MANIFESTO OF CONFINDUSTRIA FOR THE SEVILLE SUMMIT

More simplification for more competitiveness

Introduction

- European integration has been through several phases. First, the realization of a customs Union and a single commercial policy; then, the successive creation of an internal market and finally the realisation of an Economic and Monetary Union. The European Union will soon enlarge to 25 or more Member States and in 2010, if the engagements of the Heads of State and Government are kept, Europe will become the most dynamic and competitive economy in the world. These are extraordinary results and huge challenges. In this continuous evolution, the European Union has taken on a central role in the lives of its Member States, increasing its competences and, over time, increasing the number of instruments to implement them. Inevitably, **the complexity of the European system has reached breaking point and it's now necessary to reform the institutions and the way they operate**, before the enlargement of the European Union leads to its paralysis.

- The Convention on the future of Europe should respond to several needs: citizens' requests for democracy, the need for greater clarity in distinguishing institutions' powers, the division of competences between Member States and Union, the inability to decide quickly and the urgency of simplifying an over-complicated legislative framework. The Union must undergo these fundamental changes if it is to create a future environment favourable to development and to allow businesses to compete in the global market.

- Whilst awaiting reform, companies are operating in a single market that is not yet complete, that is not fully liberalised in the main factors of production, that is often excessively regulated and not harmonised throughout the EU. Enterprises, in particular SMEs, are therefore paying a high price for often ineffective administration and for often incomprehensible regulation unsuited to the market. Responsibility is divided between the European Union and Member States, but because it is divided, it is often not easy to identify.

- In Seville, Heads of State and Government, when discussing the future of the European Union, have to be aware that during the previous Intergovernmental Conference no major decisions were taken on the reform of the European Union and its functioning. This delay will encourage EU institutions and the Convention to present ambitious proposals to reform the Union's current institutional and constitutional arrangements.

- Community method must be revised and simplified in order to render decision-making quicker, legal instruments more appropriate to objectives and application of decisions more uniform throughout Europe. Concepts of efficiency and competitiveness must be introduced in

European institutions, in governments and in national administrations. Comparisons are needed with more effective systems of governance, looking specifically at democracy and originality of Community construction. **Simplification is essential for competitiveness.**

- Whilst awaiting the decisions that will change the face of Europe and the way in which it operates, it is possible to start to reform and simplify on the basis of the proposals of the White Paper on European Governance.

- Through the consultation of the White Paper on European Governance, the European institutions have understood the need for business participation in **defining, as well as putting into practice, a European model of development sustainable and capable of ensuring solidarity**. It is understood that to give the European Union a new identity, we must recreate a common European feeling: something only possible through **dialogue and consultation**. This, in itself, is already an important step forward.

- A second possible step forward, lies in the act the European Commission are keen to bring into being through the **Action Plan "Simplifying and improving the regulatory environment"** The European Commission's initiative has the merit of having created a veritable work programme establishing deadlines, responsibilities, actions and instruments. But no concrete result can actually be obtained if there is no strong political commitment from governments and institutions to support proposed acts with human and financial resources. Simplification is a recurrent theme: the characteristics of the problem have been clear for some time, but there has never been the will to actually 'do' anything, nor any integrated simplification strategy involving both European institutions and Member States.

- The European Union is going through a period of important reforms. Of these reforms, the simplification of legislatory and regulatory framework is rather urgent, given the lack of action taken until now. **The Heads of State and Government should express a strong commitment to it in Seville**.

- Confindustria maintains that measures to simplify Community and national legislation should take certain observations into account:

    1. **the existing regulatory framework is already complicated enough and it does not need to be further complicated by new legislation**. Each new initiative should be evaluated to discern its opportunities and potential effects, and to decide, in consultation with businesses, the most appropriate regulatory instrument, which may often not be legislative;

    2. **there is a problem with national implementation of Community legislation.** This is often due to the complexity of Community law, to Member States' procedures of transpositions and application and to the inefficiency of the infringements proceedings managed by the European Court of Justice. All this weakens the legal framework and institutional credibility and **creates competitiveness problems for enterprises**. The problem can only be resolved at its source, by producing good quality regulation applicable uniformly in all the EU, with extensive recourse to the "regulations", if necessary. If the impact evaluation is carried out scientifically and if business consultations and involvement are effective, the final choice of instrument to be uniformly applied at Community level (such as regulations) will contribute to guarantee a harmonised legal framework throughout the EU and will avoid the complexity and variety of legislative transposition.

3. **there is a comprehension and transparency problem in Community legislative measures** that must be solved through the simplification of texts, **giving priority to measures directly affecting businesses**.

SUMMARY OF *CONFINDUSTRIA*'S PROPOSALS

Based on the European Commission's proposals of the Action Plan "Simplifying and improving the regulatory environment", Confindustria has identified the priorities on which European Institutions and Member states should act in order to adapt the EU regulatory framework to the competitive challenges that European enterprises face in national and worldwide markets. The proposals take the form of general recommendations followed by recommendations for two specific sectors, social policy and environmental policy. These two sectors have been chosen as representative of the areas in which the legislative burden weighs particularly heavily on businesses, along with taxation. In contrast to taxation, however, the EU has a far more relevant role in the two chosen areas.

GENERAL RECOMMENDATIONS

- ***Simplify existing legislation*****,** acting in favour of a reduction of current legislation and of an improvement in the quality of legislation. To this end, *Confindustria* proposes that:

  - the European Commission **consults** industrial representatives to identify areas of legislation on which the institutions should intervene through codification, recasting and consolidation with the aim of prioritising interventions that will directly affect companies;
  - the Council and the European Parliament **commit to accelerated approval on the first reading** of codification and recasting proposals presented by the European Commission.
  - Member States **define a policy of simplification of national legislation** by June 2003, paying particular attention to laws on transposition of Community directives.

- ***Reformulate the new regulation production process***, putting particular emphasis on:

  1) Preparation and presentation of a proposal:

  Considering the current lack of a preparatory phase in legislative procedures, *Confindustria*, in line with the European Commission's proposals, underlines the importance of:

  - **an accurate *ex ante* evaluation of the need for new regulations**. Consultation of interested parties and analysis of the regulatory, economic, social and environmental impact of the new regulation are essential to this evaluation;
  - **the choice of the most appropriate level of legislative intervention** (European, national and regional) respecting the principles of subsidiarity and proportionality**;**
  - **identifying the most appropriate legislative measure.** With regard to instruments, Confindustria believes the priorities are:
    - to redefine all the instruments available to the EC legislator, not just the legal instruments (for example, redefinition of the directives' objectives, which are frequently too similar to existing regulations, and use "framework directives" which are less imperative and more flexible in their application);

- to favour the choice of alternative instruments to regulation (co-regulation, auto- regulation, voluntary agreements, open co-ordination methods, market instruments);
- to refer, for the issues relevant to the completion of the single market and its correct operation, to regulations that guarantee uniform and immediate application;

2) legislative discussion of the proposal:

Taking into account the slowness of the EU decision-making process, Confindustria hopes that:

- the Council and the European Parliament undertake to agree on first reading and with **increased recourse to qualified majority voting**;
- **proposals will be withdrawn** if they have been substantially changed by the Council and the EP with regards to the objectives of the Treaty and the protocol on subsidiarity and proportionality;
- **an automatic withdrawal clause** will be included in each proposal, in case it is not approved after a certain date.

3) transposition of EC legislation in individual Member States:

Given the delays and difficulties in transposition and application of Community legislation, Confindustria proposes that:

- as soon as possible, Member States reach the **directive transposition** target (98.5%) set by the European Council in Stockholm, and that next spring's Council sets a higher objective of 99.5%;
- the control of transposition of Community legislation is intensified, prioritising the **pursuit of infringements** which damage Community interests (in particular, cases with cross-border implications), and consequently exacerbate actions against Member States that do not fulfil their obligations;
- **an *ex post* evaluation of the effects of legislation** be carried out, both at EU and national levels, which will enable evaluation of the quality of environment companies are operating in and consideration of ways in which legislation could be modified or repealed;
- a date be established for the **revision of legislation that is greatly affected by technological changes**.

➢ **Create a new culture of simplification in Community institutions and national administrations** that will facilitate the creation of a better legal framework. To this end, Confindustria believes that:

- **human and financial resources** necessary to carry out co-ordinated administrative and regulatory simplification both in Europe and nationally must be increased;
- **a network between EC institutions and Member States** must be created to supervise the setting up of the Commission's action plan and to guarantee permanent evaluation of the quality of legislation;
- the Action Plan *"Simplifying and improving the regulatory environment"* will be revised over the years with determining of **new objectives and with regular monitoring of targets reached**;

- **indicators of improved regulation** should be used to monitor progress made by the Union and by Member States in order to keep track and allow the comparison of action taken on a Community level and nationally.

➢ **Complete the single market*:*** for companies, improving the regulatory framework does not just mean simplifying but also consolidating the rules which should ensure the smooth running of the internal market. For this reason, Confindustria asks the European Parliament and the Council to accomplish, in 2002, the 30 objectives set out by the Commission in its strategy for the internal market.

CONFINDUSTRIA'S RECOMMENDATIONS FOR THE SOCIAL SECTOR

➢ ***Simplify existing legislation.*** **Health and safety in the workplace** is one of the sectors of social policy characterised by excessively complex regulations. Therefore, Confindustria requests that:

- EU institutions take action to simplify, adapt and modernise;
- Member States act to ensure correct implementation and better application of Community legislation, even through the production of practical guides on how to apply current legislation, in order that businesses can identify the most practical and effective solutions;

➢ ***Reformulate the new regulation production process*****.** The complexity and over-abundance of regulations obstruct improved flexibility and competitiveness in the labour markets, essential conditions for improved employment. The markets' ability to adapt to continual economic changes depends largely on a leaner and less binding legal context. For this reason, Confindustria asks Community institutions to:

- adopt a **new, less regulatory, more qualitative and more "market-driven" approach to European social policy,** and where Community intervention is needed, to favour the **use of softer regulatory instruments**, i.e. open methods of co-ordination and the exchange of good practices;
- promote **social dialogue** that should be enriched in content and in alternative instruments to legally binding agreements. However, in launching social dialogue initiatives it will be necessary to :

  - respect the principles of subsidiarity and proportionality, limiting such initiatives to those sectors to which European intervention can bring added value;
  - avoid making a "masked" use of the social dialogue as a route to successive legislative intervention. In order for the process of social dialogue to be fruitful, Community institutions (and the Commission in particular) should adopt a neutral position.

- respect, whenever circumstances render legislative intervention inevitable, criteria aimed at guaranteeing improved and more coherent production of legislation. Such intervention should take full account of businesses' needs for flexibility and should take the form of an broad legal framework which limits itself to defining objectives and principles at a European level, leaving the Member States to choose the most

appropriate course of implementation and avoiding doing more than necessary to reach the established objectives;

- have a period of reflection before introducing new legal proposals. In particular, a legislative approach should be avoided at all costs in sectors such as corporate restructuring or corporate social responsibility.

CONFINDUSTRIA'S RECOMMENDATIONS FOR THE ENVIRONMENTAL SECTOR

- ***Simplifying existing legislation:*** Environmental policy causes the highest number of problems in directive implementation and application. To this end, Confindustria would like:

  - The European Commission to revise directives that, because of intrinsic defects, have not been implemented by several Member States, paying particular attention to analysis of the content of the texts and, if appropriate, to handle the abridgement of these laws;
  - Member States to revise national regulation with the aim of eliminating distortions caused by poor implementation of Community directives, which often goes further than necessary.

- ***Reformulate the new regulation production process.*** Any legislative proposal in the environmental sector should be based on the principle of sustainable development as defined in the Amsterdam Treaty. This means that the legislator must carefully evaluate the environmental, social and economic implications of the objectives under consideration and decide on the best course of action to meet these objectives. Therefore, Confindustria suggests that in the preparation and presentation phase:

- Institutional **working methods** are revised. This will facilitate the coherent integration of social, environmental and economic variables. To this end:

  - *The European Commission* should improve coordination of general directorates dealing with policies with a strong environmental impact (transport, energy, industry, agriculture) and revise interservice consultation procedures. In this way, consultation between Industry/social affairs DG and environmental DG should be strengthened.

