effective system for controlling pollution. The enforcement authorities in Member States need to be able to concentrate on practical regulation of polluting activities rather than expending effort in reconciling legislative anomalies.*

Recommendation

We recommend that the Commission's review of IPPC should lead to proposals for greater consistency and clarity of terms both within the IPPC regime and in relation to other legislative instruments. As part of the Waste Thematic Strategy, the Commission should resolve the problem of inconsistent or unclear definitions in the waste sector. (IPPC 2)

Disproportionate Requirements

5.15 We have been told that some problems are caused by the lack of any threshold for some types of installations covered by IPPC. Some smaller installations - at least those emitting very little pollution - find compliance onerous in relation to the limited

amount of pollution they cause. There is no provision for exemption on these grounds. Inert landfills for construction waste are covered by IPPC and this is felt to be disproportionate as little actual pollution is caused. Proportionality is widely recognised as a key element of good regulation.

Recommendation

We recommend that the Commission should produce proposals for exemption or lighter requirements in regulating installations of lesser potential environmental impact. (IPPC 3)

General Binding Rules

5.16 The Directive makes provision for these rules so that Member States can apply them instead of individually determined permit conditions. These may, for example, be used to simplify requirements in low risk cases. However when such rules are used, operators are still required to meet

prescriptive application requirements in full, even though they may well be close to meeting the required standard, and a permit must still be issued. Thus, the system could take better advantage of the opportunity presented for this process to simplify the requirements.

Recommendation

We recommend that the Commission should produce proposals for reducing the level of prescription associated with general binding rules. (IPPC 4)

Conclusions

5.17. The IPPC Directive provides some good examples of several of the key points we made in Chapter 2 - the need for consistency and clarity, for 'joined-up' policy-making, proportionality and the need for those with enforcement experience to be involved in the design of the policy. For example, difficulties with terms and definitions have resulted in ECJ rulings which in turn further exacerbate the piecemeal approach by the need to take account of these changes.

Differences in the meanings of terms in Directives which apply to the same activities limit the scope for creating a single integrated system to apply them in practice. As we have pointed out, the effort that enforcing authorities have to make to reconcile the inconsistencies is counter-productive to the work of practical regulation and therefore, in the long term, the inconsistencies in the regulation work against the interests of those it is intended to protect - the general public.

5.18 In addition, the burden of legislation needs to be proportionate to the environmental benefit and there is a need to take account of possible alternatives for small scale and low risk activities that currently have to comply with the same provisions.

5.19 It follows from these observations that we make some general recommendations about the ways in which the Commission should tackle the problems with environmental legislation which have been highlighted by the difficulties with IPPC. Scrutiny by Council and Parliament of new proposals should take account of the points we make; we have been told that in the past the relationship between legal instruments in this field has not properly been considered. The large number of infraction proceedings on

EU environmental legislation may also be a symptom of the lack of overall consistency.²⁴ In future, it is essential to get it right from the start of any new legislation. More thorough Impact Assessments, to which the Commission is committed under its Better Regulation initiative, should be a key element in this process.

5.20 In particular, we commend the 2004 report 'Effective Enforcement Needs a Good Legal Base' by IMPEL (the EU network for the Implementation and Enforcement of Environmental Law - an informal network of the environmental authorities of EU Member States), which has drawn attention to the need for more involvement of individuals with practical experience in the law-making process.

Recommendations

We recommend that:

- **A full appraisal of all related legislation should be conducted by the Commission at the outset of any new proposal for environmental legislation. In particular, it should consider the potential overlap in provision of information, reporting and monitoring requirements on the same processes/plant. (IPPC 5)** This may require the strengthening of internal consultation procedures in the Commission.
- **The impact of any environmental legislative proposal should be considered by reference to individual sites and the cumulative effect of the various legislative regimes, e.g. permitting, emissions limits that they have to comply with. (IPPC 6)** This may mean, inter alia, greater involvement of those with practical experience of enforcement and compliance in the decision-making process.
- **The Commission should produce a clear early conclusion on how to adapt IPPC to existing and potential future emissions trading legislation. (IPPC 7)**

²⁴ The European Commission's Fifth Report on Implementation of EU Environmental Law, published 19.8.2004, recorded 88 proceedings for failure to implement on time, 118 for incorrect transposition, and 95 for Member States' failure to meet secondary obligations.

***Make it Simple - Make it Better -
Conclusion***

We hope that this report will stimulate debate and concrete action on the simplification of EU legislation, and on the institutional mechanisms to make it happen.

We are happy and willing to discuss our work with all who have an interest in this subject.