  - *The European Parliament,* in order to rationalise its works, should split the "Environment, Public Health and Consumer Policy" committee in two different committees: "Environment" and "Public Health and Consumer Policy". During the examination of environmental proposals with strong consequences for industry, the European Parliament should systematically apply the reinforced Hugh procedure at the Industry committee, that, in this case, should assume an equal role (referred to the Environment committee) in view of the amendments to be presented at the Plenary Session. Environmental/industrial and social affairs commissions should be better coordinated when dealing with policies relating to sustainable development;

  - *The Council* should define intersectorial consultation times within working groups, in cases of proposals that assume economic, environmental and social implications.

- To **improve legislative proposals** the Commission must adopt analysis and evaluation methods that are more appropriate than those currently in use. Integration of environmental policies in other sectors needs an economic impact evaluation in order to minimise costs.[1] Therefore, it is suggested as soon as possible to adopt methodologies that allow:

    - **An analysis of the economic, social and environmental impact of the proposed intervention and an analysis of the cost/benefit ratio** of the proposal's objectives and of the ways suggested to achieve them.

    - **Analysis of respect levels**: the Commission, before presenting new specific sector proposals, should proceed to a "respect analysis" of the present environmental legislation, to understand the reasons of a difficult application at member states level and to take necessary conclusions;

    - **The use of instruments to evaluate the effects and efficiency of the legislation**.

- **More suitable regulatory instruments, alternative to regulation, are selected** in consultation with the relevant industrial sectors. Therefore, the Commission is invited to adopt the directive dealing with the Community definition of voluntary agreements in the environmental sector as soon as possible. Recourse to *command & control* type regulation should only occur when it can be shown that there is no other way to reach the given objectives. Therefore, in order to guarantee respect of competitiveness and to ensure consolidation of the internal market, the Commission should:

        - on the basis of art.95 of the Treaty, legislate to **facilitate uniform application of environmental law**, preventing Member States from adopting more restrictive measures that would influence business competitiveness creating distortions in the internal market;

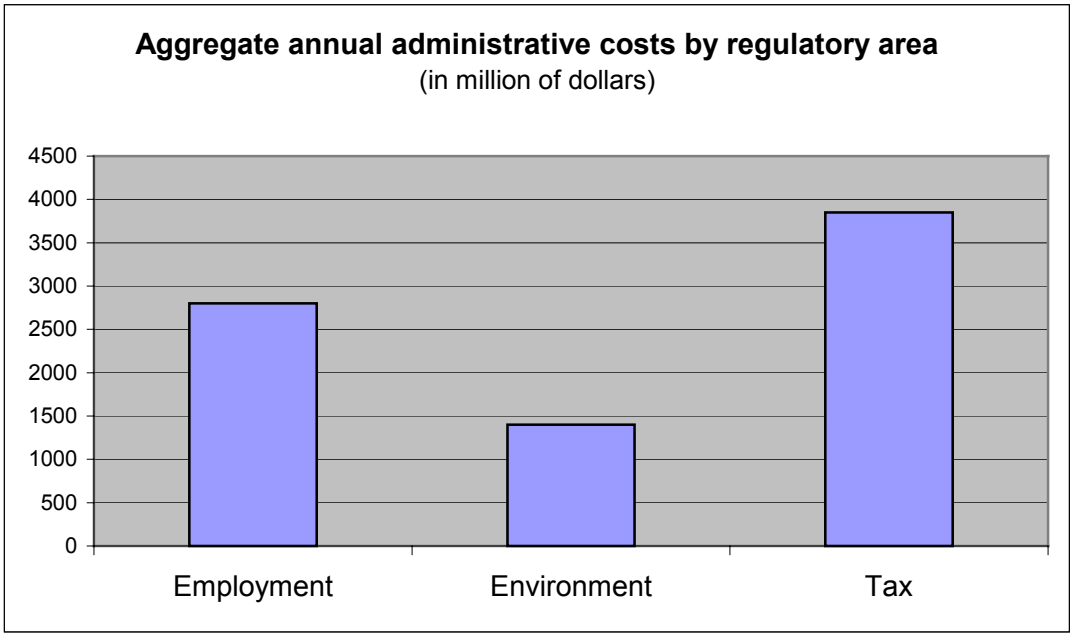
        - **extend recourse to use of regulations**, rather than laws, for proposals that have an impact on the internal market, particularly with regard to enlargement

1. Simplifying and improving the regulatory environment

1.1 Some initial considerations

- Businesses are not only shaped by the markets, but also by the regulatory and administrative environment in which they operate. Laws are indispensable for safeguarding public interests and for guaranteeing businesses' access to markets in an environment of fair competition. But there is a risk with laws: in times of profound economic and social change, an regulatory framework that is not adapted to the mutated conditions creates unfair barriers to businesses' economic efficiency, to commerce, to investments and in consequence to sustainable development and the creation of jobs.

- The problem is not new. For a long time, various international organisations have been denouncing the fact that ineffective regulation and provision of obsolete or badly applied laws create unnecessary costs and impede business performance. The World Bank says that red tape is one of the biggest obstacles that businesses operating in OCSE countries come across. In a recent survey[1] of the European Union, the main problems of growth in SMEs are, in this order: lack of qualified personnel, difficulty obtaining credit and the amount of red tape. A study on the costs of rules and regulations, recently published by OCSE, says that businesses mainly spend on taxation (46%), employment law (35%) and the environment (19%). In terms of quality of the legislation, finance[2] and employment are the legal areas with the most rigid application, and that are the least understandable and least effective in reaching their goals. The situation is only marginally better for environmental law.

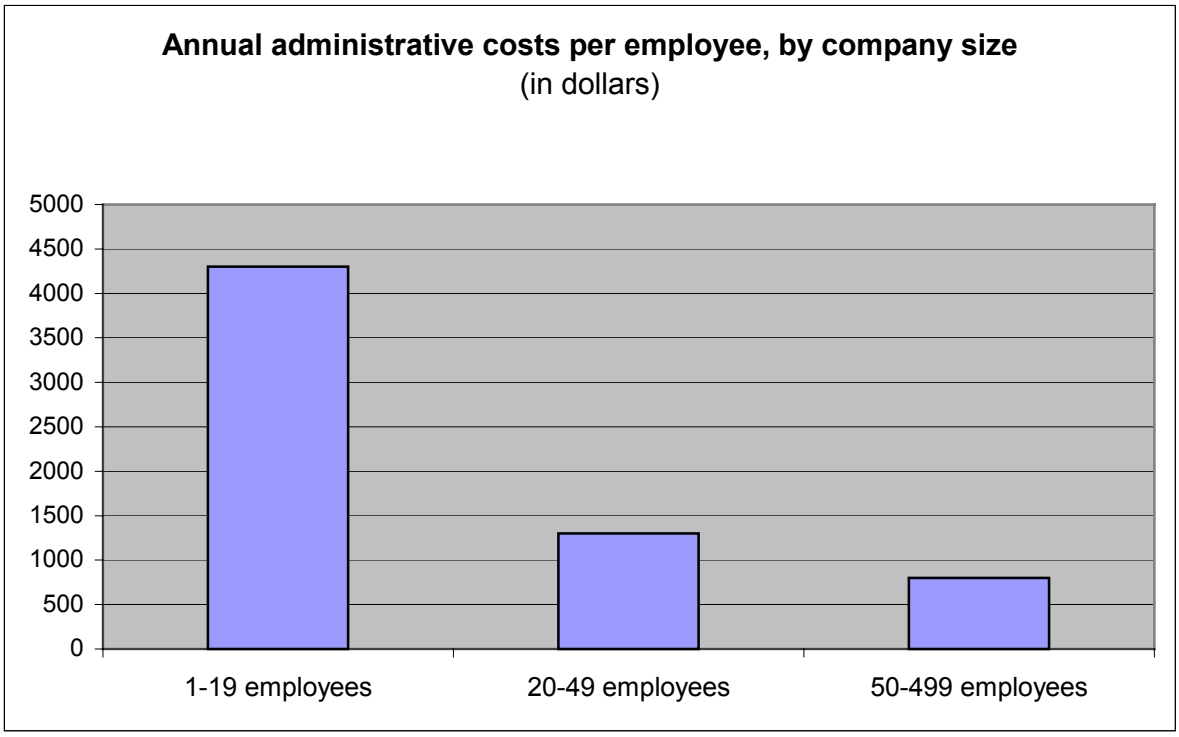


Source: Businesses' Views on red tape, administrative and regulatory burdens on SMEs – OCSE

- On average, the cost of administration accounts for 4% of the GDP for the industrial sector varying from 2% in Finland to 7% in Spain. This is an average cost of $4100 per employee and an average cost to the business of $27500. Proportionally, red tape is a bigger burden to SMEs, it is a great hindrance, particularly to firms with fewer employees. According to recent OCSE

[1] Observatory of European SMEs 2002, No.1 – Highlights from the 2001 survey, European Commission, pag.13.
[2] OCSE "Businesses' views on Red Tape – Administrative and regulatory burdens on small and medium-sized enterprises" pag. 64

data, red tape costs up to $4600 per employee for firms with up to 20 employees, up to $1500 for firms with up to 50 employees and it falls even lower to $900 for business with between 50 and 500 employees. But the most worrying aspect isn't just the cost, but rather the effect that excessive rules and regulations have on the ability to be flexible, something that is vital to business success, particularly for SMEs.



Source: Businesses' Views on red tape, administrative and regulatory burdens on SMEs – OCSE

- Administrative costs can be split into three categories[3]:

  - the cost of carrying out administrative tasks, that is the time and resources used in filling in forms and replying to government requests for information;
  - the cost of investment imposed on businesses to comply with legal requirements;
  - the indirect costs caused by the effect of red tape that unnecessarily occupies the management and other enterprise resources with a consequential reduction in productivity and ability to innovate within the business.

  In its regulatory report[4], UNICE was already saying in 2000 that the direct and indirect costs of regulations were hindering companies' ability to compete, by influencing their ability to innovate, reducing the flexibility of the business, limiting the speed of the decision-making system, distracting management from strategy, diverting capital from investment in efficiency (reducing costs) and hindering necessary structural adjustments from being made to comply with current economic changes.

- It is important to remember that a regulatory framework unsuited to development doesn't just pose a problem to companies. A reduction in enterprise' competitiveness results in a reduction in growth and an ensuing reduction in employment as well as less choice for the consumer. The

[3] "The UNICE regulatory report " and Division of costs from OSCE's recent analysis "Businesses' views on Red Tape – Administrative and regulatory burdens on small and medium-sized enterprises", UNICE 2000, pag. 11
[4] "The UNICE regulatory report ", UNICE 2000, pag. 29

final aim of "good and correct" regulation should be a safeguarding of public interest, achieved in a way that favours, not inhibits, growth and sustainable development.

- If Heads of State and Government really want to make Europe "the most competitive and dynamic economy of the world in 2010", as established at the Lisbon summit of March 2000, they must act quickly to simplify the regulatory framework and modernise the way public administration operates, at both national and Community levels. The ultimate aim should be to create an environment that favours the starting up and development of enterprises, which are and will always be main factors in economic processes.

1.2 Analysis of the European Union internal situation.

- The European Union has a legal framework of about 80,000 pages. Each year around 2500 new acts are produced, with an annual addition of 5000 pages of official text. In a recent survey of a representative field of entrepreneurs[5], it emerged that if legislation was of better quality, businesses could reduce time given over to administrative chores by 15% with a total saving for the European Union of 50 billion Euros. The European Commission responds to this by saying "**We want our businesses to be competitive, but at the same time we are tying their hands... We cannot expect such burdened businesses to be competitive on the world stage**" and continues "**despite all the talks on the need for better regulation, most businesses have not seen any tangible effect on their daily activities**[6]". This recognition is important and worrying not only because national and European simplification measures are not benefiting businesses, but also because not enough is being done to achieve a given objective in time, neither nationally, nor on a Community level.

- The recent conclusions of the European Summits on the urgency of acting decisively on legal framework and national and European administration have not yet had any significant result (box I). Perhaps as a reaction to any concrete action, there has been recent activism, which although justified is equally confused: simplification is a subject that is not only dealt with in various communications from the Commission to the summits, but is also a central part of the actions of the White Paper on European Governance. In concomitance, the start of the Convention's work will clarify the redefinition of the legislative structure and its correct use, which is relevant to the creation of a clear legal framework.

- Whilst awaiting the results of the Convention's work and the next Intergovernmental Conference (IGC), the Action Plan *"Simplifying and improving the regulatory environment"* could help to coordinate current initiatives and action to be taken in the coming months. However, it is important to overcome the current situation characterised by intervention that could be defined as "experimental", or at least non-coordinated.

[5]INTERNAL MARKET SCOREBOARD, European Commission, November 2001, pag. 30
[6]Com(2002) 171 def. , Communication from the European Commission "2002 Review of the Internal Market strategy", pag. 13.

Box 1

The gap between political decisions and the delay in beginning regulatory reform

Simplification was first mentioned at the 1992 European Council in Edinburgh, when it was decided that simplification and improved legislation were priorities for the European Union.

The European Council in Lisbon cited administrative simplification as one of the objectives of the strategy that is to make the European Union the most dynamic and competitive economy in the world in 2010. It was in 2000 that Heads of State and Government pledged to:

"to set out by 2001 a strategy for further coordinated action to simplify the regulatory environment, including the performance of public administration, at both national and Community level. This should include identifying areas where further action is required by Member States to rationalise the transposition of Community legislation into national law"

At the subsequent 2001 European Council in Stockholm, no strategy was presented, but it was confirmed that:

"Businesses and citizens need a regulatory environment which is clear, simple, effective and workable in a rapidly changing global marketplace. This means consultation on proposed regulation, assessment of the impact of regulations as well as the introduction of schemes for codification and recasting of European legislation and legislation review systems. The public sector should increase efficiency and reduce red tape in order to enhance the productive and innovative capacity of our economies, and reduce statistical requirements to the core questions of European policy-making."

But Member States were invited to:

"accord high priority to transposing internal market directives into national law, aiming at an interim transposition target of 98,5 % for the 2002 Spring Council"

In preparation for the European summit in Laeken, in December 2001, the European Commission made a statement[7] in which it admitted:

"Nine years later, - referring to the 1992 European Council in Edinburgh – *we must recognise that the results of efforts made have not reached the objectives, due to the complexity of the task and the lack of real political support. Consequently, most of the work is still to be done. This observation is shared by two branches of legislatory authority, as emphasized in many European Parliamentary debates over the last two years."*

Analysis of directive transposition was again looked at in spring 2002 at the Barcelona summit, where it was admitted that:

"…Although progress has been made, the interim transposition target of 98.5% set in Stockholm has only been achieved by seven Member States. Efforts need to be stepped up. The European Council calls on Member States to make further efforts to meet that target and for a transposition target of 100% to be achieved by the Spring European Council in 2003 in the case of directives whose implementation is more than two years overdue."

Simplification seems to be going well finally:

"Efforts to simplify and improve the regulatory environment will be vigorously pursued at both national and Community level, including inter-institutional aspects, with particular emphasis on the need to reduce the administrative burden on SMEs. The European Council invites the Commission to submit, in time for its next session at Seville, the Commission's Action Plan, which should take into account in particular the recommendations of the Mandelkern Group on Better Regulation"

Considering solely the subject of simplification, and taking the start of the process in Lisbon as a reference date, **three** years passed between the declaration of intent (2000), the presentation of the action plan (expected by December 2001, achieved in June 2002) and the concrete start of action (planned for 2002/2003), where just about nothing was actually done.

[7] COM(2001) 726 final, "Simplifying and improving the regulatory environment", European Commission, pag. 2.

1.3 Confindustria's priorities

- Improved regulation and regulatory reform cannot be summed up as de-regulation, but rather a case of ensuring regulations are used when necessary, of ensuring the legislation is of the highest quality and applied uniformly all over Europe, and of ensuring that businesses can count on a legislative environment that is complete, clear and transparent and that guarantees they are backed by a harmonised legal framework.

- For Confindustria, there are certain priorities that institutions and governments must act on. These priorities enable the European Union's regulatory framework to be effectively adapted to the competitive challenges that European businesses must face in national and international markets. They are as follows:

    1. a decisive **simplification of existing legislation**;

    2. reformulation of the **new regulation production process** through an approach that considers the whole life-cycle of a legislative act: from evaluation of opportunities for a new law, to identification of alternatives to regulations or the choice of the most suitable regulation for the circumstances, finishing with monitoring of the transposition and respect of the regulation;

    3. create a **new culture of simplification** in European institutions and national administrations and accompany political will, often expressed nationally and on a European level, with the human and financial resources necessary to a unique and coordinated action of administrative and regulatory simplification;

    4. **complete the single market** providing enterprises with a clear and definite legal framework with the approval or presentation of legal proposals essential to the complete liberalisation of the sectors vital to the functioning of the single market (energy, transport, financial markets, liberation of other universal services) and vital to the process of production and enterprise competitiveness (for example, the quick approval of regulations on European patents).

- The results that will stem from the Convention's work are fundamental to this restructuring and completion of a clearer and more flexible European legislative framework. The European Union's new constitutional and institutional order will be the base for every new action of regulatory reform. Without the basic idea of being able to count on stronger institutions and faster and more transparent decisions-making procedures in the future, any regulatory reform process would miss the fundamental point.

  An analysis of single priorities follows, starting with an analysis of the current situation and an evaluation of the proposals formulated by the European Commission in the Action Plan *"Simplifying and improving the regulatory environment"* .

1.3.1 Simplification of existing legislation

- Simplification of the current legislation can be summarised in two types of intervention: **intervention on the quality and intervention on the quantity of the existing regulations**. The European Commission has over time undertaken some action to simplify[8], the results of which are not particularly encouraging. Without even going into detail, the marginal nature of the actions carried out and the utter incongruence between political declarations and results obtained are obvious. Recent surveys carried out on behalf of the European Commission show that, on average, 37% of companies believe national legislation is not adapted to the markets (French and German companies are the least satisfied). The cause of this dissatisfaction can often be found in a European legislative system that is already severely lacking in clarity and simplicity and so renders national transposition even more complicated. The European Commission has undertaken to act on two types of simplification:

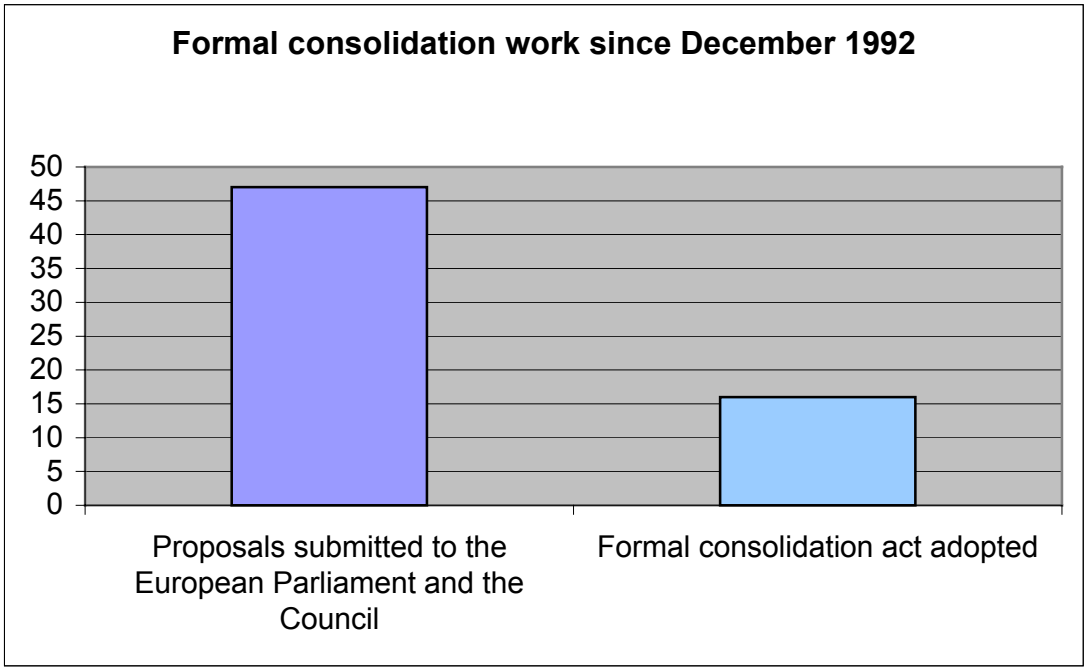
    - **Reducing the quantity of existing legislation,** the European Commission has set itself two ambitious targets: firstly to reduce the volume of current legal text by at least 25% by the end of the current European Commission's term (January 2005) and also to withdraw at least 100 pre-1999 proposals that are no longer relevant;

    - **Improving the quality of legislation**, the Commission has already begun an important initiative of codification, recasting and consolidation[9] of existing legislation with regard

[8] The Best initiative (Business Environment Simplification Task force), which foresaw the identification of actions necessary to simplify legislation and remove unnecessary obstacles to business development, has produced a series of recommendations for Member States on regulatory questions, such as the creation of ministerial groups for simplification and the introduction of business impact assessments. It is not yet known how much of the BEST recommendations have actually been put into practice by national administrations.
The SLIM exercise is an initiative with excellent intentions, but that is extremely slow and involved. SLIM has the general objective of "identifying what possibilities there are to render the single market more efficient and stabilising, simplifying and improving the relevant legislation. Most attention is to be given to laws whose application gives rise to excessive costs and administrative burdens, national differences in interpretation and application as well as practical difficulties." The initiative is voluntary and the relative recommendations are in no way binding. The initiative's limit is already affected by its choice of sectors. SLIM will focus next on radioactive waste, cosmetics and pesticide residues. The last point to consider is the time taken and the relatively minor results achieved: the Commission proposed legislative action in six of the eleven sectors covered by SLIM's first three phases (Intrastat, recognition of diplomas, ornamental plants, VAT, combined nomenclature for exchange with Third World countries and social security) to the Council and the European Parliament. They only adopted three of these proposals - the Intrastat, the ornamental plants and the nomenclature for exchange with Third World countries, with processes lasting twenty four, seven and two months respectively.

[9] **Consolidation** means, according to the conclusions of the Edinburgh European Council, the regrouping of the diverse fragments of legislation governing a given matter without affecting the validity of those fragments and without the regrouping having any legal effect. It is therefore a mechanical process whereby the provisions of the basic act governing a particular matter, and all its amendments are brought together, without any examination or alteration of the text and without the recitals. The resulting consolidated text is for information only and has no legal status. Consolidation of Community law is currently undertaken by the Office for Official Publications (OPOCE) and provides the raw material for its codification. As such it is vital for the codification of the *acquis*. **Codification** is, according to point 1 of the Interinstitutional Agreement of 20 December 1994, the procedure whereby the acts to be codified are repealed and replaced by a single act containing no substantive change to those acts. It therefore involves the reworking of the consolidated text into a coherent and comprehensible new single legal act formally replacing the basic act and all its amendments. This process includes the deletion of all obsolete provisions, the harmonization of the terminology used in the new act and the determination of its recitals. It is this process which enables the mass of the legislation to be reduced whilst maintaining the substance of the legislation. A **recast** is a new legal act which incorporates in a single text both the amendments it makes to the previous act and the provisions of that previous act which remain unchanged, the new legal act replacing and repealing the

to expansion of the European Union[10]. Unfortunately, though, if you look at the action currently underway, you can see that most of the activity is centred on the agricultural sector. The same can be said for the 10 recent proposals for rewriting of legislation for 2001: one deals with fertilisers, and the other 9 with European agricultural policy. Added to this, the number of codification and rewriting operations actually finished is limited and often delayed by the necessary approval from the Council and the European Parliament. Out of 7 codification proposals in 2001, only three have been approved to date.