As we say in the opening chapter, it is vital that the EU shows that it can improve the quality of its current and future legislation if it is to have greater credibility with its citizens.

The Four Presidencies Initiative on better regulation in the EU, and

particularly the identification of areas for simplification which has been conducted under the Dutch Presidency, has raised the profile of this important subject. In addition, the High Level Group on the Lisbon strategy has noted the importance of tackling the quality of regulation in improving EU competitiveness and boosting economic growth. The case for better regulation in the EU is clearly gathering momentum and the Task Force will contribute actively to the process - this report is the first of a series that we intend to produce on EU regulatory issues. We want our work to add impetus to the better regulation agenda in the EU, and contribute to achieving outcomes which will bring tangible benefits for EU citizens and businesses.

Annex A

Full List of Recommendations

1. On the institutional procedures for simplification:

We recommend that the Council and Parliament should meet their commitment under the Inter-Institutional Agreement to adopt 'ad hoc structures' to expedite simplification proposals, by mid 2005. (Gen 1)

2. To ensure that the need for future simplification is considered when new EU legislation is made:

We recommend that for each new legislative proposal, the document which sets out the rationale for deciding on what legal instrument is appropriate - the Impact Assessment or the Commission's Explanatory Memorandum - should include consideration of how the favoured instrument can be amended in future. (Gen 2) This would mean for example more use of explicit review clauses or framing legislation in ways to enable revisions to be done easily.

3. We draw out a number of general themes which have emerged from our review of Data Protection, Food Labelling and IPPC, and which should inform the development of EU legislation. **We recommend that:**

- **Any proposal for new legislation should contain a holistic review of all relevant legislation applying to the activities to be regulated, and an explanation of how the new proposal will fit with the existing regulatory regime.** (Gen 3) In particular, there is a need for better liaison between different units in the Commission to ensure the coherence of new proposals with wider policy and existing measures.
- It follows from this that **more care must be taken to ensure consistency and clarity of common definitions in the different items of relevant legislation** (Gen 4) (Member States have a similar responsibility to ensure their 'experts' are aware of various pieces of legislation which apply to their areas).
- **Enforcement authorities should be consulted at an early stage on the practicalities of implementation** (Gen 5).
- **Legislation should aim to reduce unnecessary administrative burdens by streamlining or eliminating the need to apply for multiple permits, authorisations, or make multiple notifications. In particular, to be consistent with the Single Market it should allow single commercial bodies with operations in different Member States to make single applications/notifications.** (Gen 6) Several pieces of EU law do not appear to facilitate or recognise circumstances where companies have subsidiaries, branches or different operating outlets especially when these are in more than one country.
- **Where there are procedures aimed at supporting implementation by the issue of guidance or reference documents, the process must be transparent and conducted according to clear plans and timetables.** (Gen 7)

- **The ability of small firms to comply with the legislation needs particularly to be considered.** (Gen 8) Effective consultation is a key to this.
4. We make both general and detailed recommendations about the **Data Protection Directive**. The general recommendations are:
- In 2005 the Directive will have been in existence for 10 years. **It should be reviewed with the aim of simplification.** (DP 1)
 - **This review should have clear objectives, a plan and timescale.** (DP 2)
 - If simplification is achieved the work of the Article 29 Working Party would be more efficient and have more impact. **The Article 29 Working Party should make its deliberations more transparent, for example by conducting consultation exercises on the issues it discusses, publicising details of its discussions and reporting progress on its work programme more regularly, and the Commission should support it in doing so.** (DP 3)
5. The detailed recommendations are:
- **The definition of 'personal data' should be reviewed and an EU-wide definition established, in particular to reflect recent technological developments, and clarify the boundaries of what constitutes anonymous data (Article 2).** (DP 4)
 - **A single 'country of origin' should be designated for the law applicable to data processing operations which straddle more than one Member State. That which applies to a designated 'head office' in one State should apply for all others (Article 4).** (DP 5)
 - **The provision concerning a data processor not established in EEA territory but using equipment in Member State territory, should be revised in the light of the practicalities of enforcement, and may be dispensed with altogether (Article 4).** (DP 6)
 - **On the provision of information to data subjects when the data have not been obtained from them, the Directive should say that in these circumstances all such information about the data collection should be made available to the subject 'within a reasonable period' (Article 11).** (DP 7)
 - **An exemption should be given from the requirements on information for the data subject for routine transactions involving a third party, for example by reference to the performance of a contract or where making the information available is not necessary to guarantee fair processing (Article 11).** (DP 8)

- **The Directive should allow information for the data subject to be 'provided' in a variety of ways such as informing the data subject where it can be found (Articles 10 and 11). (DP 9)**
- **The amount of information required in notification should be reduced, or even eliminated altogether (Articles 18 and 19). (DP 10)**
- **If notification remains, a company processing data in more than one EEA country should not have to notify in more than one country (Articles 18 and 19). (DP 11)**
- **The procedure for authorisation of transfers to countries without adequate data protection should be reviewed (Articles 25 and 26). (DP 12)**
- **Meanwhile, the present authorisation process could be simplified. The Directive should allow for a single authorisation to be issued covering a data processing operation based in more than one Member State (Article 26). (DP 13)**
- **The Commission should make more transparent the process and criteria for approval of third countries as having adequate data protection safeguards, and set and adhere to a target time for approvals (Article 25). (DP 14)**
- **The Directive should make it clear that other measures besides 'appropriate contractual clauses' may satisfy the need for adequate safeguards, for examples company rules. Such measures should need to be approved by one Member State only; and if so approved, should allow transfer from branches of the same company in all EEA states as well as the one issuing the approval (Article 26). (DP 15)**
- **The Commission should streamline the procedure for agreeing Binding Corporate Rules and set target times for agreement. Binding Corporate Rules should not have to be agreed separately by all Member State Data Protection Authorities where the company in question has branches; the country where the HQ is sited should be able to issue an approval covering all (Article 26). (DP 16)**
- **Details of outside countries where protection is inadequate, and of authorisations of data transfers to such countries, should be provided to a central point (the Commission) and made available from there, rather than being passed directly to all Member States and the Commission (Articles 25 and 26). (DP 17)**
- **The scope of the Directive in relation to the international transfer of routine information, such as internal company directories, should be clarified (Article 26). (DP 18)**

- **To the derogation allowing international transfers to protect the vital interests of the data subject, should be added 'or another person' (Article 26). (DP 19)**

6. On **Food Labelling** we recommend that:

- **There should be a consolidation of the existing pieces of legislation affecting food labelling, through a process of both codification and simplification to bring the legal texts into an accessible form and to group together the separate amendments. (FL 1)**
- **Food labelling legislation and policy should be the lead responsibility of one Directorate General in the European Commission. (FL 2)**
- **The current DG Sanco review should propose that no further mandatory label requirements should be issued unless it is clear how extra space on the label is to be created. (FL 3)**
- **It should issue proposals for making labels clearer, for example through a grid. (FL 4)**
- **It should propose that the information to be presented on food labels be prioritised, with information on allergens given top priority. (FL 5)**
- **The Commission should ensure any new legislation that increases mandatory information requirements on packaged food should allow for the information to be provided to the consumer in ways other than the label. (FL 6)**
- **Updates of EU law on food labelling should be consolidated so that implementation dates for changed pieces of legislation occur a maximum of once a year. (FL 7)**
- **The Commission should agree on a minimum period of two years for the implementation of new legislation, where no safety issue is involved. (FL 8)**
- **The European Commission review their process of consultation on food labelling and provide more ways to ensure stakeholder involvement throughout the law-making process. (FL 9)**
- **Any new labelling proposals should be backed by EU-funded independently conducted and comprehensive consumer research. (FL 10)**
- **The Commission should ensure that any new proposals for EU food law should follow the principles of its Better Regulation Action plan. (FL 11)**

7. On **IPPC** we recommend that:

- **The Commission's review of the IPPC Directive should produce proposals for the alignment of inconsistent requirements in environmental legislation. (IPPC 1)**
- **The Commission's review of IPPC should lead to proposals for greater consistency and clarity of terms both within the IPPC regime and in relation to other legislative instruments. As part of the Waste Thematic Strategy the Commission should resolve the problem of inconsistent or unclear definitions in the waste sector. (IPPC 2)**
- **The Commission should produce proposals for exemption or lighter requirements in regulating installations of lesser potential environmental impact. (IPPC 3)**
- **The Commission should produce proposals for reducing the level of prescription associated with general binding rules. (IPPC 4)**
- **A full appraisal of all related legislation should be conducted by the Commission at the outset of any new proposal for environmental legislation. In particular it should consider the potential overlap in provision of information, reporting and monitoring requirements on the same processes/plant. (IPPC 5)** This may require the strengthening of internal consultation procedures in the Commission.
- **The impact of any environmental legislative proposal should be considered by reference to individual sites and the cumulative effect of the various legislative regimes, e.g. permitting, emissions limits that they have to comply with. (IPPC 6)** This may mean, inter alia, greater involvement of those with practical experience of enforcement and compliance in the decision-making process.
- **The Commission should produce a clear early conclusion on how to adapt IPPC to existing and potential future emissions trading legislation. (IPPC 7)**