Source: *Better Lawmaking European Commission*, COM(1999) 562

- In this context, Confindustria suggests that:

  - enterprise representatives **are consulted** to define the simplification programme, in particular to choose areas of legislation that need action on codification, recasting and consolidation, in order to prioritise action which will have a direct effect on companies;

  - in line with proposals in the Action Plan *"Simplifying and improving the regulatory environment"*, the Council and the European Parliament undertake to **approve on the first reading** proposals of codification and recasting presented by the European Commission;

previous act. The new legal act therefore amounts to a codification of the pre-existing basic act and all its amendments, but at the same time it provides for changes to the law, which are not possible in the case of a codification. Save as otherwise stated in this Communication, recasts do not fall within its ambit. COM (2001) 645 Commission communication "Codification of the aquis communautaire", European Commission, pag. 6.

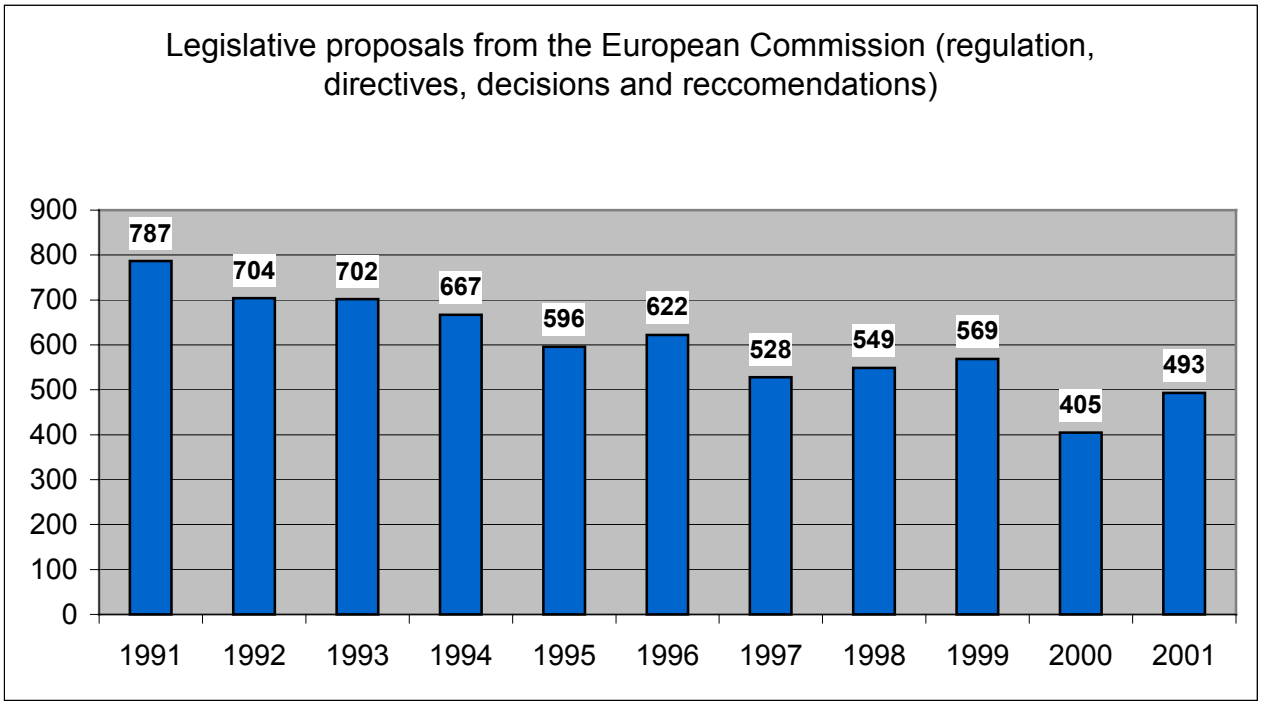
[10] COM (2001) 645 Commission communication "Codification of the aquis communautaire", European Commission

- Member States **define a policy of simplification of national legislation** by June 2003, paying particular attention to laws on transposition of Community directives.

1.3.2 Production of new regulations

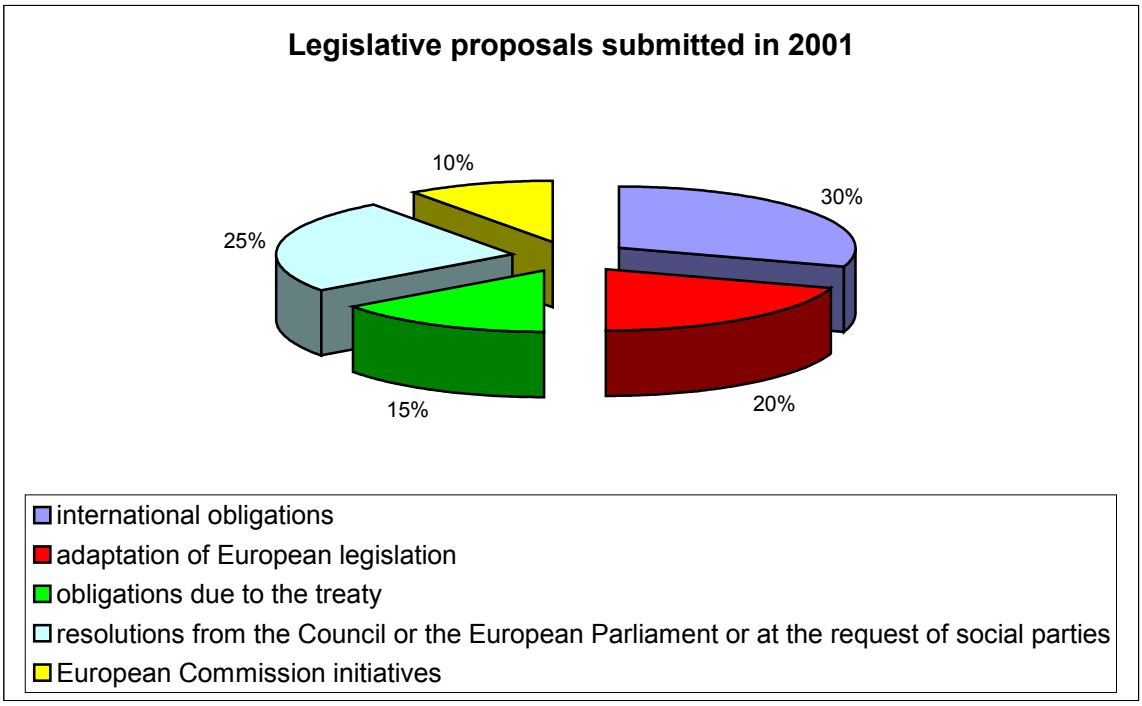
- Two aspects are particularly relevant for Confindustria: the complete reform of the production process, in line with proposals formulated in the European action plan, and the definitive reduction in production of legislation, with the exception of measures to complete the single market, and to improve legislation.

- With regard to the **reduction of legislation produced** the European Commission states that action has been taken to since 1990 to reduce the number of proposals presented.



Source: *Better Lawmaking* COM(2001)728

It is important to note however that a reduction in legislation is physiological in an already complicated legal framework and that the European Union's new competence in Common Foreign and Security Policy (CFSP) or in Justice and Internal Affairs (JIA) is also fulfilled in another way with instruments that are classed as intergovernmental processes and are not the traditional legal instruments foreseen in art.249 of the Treaty.



The diagram shows that only 10% were European Commission initiatives. The rest comes from international agreements or adaptation of EU Acquis or initiatives coming from the institutions or the social partners. Anyway the preparation of new legislation and the management of the existing legislation, completely absorb the services of the European Commission leaving only few possibilities for simplification and consequently for the reduction of the regulation.

- With regard to **reform of the legislative process**, the strategy of administrative simplification must involve all the stages of a legislative act. With this in mind, it is necessary to intervene in three areas:

  a) ***preparation and presentation of a proposal*** which should allow the identification of whether legislative intervention is necessary, the level of intervention and the most suitable instrument;

  b) ***legislative discussion*** which should be transparent and fast;

  c) ***correct application*** by Member States, which should coincide with a fast and correct transposition and an effective application.

Particularly important factors are:

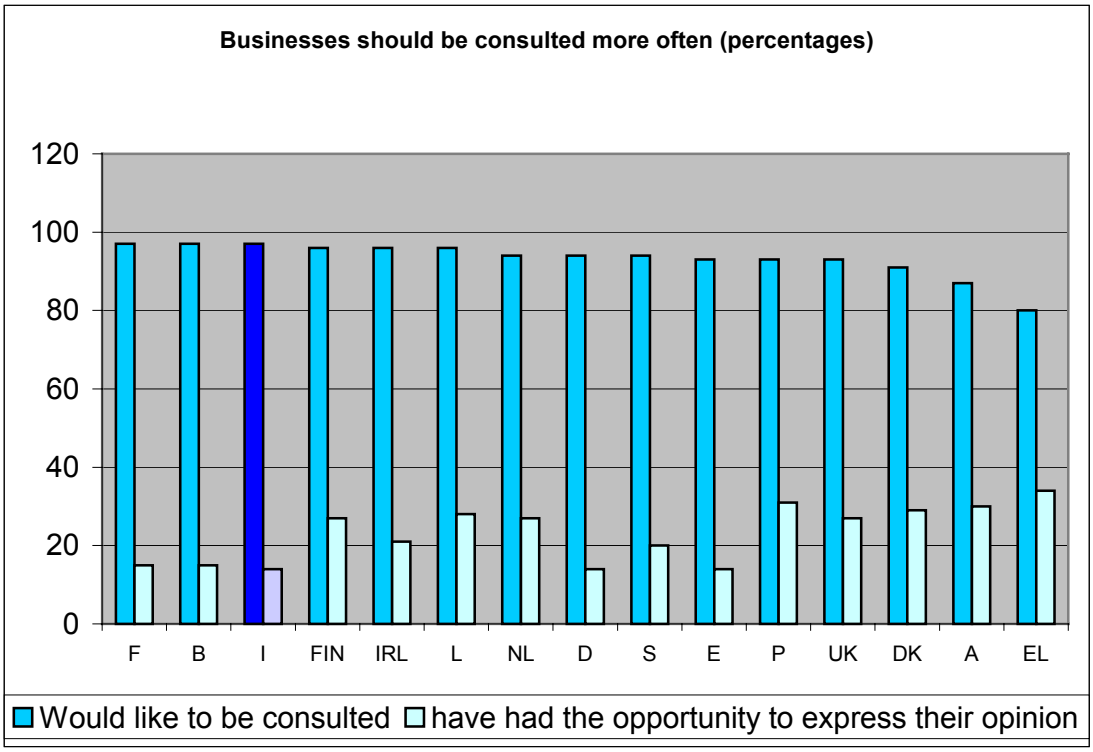
a) that the preparation and presentation of a proposal should foresee:

1. **an ex ante evaluation** of the need for new regulation that can only be carried out through correct consultation and careful analysis of the impact of the new regulation.

   With regard to consultation, the White Paper on governance has already underlined the need to "reinforce the culture of consultation and dialogue[11]" as a way of rendering institutions more transparent and citizens and businesses more participatory in European processes. The definition of a code of conduct with minimum consultation standards is becoming the way to regulate participation in decisions that otherwise risks becoming unmanageable.

   The action plan's proposal for an "integrated and proportional" impact analysis of legislative initiatives and policies under approval is also heading in the right direction. Analyses should not just consider the regulatory impact, but also the effects of the regulation on sustainable development and so the economic, social and environmental impact of the proposal. The urgency of such an approach should encourage the Council and the European Parliament to not consider European Commission proposals that do not have an evaluation of regulatory impact from 1/1/2003, as proposed in the Mandelkern Report [12].

   Consultation and impact analysis should be carried out both nationally and on a European level. Member States following the example of European institutions should provide for the realisation of consultation procedures. Surveys show that national consultation is welcomed buy business, but scarcely achieved. The same can be said for impact evaluation. It is also to be hoped that the European Union and the Member States make use of standard consultation and impact evaluation procedures that will allow, for example by the downward phase of transposition of European legislatory production, the use of information and data collected in Europe and its integration with national information and data.



Source: Internal Market Scoreboard, November 2001, European Commission

[11] COM (2001) 428 , White Paper on Governance, European Commission, pg. 17
[12] Mandelkern Report, Final Report 13 November 2001, pg.3

2. **the choice of acting at a European level and the identification of the most suitable instrument**

When consultation and impact analysis have confirmed the need to intervene, it must be decided at what level the legislation is to be made with respect to the criteria of subsidiarity and proportionality[13] and which instrument will be most suitable to use. This is the central phase of the legislative process. Impact analysis provides European legislator with some evaluation, but without a rationalisation of EU intervention methods, that allows the legislator to coherently select the instruments most adapted to reaching the given objectives, it is not enough.