Annex B

Contributors to the Study

Academy of Medical Sciences
Accenture
Actal - Adviescollege toetsing administratieve lasten (Dutch Administrative Board on Administrative Burden)
Associated Computer Services
Association of British Insurers
Association of British Travel Agents Ltd
Association of Electricity Producers
Anaphylaxis Campaign
Association of German Insurers
Audit Commission
Barclays Bank
Biscuit, Cake, Chocolate & Confectionery Alliance
BDI - Bundesverband der Deutschen Industrie e.V. (Federation of German Industries)
BEUC - Bureau Européen des Unions de Consommateurs (The European Consumers' Organisation)
BLL-Bund für Lebensmittelrecht und Lebensmittelkunde (German Federation of Food Law and Food Science)
BP
Bristows
British Bankers' Association
British Chambers of Commerce
British Furniture Manufacturers Association
British Hospitality Association
British Meat Producers' Association
BT plc
Cancer Research UK
Cazenove
CBI (Confederation of British Industry)
Centre of Excellence "MANHAZ" (Management of Health and Environmental Hazards)
Chemical Industries Association
CIAA - Confédération des industries agro-alimentaires de l'UE (Confederation of the food and drink industries of the EU)
Citigroup
Civil Platform (Poland)
CMS Cameron McKenna
Coeliac UK
Construction Confederation
Corporation of London
Data Protection Authority (Netherlands)
Department for Constitutional Affairs
Department of the Environment, Farming and Rural Affairs
Department of Trade and Industry

DP - The National Data Protection Committee (Portugal)
Environment Agency
Environmental Protection Institute
Environmental Services Association
Ernst & Young
European Commission (DG Enterprise, DG Environment, DG Internal Market, DG Sanco, Secretariat General)
European Economic and Social Committee
European Parliament:
 Arlene McCarthy MEP (North West, UK)
 Caroline Jackson MEP (South West, UK)
 Lambert Doorn MEP (The Netherlands)
 Malcolm Harbour MEP (West Midlands, UK)
 Phillip Whitehead MEP (East Midlands, UK)
European Policy Forum
Federation of Bakers
Federal Environment Agency (Germany)
Federal Ministry of the Interior (Germany)
Finance & Leasing Association
Financial Services Authority
Food & Drink Federation
Food Standards Agency
Foreign & Commonwealth Office
Forum of Private Business
Futures and Options Association
General Inspectorate of Data Protection (Poland)
Her Majesty's Treasury
Hunton & Williams
HSBC
IMS Health
Information Commissioner's Office
Inland Revenue
Institute of Directors
J P Morgan Chase
King's College London - The King's Centre for Risk Management
Learning Skills Council
Lincolnshire Development, Business Link
Lloyds TSB Bank Plc
Local Government Association
Marks & Spencer
Ministry of Agriculture and Rural Development (Poland)
Ministry of Consumer Protection (Germany)
Ministry of Economics (The Netherlands)
Ministry of Economic Affairs and Labour (Portugal)
Ministry of Finance (The Netherlands)
Ministry of Foreign Affairs (Portugal)
Ministry of Health, Welfare and Sport (The Netherlands)

Ministry of Housing Spatial Planning and the Environment (The Netherlands)
Ministry of Justice (The Netherlands)
Ministry of Justice (Portugal)
Ministry for Urban Affairs, Spatial Planning and the Environment (Portugal)
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National Consumer Council
Office of the Committee for European Integration (Poland)
Ofgem
PKO Bank Polski
Peter Schar, Chairman of the Article 29 Working Party on Data Protection
Philips International B. V.
Polish Bank Association
Polish Chamber of Food Business
Polish Confederation of Private Employers
Privacy Laws and Business
Quoted Companies Alliance
Rabobank - Coöperatieve Centrale Raiffeisen- Boerenleenbank, B. A.
Royal Bank of Scotland
Scotch Whisky Association
Secretariat of the President of the Council of Ministers (Portugal)
Society of Motor Manufacturers and Traders Ltd
Trades Union Congress
UEAPME - Union Europeene de l'artisanat et des petites et moyennes enterprises
Europäische (European Association of Craft, Small and Medium Sized Enterprises)
UK Major Ports Group Ltd
Unilever
VNO-NCW (Confederation of Netherlands Industry and Employers)
Vodafone Ltd
Wine and Spirits Association

Annex C

Membership and ways of working

The Better Regulation Task Force is an independent advisory group established in 1997. Members are appointed by the Minister for the Cabinet Office, Ruth Kelly. Appointments are for two years in the first instance and are unpaid. Members come from a variety of backgrounds - from large and small businesses, citizen and consumer groups, unions, the public sector, non-for-profit and voluntary groups and those responsible for enforcing regulations. All have experience of regulatory issues in the UK. The Chair is David Arculus. He was appointed for a three year period from 1 April 2002, which has recently been extended until December 2005

Terms of Reference and how we work

The Task Force terms of reference are:

"To advise Government on action to ensure that regulation and its enforcement are transparent, accountable, proportionate, consistent and targeted."

When we comment on the quality of existing or proposed regulation, we test it against the five principles of good regulation listed within these terms of reference, asking ourselves a number of questions:

- Is the regulation necessary?
- Is it affordable?
- Is it fair?
- Is it effective?
- Is it simple to understand and easy to administer?
- Does it command public support?

We carry out studies of particular regulatory issues. These reviews are taken forward by sub-groups of Task Force members who set their own working methods. All sub-groups discuss their proposals with key organisations and individuals, as well as (for UK reports) with Ministers and Government Departments. We work through consensus - all reports are endorsed by the full Task Force before being sent to the relevant Ministers for their response. The Prime Minister has asked Ministers to respond to Task Force reports within 60 days of publication. We also respond to consultation exercises on regulatory proposals; we comment on live regulatory issues; and the Chair of the Task Force attends meetings of the Panel for Regulatory Accountability, a Cabinet Committee which meets regularly to address regulatory concerns with Departmental Ministers.

Resources

In addition to the valuable time of its Chair and members, which is freely given, the Task Force is supported by a team of 11 staff, part of the Cabinet Office Regulatory Impact Unit. The budget of the Task Force support team is £0.55m in 2003/4.

Members of the Task Force from April 2004

David Arculus - Chair, Severn Trent plc

Teresa Graham OBE - Deputy Chair, Baker Tilly
Jean Coussins, Portman Group
Michael Gibbons, Consultant: utility sector
Kevin Hawkins OBE, British Retail Consortium
Dame Deirdre Hutton, National Consumer Council
Kirit Patel, Day Lewis Group
Dr Ian Peters, EEF
Dr Penelope Rowlatt, Independent Economist
Janet Russell, Kirklees Metropolitan Council
Eve Salomon, Consultant: communications
Sukhvinder Stubbs, Barrow Cadbury Trust
Tim Sweeney, Consultant: financial services
Rex Symons CBE, Bournemouth Primary Care NHS Trust
Sarah Veale, Trades Union Congress
Victoria Younghusband, Lawrence Graham LLB

**Members of the Task Force who stood down on
31 March 2004**

Matti Alderson, FireHorses
Stephen Falder, HMG Paints
Simon Petch, CONNECT (retired May 2003)
Simon Ward, Consultant: hospitality industry
A Register of Members' Interests has been drawn up and is
on the Task Force website: www.brtf.gov.uk or is available
on request.

Annex D

Sub-group members

Michael Gibbons (Chair) is an independent consultant to the utility sector. He is a member of the Executive Committee of the British Energy Association and was Director of UK Communications at PowerGen until February 2002.

Tim Sweeney holds a number of non-executive and voluntary posts. His background is in banking and, until 2001, he was Director General of the British Bankers Association. He is a non-executive director of the AIB Group (UK) plc (Allied Irish Bank) and the Waste and Resources Action Programme, Chairman of Amicus Vision (charity arm of Amicus Group), Director of the Money Advice Trust and a Consultant to the Corporation of London.

Jean Coussins is the Chief Executive of the Portman Group, a not-for-profit organisation that promotes sensible drinking by the consumer and responsible marketing by the industry. She is a member of the Scottish Ministerial Advisory Committee on Alcohol Problems, the Alcohol Education and Research Council and the Council of the Advertising Standards Authority.

Rex Symons CBE is Chairman of the Bournemouth Primary Care NHS Trust, Bournemouth Transport Ltd and several non-trading subsidiaries. He is also a member of the Council of Southampton University and was, until 2002, a member of the Health and Safety Commission.

Simon Ward is Public Affairs Director of Mitchells and Butlers. Until recently, he was a non-executive director of the Leisure and Lifestyle Division of the accountancy firm Robson Rhodes and a director of the Consumer Policy Institute.

Matti Alderson founded FireHorses Ltd to provide specialist advice and advocacy on regulatory policy and strategy to clients in the public and private sectors in the UK and the European Union. Until April 2000, she was Director General of the Advertising Standards Authority in the UK and Vice Chairman of the European Advertising Standards Alliance in Brussels. She has served on the Doctors' and Dentists' Pay Review Body and the Food Advisory Committee.

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