Sharing of competences and intensity of European intervention are key points in the work of the European Commission. On one hand, is the need for flexibility in the definition of competences to avoid rigidity in the EU's capacity to act, on the other hand, it is good to specify "the desirable scale of European action in certain areas can be specified in order to safeguard the exercise of national powers"[14] or to guarantee a uniform application of law in the single market.

In parallel, a redefinition is needed of all available instruments, not just legal instruments. The action plan's proposal to redefine directives' objectives, which have become too similar to regulation, is a proposal that is readily accepted. Just as the instructions to use mostly "framework directives" that are less imperative and more flexible in their application is easily shared. However, when selecting legislative options, the objectives being pursued and the need for uniform application of European legislation over all the Union, which will soon expand to include another 10 countries, must be kept in mind. There is a difficult equilibrium to be found by European institutions between flexibility of interventions, which remain the only possible answer to respecting the complexity and diversity of the European system, and the need to guarantee the European Union a coherent and uniformly applied legal framework.

Confindustria has long expressed its position on this subject, which is in favour of the two extremes of what could be considered the current range of instruments at the disposition of the European Union: alternatives to regulation (co-regulation, self-regulation, voluntary agreements, open methods of coordination, market instruments), and regulations that guarantee uniform and immediate application, but that can only be used for subjects relating to the completion of the single market and its correct operation.

b) Legislative discussion

With regard to discussions in the legislative phase, Confindustria agrees with the proposals presented in the Commission's action plan with regard to:

[13] The Treaty establishing the European Community, art. 5: The Community shall act within the limits of the powers conferred upon it by this treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the member states and can therefore, by reason of the scale of effects of the proposed action, be better achieved by the community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this treaty.

[14] European Commission statement "Project for European Union" COM (2002) 247 def., pag. 22.

- **trying to obtain approval from the Council and the European Parliament on the first reading and with qualified majority voting**, without always having to resort to reaching a consensus;

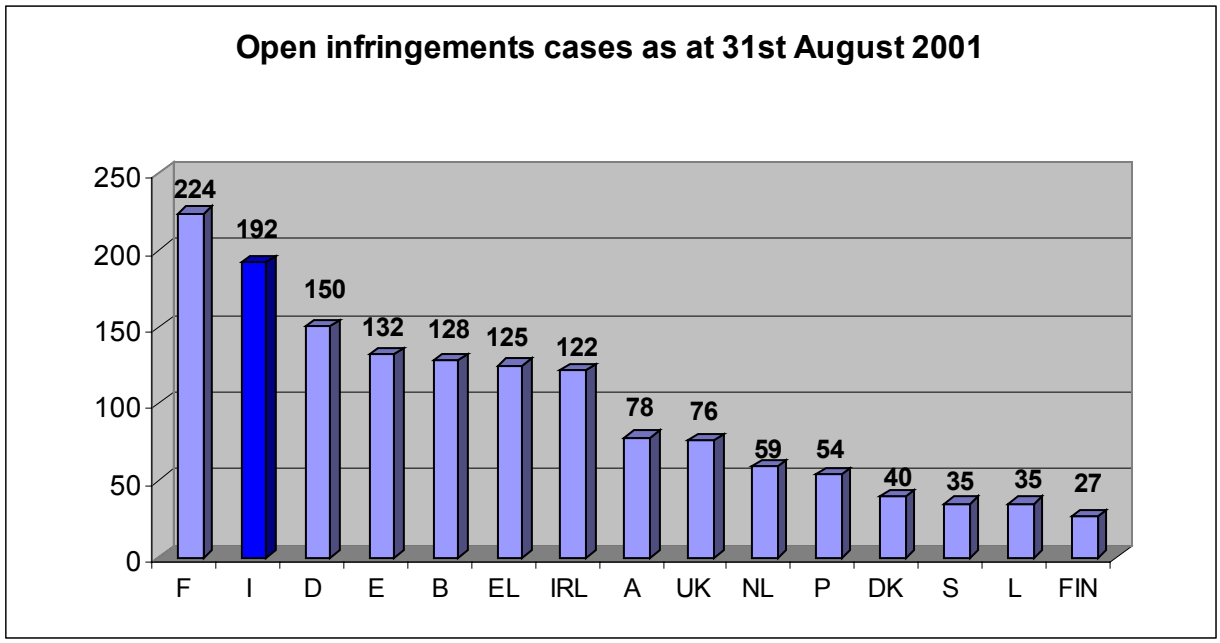
- **withdrawal of proposals that have been substantially modified by the EP and the Council**, with regards to the objectives of the Treaty and the protocol on subsidiarity and proportionality, or carrying out of another impact evaluation to ensure the proposal has maintained its validity and the modifications do not extend or alter its field of application;

- **include in each proposal** (that could become obsolete if not approved quickly) **a clause that automatically leads to its withdrawal if it is not approved in the time allowed**;

c) Correct application

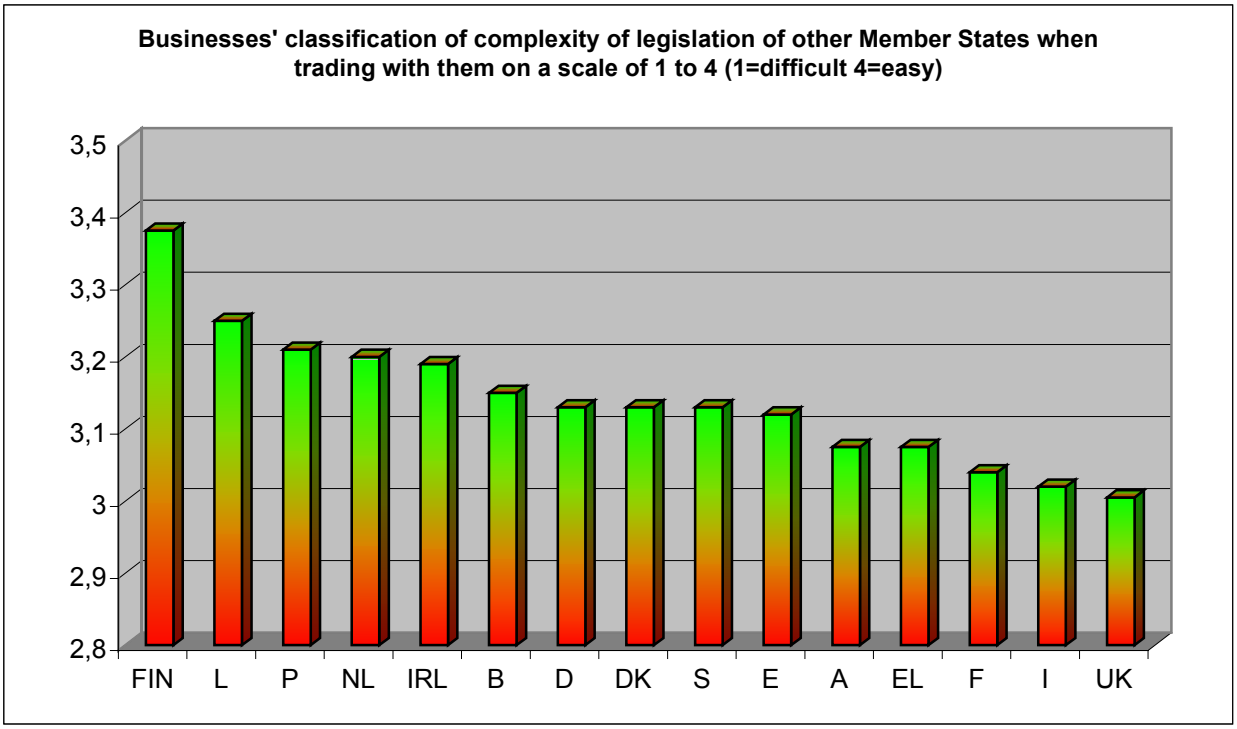
- Slow implementation can seriously destabilise businesses and hinder citizens from benefiting from their rights. Typical examples are the accomplishment of social and environmental policies, which result in the highest number of non-compliances. In March 2001, the European Council in Stockholm set an implementation target of 98.5% - in other words, they asked Member States to reduce implementation deficit to less than 1.5% before the European Council in Barcelona on 15th/16th March 2002. The current average deficit in the EU is 2.0%. The only acceptable deficit is "zero", but it must be recognised that progress has been made, considering that only 4 years ago the average deficit was over 6% and that in 2000, out of the 83 directives that should have been implemented to complete the internal market, only 5 had been implemented in all the Member States. Based on current progress, most Member States are likely to reach, and possibly exceed, the target of 1.5% by spring 2003. If these objectives are reached, there is no reason why the European Council cannot go further and set the next target at 0.5%.

- However, the problem is not as much implementation as ineffective execution and irregular application of European law. At the end of August 2001, the Commission was working on over 1477 cases of alleged breaches of the internal market. In the last six years, Italy, France and Germany are the three worst offenders of non-compliance. The average time taken to resolve a non-compliance proceeding is over two years, with some cases exceeding 5 years.



Source: Internal Market Scoreboard, November 2001, European Commission

- The most serious aspect however, is that several States remain non-compliant even when faced with sentences of the European Court of Justice. This weakens the credibility of the whole process and the institutions' work to create a single market that can operate efficiently. These aspects also have a direct effect on businesses: it is no coincidence that the countries that are in a more complex state with regard to adaptation to European legislation are also the countries whose legal framework is perceived as discouraging for businesses that have decided to trade with. To quote the European Commission[15] "in nearly 7% of cases the regulatory environment was felt to be so discouraging that companies decided to reduce or to stop trading altogether. This has been experienced by several companies in France, Germany and in particular Italy."



Source: Internal Market Scoreboard, November 2001, European Commission

[15]Internal Market Scoreboard, European commission, November 2001, pag 29

- Confindustria agrees with the need for European law to be seen by companies as an integral part of national law, and not as a "foreign" legislative feature. To find a solution to the current difficulties in transposition and implementation of European laws, priority must be given to cases of non-compliance proceedings that gravely damage European interests (in particular the cases with cross-border implications), and the criteria that will establish the priorities in inquiries into any infringements of European law should be established as soon as possible. Equally, it must be remembered that action against Member States that show constant compliance problems should be stepped up.

- Just as it is important in the proposition phase to carry out an *ex ante* evaluation, in the application phase of a law it is vital that the European Commission, together with the national authority and the social partners s, carries out an *ex post* evaluation of the effects of the legislation and the coherence of the current laws with the intended aims. This analysis will allow evaluation of the need to modify the act in progress or to abridge it. For dispositions greatly subject to technological change, it is very important to include a revision date.

1.3.3 Create a new culture of simplification.

- To adopt a new simplification strategy in Europe and in national administrations, a new culture of simplification must first be created. To do this, political will, often expressed nationally and in Europe, must be accompanied by an adaptation in human and financial resources that are necessary to a coordinated action of administrative and regulatory simplification in Europe and nationally. The initiative of creating a net between European institutions and Member States to supervise the Action Plan "*"Simplifying and improving the regulatory environment"* being put into practice and to guarantee better quality legislation is a shareable proposal.

- However, it is very important that the action plan will be renewed over the years, fixing further objectives and regular monitoring of results achieved. The Commission's proposal to use the annual report on the application of the principle of subsidiarity and proportionality to evaluate results achieved in Europe and nationally is desirable. This would need to be supplemented by the creation of indicators of improved regulation that could be used to monitor progress made and to look at European and national activities carried out in connection with the spring summits to check progress on the Lisbon strategy.

1.3.4 Complete the single market

- To companies , improving the regulatory framework does not just mean simplification or improved operation of public administration, but also consolidation of the laws that should ensure the smooth running of the internal market. In practice the "fundamental aspects" need to continue to be prioritised, that is to say those aspects concerning a suitable harmonisation of legislation, reciprocal recognition, implementation of European legislation in national legislation, respect of policies and regulations intended to ensure them, the solution to problems and normalisation, that hold a fundamental importance if we want the internal market to operate well in practice and not just to be a mere theoretical exercise.

- With regard to the strategy for the full completion of the internal market, the results achieved are rather disappointing, with a success rate that doesn't reach the 50% of the engagements made in 1999. This has pushed the European Commission to reduce the number of objectives for 2002 (30 instead of the previous 80) trying to choose those that can make a significant contribution and that are "specific, concrete and measurable". The chosen interventions have been categorised into four groups:

  - **modernise markets,**
  - **improve business conditions,**
  - **meeting citizens' needs,**
  - **anticipating enlargement.**

- Confindustria believes that some of these objectives are relevant for the effect they could have on the way businesses operate. The objectives that the European Parliament and the Council are called to realise in 2002 to modernise the markets and to improve conditions in which businesses operate are detailed in the box below. Confindustria agrees completely with these proposals from the European Commission. These objectives must be achieved as soon as possible if we really want a completed single market.

Box II

MODERNISING MARKETS (*by December 2002)*

Adoption of proposals for the final stage of market opening of gas and electricity, including freedom of choice of supplier for all European non-household consumers as of 2004.

Adoption of proposals creating the Single European Sky and proposed rules on airport slot allocation.

Adoption of the second package of measures to revitalise European railways.

Adoption of proposals on pension funds, financial conglomerates and prospectuses.

Adoption of the public procurement package.

IMPROVING BUSINESS CONDITIONS (*by December 2002):*

As a follow up to Commission Action Plan to simplify the regulatory environment, a system for impact assessment and minimum standards for consultation, including increased use of Interactive Policy Making, to be operational.

Adoption of Regulation aimed at bringing about a more efficient enforcement of competition rules by involving national competition authorities and national courts in the enforcement of Articles 81 (cartels) and 82 (abuse of dominant position) of the EC Treaty.

Proposal for amendments to the EC merger Regulation aimed at ensuring the continuing effectiveness of merger control in the context of globalisation and enlargement.

Completion of the "Tax Package" (Directive to ensure effective taxation of savings income in the form of interest payments, Directive on a common system of taxation applicable to interest and royalty payments between associated companies in different Member States and roll-back of all harmful tax measures).

Adoption of the Community Patent proposal.

CONFINDUSTRIA'S GENERAL RECCOMMENDATIONS

- ***Simplify existing legislation*****,** acting in favour of a reduction of current legislation and of an improvement in the quality of legislation. To this end, *Confindustria* proposes that:

  - the European Commission **consults** industrial representatives to identify areas of legislationon which the institutions should intervene through codification, recasting and consolidation with the aim of prioritising interventions that will directly affect how companies operate;
  - the Council and the European Parliament **commit to accelerated approval on the first reading** of codification and recasting proposals presented by the European Commission.
  - Member States **define a policy of simplification of national legislation** by June 2003, paying particular attention to laws on transposition of Community directives.

- ***Reformulate the new regulation production process***, putting particular emphasis on:

  1) Preparation and presentation of a proposal:

  Considering the current lack of a preparatory phase in legislative procedures, *Confindustria*, in line with the European Commission's proposals, underlines the importance of:

  - **an accurate *ex ante* evaluation of the need for new regulations**. Consultation of interested parties and analysis of the regulatory, economic, social and environmental impact of the new regulation are essential to this evaluation;
  - **the choice of the most appropriate level of legislative intervention** (European, national and regional) respecting the principles of subsidiarity and proportionality**;**
  - **identify the most appropriate legislative measure.** With regard to instruments, Confindustria believes the priorities are:
    - to redefine all the instruments available to the EC legislator, not just the legal instruments (for example, redefinition of the directives' objectives, which are frequently too similar to existing regulations, and use "framework directives" which are less imperative and more flexible in their application);
    - to favour the choice of alternative regulatory instruments (co-regulation, auto-regulation, voluntary agreements, open co-ordination methods, market instruments);
    - to refer, for the issues relevant to the completion of the single market and its correct operation, to regulations that guarantee uniform and immediate application;

2) legislative discussion of the proposal:

Taking into account the slowness of the EU decision-making process, Confindustria hopes that:

- the Council and the European Parliament undertake to agree on first reading and with **increased recourse to qualified majority voting**;
- **proposals will be withdrawn** if they have been substantially changed by the Council and the EP with regards to the objectives of the Treaty and the protocol on subsidiarity and proportionality;
- **an automatic withdrawal clause** will be included in each proposal, in case it is not approved after a certain date.

3) transposition of EC legislation in individual Member States:

Given the delays and difficulties in transposition and application of Community legislation, Confindustria proposes that:

- as soon as possible, Member States reach the **directive transposition target** (98.5%) set by the European Council in Stockholm, and that next spring's Council sets a higher objective of 99.5%;
- the control of transposition of Community legislation is intensified, prioritising the **pursuit of infringements** which damage Community interests (in particular, cases with cross-border implications), and consequently exacerbate actions against Member States that do not fulfil their obligations;
- **an *ex post* evaluation of the effects of legislation** be carried out, both at EU and national levels, which will enable evaluation of the quality of environment companies are operating in and consideration of ways in which legislation could be modified or repealed;
- a date be established for the **revision of legislation that is greatly affected by technological changes**.

➢ **Create a new culture of simplification in Community institutions and national administrations** that will facilitate the creation of a better legal framework. To this end, Confindustria believes that:

- **human and financial resources** necessary to carry out co-ordinated administrative and regulatory simplification both in Europe and nationally must be increased;
- **a network between EC institutions and Member States** must be created to supervise the setting up of the Commission's action plan and to guarantee permanent evaluation of the quality of legislation;
- the Action Plan *"Simplifying and improving the regulatory environment"* will be revised over the years with determining of **new objectives and with regular monitoring of targets reached**;
- we must establish **indicators of improved regulation** that can be used to monitor progress made by the Union and by Member States in order to keep track and allow the comparison of action taken on a Community level and nationally.

➢ **Complete the single market*:*** to companies, improving the regulatory framework does not just mean simplifying but also consolidating the rules which should ensure the smooth running of the internal market. For this reason, Confindustria asks the European Parliament and the Council to accomplish, in 2002, the 30 objectives set out by the Commission in its strategy for the internal market.

The following two sections illustrate the legal situation and Confindustria's proposals with regard to simplification in two specific sectors, social policy and environmental policy. These two sectors have been chosen as representing, together with taxation, the areas in which the legal burden is particularly heavy on businesses. Both social and environmental legislation are characterised by their complexity both on a Community level and on a national level and by the negative impact they have on the flexibility of the markets and the competitiveness of enterprises.

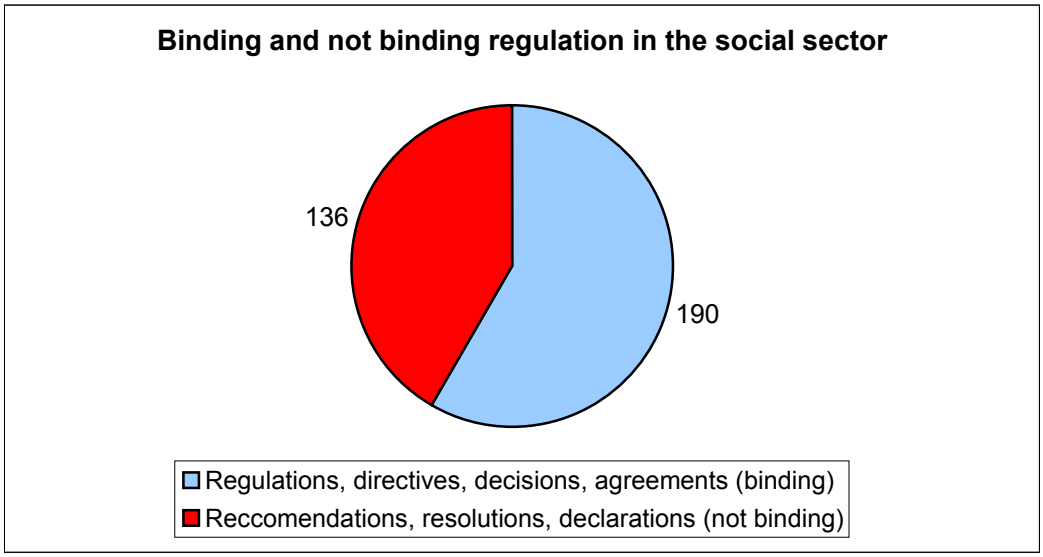
2. Simplification of legislation in the social sector

2.1 Analysis of European regulatory framework

- The EC Treaty establishes the objectives of social policy and the issues of Community competence. Community acts in this area can be adopted by two alternative procedures: the first is the **legislative procedure** based on the agreement of the Council and the European Parliament. The second is the **social dialogue based procedure** in which no intervention from the European Parliament is envisaged. Both procedures have an initial phase based on consultation with social partners (as stated in the Treaty, the Commission is obliged to consult social partners before any Community initiative).

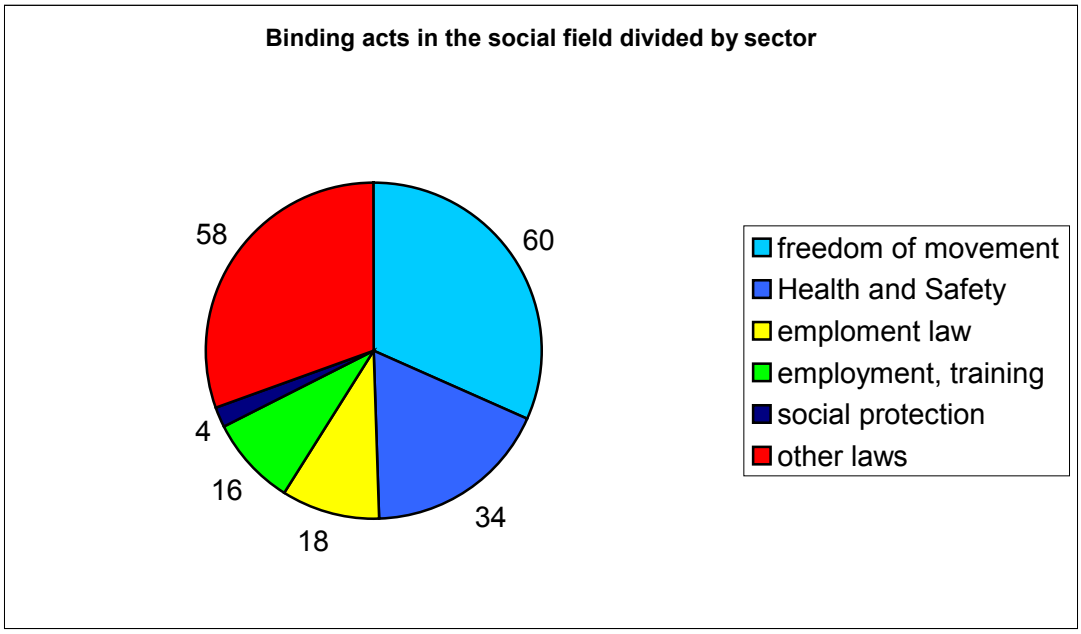
  Alongside the procedures mentioned above, European social policies can also be carried out through the **open coordination method** (based on a structured exchange of experiences between Member States, on a benchmarking exercise aimed at spreading the best practices used nationally and on the setting of shared objectives with the prospect of coordination of national policies). This kind of method is currently applied to three sectors of social policy: **employment policies, social integration policies and pension policies**.

- Intense legislatory activity has accompanied the internal market realisation programme. The Amsterdam Treaty then increased European authority to legislate on subjects that are usually subject to negotiation between social partners. Today, "Social Europe" is a combination of national legal systems, extremely well developed and integrated on a European level, of about 190 legislatory texts that are legally binding (directives, regulations, agreements) and 136 non-binding texts (recommendations, resolutions, declarations etc.).



Source: UNICE, Releasing Europe's employment potential, Companies' views on European Social Policy beyond 2000

The 190 legally binding texts cover the following priority sectors: free movement of persons, health and safety in the workplace, labour law, employment and training and social protection.



Source: UNICE, Releasing Europe's employment potential, Companies' views on European Social Policy beyond 2000

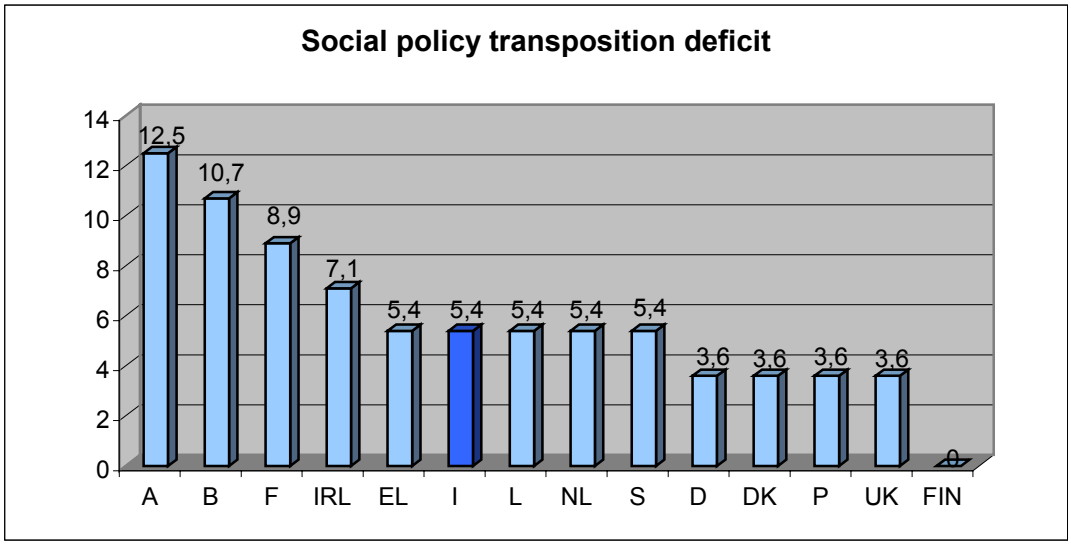
- With the Maastricht Treaty, European social partners have been given the power of negotiating, at European level, agreements aimed at governing the sectors of social policy relating to working conditions. Under the terms of the Treaty, such agreements are implemented either according to the procedures and practices of the social partners and the Member States or at a joint request from the signatory parties, based on a decision by the Council on a proposal from the Commission. Since 1993 five agreements have been reached through **social dialogue** (three inter-professional agreements – parental leave, part-time work, fixed-term work – and two sectorial agreements) that have been transformed into Community directives. To date, a further 230 non-binding combined acts (common opinions, declarations, resolutions, etc.) have been completed through social dialogue. The social partners role of "co-legislator" characterises European social dialogue in a unique

way, giving it a specificity that distinguishes it from other forms of dialogue with civil society.

- Alongside social dialogue, the **open coordination method** is another instrument of implementation of social policy. This method was used for the first time in the European Employment Strategy, launched in 1997 by the European Council in Luxemburg. The strategy is based on setting a series of shared objectives and on the definition, country by country, of guidelines that should inspire the employment policies of the Member States, who in turn implement them in ways and with means that are most suitable and adapted to the national situation and specificity. Application of such methods has given good results due to the achievement of a better balance and coherence between social and employment policies and the involvement of social partners in the process. This has led Community institutions to extend the open coordination method to another two sectors of social policy: pensions and the struggle against social exclusion.

- In addition to the complexity of the legal framework that characterises European social policy are **problems of national implementation of Community legislation**.

The transposition deficit of social policy directives is far higher than average. The average EU social policy deficit is 5.4% compared with 2% over all the directives. Important directives have still not been implemented. Finland and Spain are the only countries to have reached the final objective of a zero implementation deficit, while Italy has a deficit of 5.4%.



Source: Internal Market Scoreboard, European Commission, November 2001

- With regard to the **costs that the Community legislative framework and the national legal systems present to businesses**, an OCSE survey shows that a high number of SMEs (80% of the businesses surveyed) believe that respecting social legislation has a negative repercussion on business performance. Around 60% of the businesses questioned believe such legislation has a negative impact by increasing non-wage labour costs and hindering flexibility.

In general, companies tend to be extremely critical of social legislation in their own countries, which is seen as not flexible enough for efficient implementation, overly complex and hard to apply.

2.2 Confindustria's proposals for simplification of existing legislation

- **Health and safety in the workplace** is a sector of social policy characterised by excessively complex regulations. On a Community level in fact, an extremely complicated and often difficult to understand legislation has gradually been created, with the aim of raising the level of workers' protection and of promoting a risk-prevention culture. This legal system now needs simplification, adaptation and modernisation.

- But it is above all on a national level that intervention is needed, in order to ensure correct implementation and improved application of Community legislation. To this end, particular emphasis should be put on defining practical guides on how to apply current legislation in order to promote effective application and so that businesses can identify the most practical and effective solutions.

- Finally, any Commission decision to propose specific new legislation should in future be based on an analysis of the implementation of the existing legal framework, an analysis of precise scientific data and an evaluation of economic and social costs and benefits of introducing a new law.

2.3 Confindustria's proposals on production of new regulations

2.3.1 A less regulatory, more qualitative and "market-driven" approach

- As indicated in the first part of this document, the complexity of the legal framework and over-regulation are obstacles to achieving greater flexibility and competitiveness in the labour market, conditions that are vital to a higher rate of employment. Such markets' ability to adapt to the continual changes of the economy depends greatly on a more streamlined and less binding legal system. However, reaching the Lisbon objectives and respecting the need to reconcile flexibility for businesses and security for workers, means adopting a new, less regulatory, more qualitative and "market-driven" approach to European social policy.

  European social policy has been carried out using traditional legislative instruments (Community directives in particular) for a long time. In future, an approach aimed a promoting gradual convergence towards effective national policies should be promoted, rather than pursuing forced harmonisation through legislative intervention.

  The European Union's constant and repeated invitation to Member States to reform their labour markets with a view to increased flexibility should not be contradicted by excessive legal intervention, which is actually a source of increased rigidity of such markets, particularly in sectors that, on the contrary, need flexible, varied approaches (for example, corporate restructuring and corporate social responsibility). Any Community initiatives should favour (and not hinder) processes to adapt the labour market to the continual changes.

- In summary, bearing in mind the need for a less regulatory and more "market-driven" approach to achieve greater labour flexibility, we consider that where there is a need for regulation, either softer regulatory instruments, or social dialogue should be favoured, as alternatives to traditional legislative intervention. If circumstances are then identified that

render proper legislative intervention unavoidable, a series of criteria aimed at ensuring improved and more coherent production of legislation must be rigorously respected.

2.3.2 Development of a softer regulatory system

- The interventions carried out until now by Community institutions have defined, on the European level, a general framework of regulations that sufficiently sets fundamental standards for the functioning of the labour market and the protection of workers.

- Now, however, to reach the Lisbon objectives it is necessary to develop "lighter" regulatory instruments in the field of social policy.

  Such instruments are not new to European experience and have already been used successfully in the European employment strategy for example, through the open coordination method.

  The guidelines such strategies are based on are a valid instrument to the achievement of appointed objectives giving Member States a higher level of autonomy in the choice of method of intervention in the relevant sectors.

  Therefore, it is certainly opportune to explore extending the open coordination method to other sectors of social policy with substantial involvement of political parties. As already happens in implementation of the European employment strategy, guidelines could orient Member States' activities, avoiding imposing specific behaviour, but, at the same time, obliging a determined objective to be reached.

  Without imposing excessively meticulous and unbreakable laws, that usually "stiffen" the system of industrial relations and exclude intervention of social partners, this would allow a notable "flexibilization" of the reference framework and would leave more space to companies and unions to develop social dialogue.

2.3.3 Role of social dialogue

- In parallel with the development of a softer regulatory system, social dialogue at a European level must be enriched in content and instruments.

  Social dialogue can in fact help improve labour policies in the context of the Lisbon strategy. Introduction of Community regulations through agreements negotiated by social partners allows production of laws that fulfil their needs, that better respect the principles of subsidiarity and proportionality and that contribute more efficiently to reaching the objectives of the social policy. In short, where action at European level is appropriate, social partners are best placed to find balanced and reciprocally acceptable solutions.

- To develop reflection on the future of social dialogue, started by the Laeken joint declaration, social partners must agree to take all the opportunities provided by the Treaty with reference to the possibility of using alternative instruments to legally binding agreements.

- Types of agreements – like those leading to elaboration of non binding agreements – that do not need intervention by Community institutions to be effective, as their carrying out and implementation is entirely entrusted to social partners, at European and national levels,

should be used more boldly. For example, negotiation of a non-legally binding agreement on tele-working - a certainly innovative experience that could become a success story for future interventions.

- Taking into account that each member country is characterised by very different industrial relations systems, social partners' initiatives should be based on principles of subsidiarity and proportionality. The diversity of national industrial relations systems should be respected and any attempt at European interference in such systems must be avoided. Proposals that do not respect such principles will not have any positive effect on employment, but will on the contrary have negative consequences on the creation of more jobs.

- Social dialogue should concentrate solely on those sectors where European input can bring real added value. Moreover, the criteria for better regulation should also be applied in the case of social partners' negotiation of legally binding agreements.

- The Commission should avoid making a "masked" use of social dialogue as a route to successive legislative intervention. Moreover, in order that the process of social dialogue is fruitful, Community institutions (the Commission in particular) should adopt a neutral position.

2.3.4 Rules to be respected in legislative intervention

- In introducing new laws into the social field, the principles of *ex ante* impact evaluation with appropriate involvement and consultation of social partners, the choice of the most appropriate instrument, a quick and correct transposition and effective application should be fully respected.

- The principles of subsidiarity and proportionality should be applied more rigidly than they have been to date. If on one hand the Amsterdam Treaty gave Europe more authority in the social area, on the other hand the Protocol on subsidiarity and proportionality expressly establishes that any initiative undertaken at EU level must bring added value to that which can be achieved on a national level.

- Community legislative intervention in social policies should be limited to those sectors characterised by a transnational dimension and to cases where only European intervention can bring any real added value. Such an intervention should take full account of businesses' need for flexibility and should take the form of an broad legal framework limited to defining objectives and principles at a European level, leaving Member States the choice of the most appropriate way of implementation and avoiding going further than necessary to achieve the given objectives. It will also be necessary in this respect to carefully reconsider both the use of the so-called "non-reducing clauses" (which are, in fact, often used as an excuse for weighing down the internal legal framework, in contrast with the objective of greater convergence between national regulations), and the procedure of referring to the principles established by judgments of the European Court of Justice (used as justification for adapting existing legislation to the decisions of the Court).

2.3.5 Some specific suggestions

- The pursuit of greater flexibility in the labour market through a reduction in the present and future regulatory framework should lead European institutions to reflect seriously before

introducing new legislative proposals, particularly in certain sectors. Some example, which are currently under Community debate, are given below. A legislative approach to these subjects should be absolutely avoided .

Corporate restructuring

- Companies' capacity to adapt to change represents one of the central issues of the strategy presented to the European Council in Lisbon. Only through a continuous process of adjustment to external environment, companies manage to remain competitive, contributing to economic dynamism and development.

- The need to find answers to technological, economical and social changes often obliges businesses to begin restructuring processes which vary depending on their context.

  For this reason, it is not only essential to recognise businesses' opportunity to carry out restructuring operations whenever necessary to guarantee efficacy and efficiency (not only in economic crisis periods) but it also necessary to allow such operations at the level of each single business in order to identify the most suitable solutions to the specificity of each business's territory.

- With reference to the social aspects of the corporate restructuring, it is important to note that a legislative framework already exists both at European level and in the Member States that defines sufficient safeguards and guarantees for workers.

- Therefore, any intervention that, without taking into account different aspects of the phenomenon, aims to impose solutions from above, where deeper analysis is necessary, should be avoided.

Corporate social responsibility

- Businesses must take part in their own change and adaptation to the external situation by developing management policies suitable to the size of their own production base, activity undertaken, sector they belong to, legislative and economic contexts of reference, shareholders and stakeholder characteristics.

- If, on one hand, we recognise the importance of a debate aimed at promotion of corporate social responsibility and businesses' commitment to operate in a responsible way and to integrate ethical, social and environmental considerations in their strategic decisions and day to day business, on the other hand, it is necessary to respect the voluntary and business-driven nature of corporate social responsibility. An approach aimed at setting up a European model of corporate social responsibility and imposing rigid codes from the outside does not correspond to the challenges that companies have to face in a global context. Instead, it is the possibility of diversifying the answers that can make social responsibility "sustainable" for businesses. Progresses on this way can only be produced through the development of specific models, for handling environmental and social topics, within businesses.

Temporary work

- The European social partners failure to negotiate the regulation of this subject has highlighted that, the different regulations covering the recourse to temporary work in Europe

cannot be harmonised because of the deep diversity which characterize the industrial relations systems and the legislative frameworks of the different countries of the Union.

- Despite this being clearly demonstrated by the impossibility of social partners reaching a compromise, even after long negotiations, the Commission decided to follow its course and present a directive proposal on this subject.

- However, in its actual wording, the proposal does not sufficiently take the businesses' temporary work requirements into account and, if approved without the necessary amendments, would slow down the development of this form of flexible work, which already contributes significantly to the growth of employment in Europe.

CONFINDUSTRIA'S RECCOMMENDATIONS FOR THE SOCIAL SECTOR

- ***Simplify existing legislation.*** **Health and safety in the workplace** is one of the sectors of social policy characterised by excessively complex regulations. Therefore, Confindustria requests that:

- EU institutions take action to simplify, adapt and modernise;
- Member States act to ensure correct implementation and better application of Community legislation, even through the production of practical guides on how to apply current legislation, in order that businesses can identify the most practical and effective solutions;

- ***Reformulate the new regulation production process*****.** The complexity and over-abundance of regulations obstruct improved flexibility and competitiveness in the labour markets, essential conditions for improved employment. The markets' ability to adapt to continual economic changes depends largely on a leaner and less binding legal context. For this reason, Confindustria asks EU institutions to:

- adopt a **new, less regulatory, more qualitative and more "market-driven" approach to European social policy,** and where Community intervention is needed, to favour the **use of softer regulatory instruments**, i.e. open methods of co-ordination and the exchange of good practices;
- promote **social dialogue** that should be enriched in content and in alternative instruments to legally binding agreements. However, in launching social dialogue initiatives it will be necessary to :

    - respect the principles of subsidiarity and proportionality, limiting such initiatives to those sectors to which European intervention can bring added value;
    - avoid making a "masked" use of the social dialogue as a route to successive legislative intervention. In order for the process of social dialogue to be fruitful, Community institutions (and the Commission in particular) should adopt a neutral position.

- Respect, whenever circumstances render legislative intervention inevitable, criteria aimed at guaranteeing improved and more coherent production of legislation. Such intervention should take full account of businesses' needs for flexibility and should take the form of an broad legal framework which limits itself to defining objectives and principles at a European level, leaving the Member States to choose the most appropriate course of implementation and avoiding doing more than necessary to reach the established objectives;

- have a period of reflection before introducing new legal proposals. In particular, a legislative approach should be avoided at all costs in sectors such as corporate restructuring or corporate social responsibility.

3. Simplifying legislation in the environmental sector

3.1 Analysis of the legislative context

- Community legislation in the environmental sector, adopted from the seventies to date, is founded on articles 174 and 95 of the Treaty. Article 174 defines the basic principles to which the legislation must conform and in particular: the principle of precaution, of preventive action, of correction, if possible at source, of environmental damage, not forgetting the "polluter pay" principle. Article 95 envisages measures to harmonise "legislation on health, safety, environmental protection and consumer protection". The acts adopted on the basis of article 174 leave the Member States the possibility (Art. 176) to be able to adopt national measures that are more restrictive than those foreseen by the Community regulation. Article 95, however, does not grant this flexibility, which in one sense guarantees a more uniform application of Community environmental law.

- In both cases, acts are adopted by qualified majority voting[14], through the co-decision procedure. The Treaty foresees that the Council acts unanimously and consults the EP in cases of:

    - regulation of a mainly **fiscal nature**;
    - measures concerning **territorial planning**, destination of land with the exception of waste management and general measures, as well as water sources management;
    - measures having a tangible impact a Member State's choice between **different sources of energy** and on the **general structure of the energy supply.**

  When the Amsterdam Treaty came into force, environmental policy acquired a wider dimension because of the codification of the principle of **sustainable development**[15] and **the integration of environmental features in other Community policies.** Article 2 of the new Treaty says that "sustainable development of economic activities" should happen in parallel with a "high level of employment and social protection, and a high level of environmental protection as well as an improvement of the quality of the environment", while article 6 states that "Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities, in particular with a view to promoting sustainable development".

- In June 2001, in Göteborg, the Member States decided to give the Lisbon strategy a third dimension: sustainable development. Achieving and sustaining the 3% growth objective foreseen in Lisbon means elaborating environmental policies, carefully evaluating the relationship between the costs involved and the benefits for the environment.

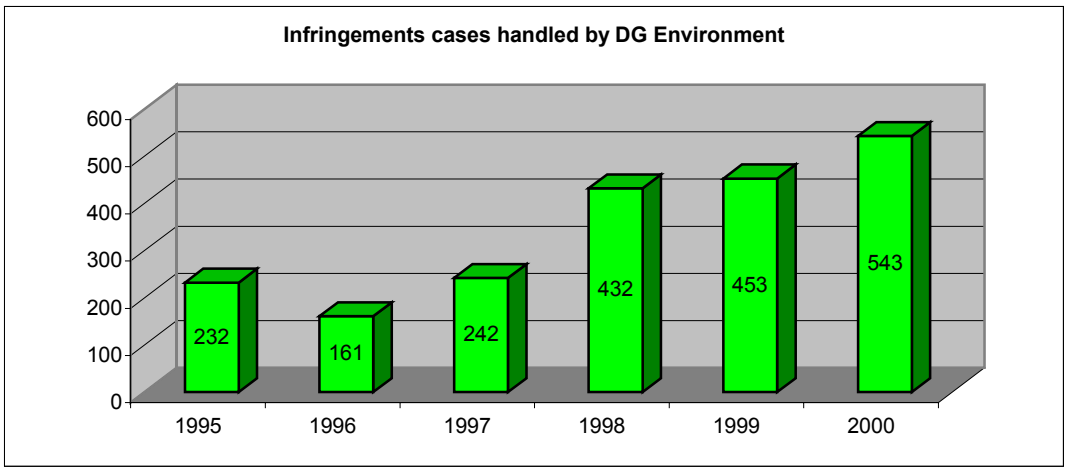
[14] The Maastricht treaty has extended qualified majority voting in article 130 par.1 (new 175 UC)
[15] In 1987, the Brutland Commission introduced and defined for the first time the concept of sustainable development as " development which satisfies current needs without compromising the ability of future generations to meet their future needs"

3.2 Some considerations concerning Community legislation in the environmental sector.

- Most legislation in the environmental sector is inspired by a **traditional "command and control" approach**, that forces businesses to respect set bonds and obligations, instituting control systems from the public authorities. Other Community instruments, which foresee a direct self-regulation of businesses, such as EMAS-ECOLABEL, have not obtained a wide consensus from European companies. Rare but positive results are cases of direct industry involvement in programme definition (AUT-OIL I e II[16]).

- With regard to **interpretation and application of community environmental legislation,** recourse to the use of framework directives rather than regulations, together with the flexibility foreseen in article 176, has left Member States a wide margin of intervention in the environmental legislation implementation phase, often causing distortion of competition among businesses operating in different countries. The same basic principle expressed in article 175 can be interpreted in a different way by differing national systems provoking differences in treatment among businesses.
  A concrete example is given by the interpretation of the principle "the polluter should pay": in some countries this is flexibly interpreted as "who persist should pay", in that the perpetrator may not have had non-polluting technology available, or could have been previously authorized to produce in such a polluting way. On the contrary, in Italy we tend to have the more restricted interpretation of "the polluter, past or present, should pay".

- From a quantitative point of view, in the last decade Community legislative activity in the sector of environmental policy became extremely important, in order to overcome in purely quantitative terms the activity undertaken for the completion of the internal market. Out of all the legislative acts adopted by the European Parliament, more than 30% concern the environment and fall under the competence of the "Environment, Public Health and Consumer Policy" Committee which is responsible for these questions. This high legislative activity has created several problems of implementation of Community directives. In 2001, out of 3360 cases analysed by the Commission about incorrect application of community law, 38.75% were related to the environment. Many of these cases consisted of delays in implementation, but the percentage of infractions is still worrying. As shown on the chart, these infractions increased from 232 in 1995 to 543 in 2000.



Source: European Commission, Periodical statistics on infringements cases

[16] The programme foresees the involvement of the automotive industry in the definition of objectives for the reduction of emissions and is based on the principle of analysis of costs-benefits, scientific data and transparency.

- The Commission[17] identifies the main causes of incorrect transposition or lack of transposition of Community directives as:

    - difficult competences sub-division within Member States (national, regional, etc.);
    - difficulties arising from the need to apply obligations of environmental legislation to other economic sectors (agriculture, transport, industry);
    - existence of other national environmental legislation characterised by different approaches;
    - Poor co-ordination at national level between representatives negotiating the directive at the Community and those responsible for their implementation.

- In 1991, in order to solve problems arising from application of Community environmental legislation, the Environment Council promoted the creation of an informal network of representatives from national administrations and of the IMPEL (Implementation and Enforcement of EU Environmental Law) Commission, charged with the task of exchanging information about implementation, conformity and control of the application of Community environmental law. IMPEL's activity focussed particularly on the problem of minimum criteria for inspections, access to justice and training of magistrates and, in 1991, it led to the adoption of a new directive[18] aimed at standardising and rationalising relations relevant to the implementation of those directives concerning the environment.

- Without underestimating the activity of such a body, among other things that are useful for the promotion of an "objective" culture of Community environmental law at magistracy level, the actions undertaken so far to improve the implementation of environmental legislation have not been sufficient. In view of the approaching enlargement, this lack could become a warning sign with regard to control of the implementation of environmental *acquis,* but above all the controls intended to verify the implementation.

- In order to correct such a situation, a proposal to delegate management of some minor procedures to national authorities, was put forward to alleviate the burden of such a task at Community level. This proposal appears extremely delicate because it could have negative repercussions on the operation of the internal market. It seems more useful that the European Commission revises the directive that, due to structural defects, have not been implemented by a large number of member states, analysing particularly its contents and, if it's the case, modifying the legislation.

3.3 The contribution of the manufacturing industry

- In its recent "Competitiveness 2002" report[18], the Commission showed how the Community manufacturing industry has contributed, particularly in recent years, to break the link between increase in productivity and impact on the environment. Despite the lack of complete data on efficiency of Community regulation in fighting pollution and despite the uneven implementation by several Member States, we have to recognise that in some cases, particularly in the reduction of specific sources of pollution, Community policy played a positive role in the process and contributed to the creation of a business and market environmental culture that is now hard to give up.

[17] Second Annual Survey on the Implementation and Enforcement of Community Environmental Law
[18] Directive 91/692 ECC, 23/12/1991
[18] "Competitiveness 2002 – productivity: key to European economy and business competitiveness"

- As the following data shows, this culture can be easily explained in a direct commitment by businesses in terms of innovation and improvement of production processes and final products:

    - Despite a 29% increase in output from 1985 up to now, the European manufacturing industry energy consumption has remained constant. The close relation between raw materials and manufacturing industry output remained constant until the early nineties.
    - Since 1993, there has been a 12% improvement in terms of eco-efficiency in the use of raw materials;
    - Carbon monoxide emissions from the manufacturing industry have decreased by 18.14% from 1985 to 1999;
    - Acid gas emissions from the manufacturing industry have decreased by 69% from 1980 to 1999. The manufacturing industry contributed by a quarter to the total reduction of acid gas emissions in the EU between 1980 and 1999.

  In general, it is calculated that, in 1998, the private industry's environmental spending totalled around 32 billion Euros, which is 0.4% of the GDP or 2.0% of the total industrial added value (see table).

Eurostat (2001)	Total	Investments	Current spending
Waste management	4.9	1.2	3.7
Waste water management	8.7	2.7	6.0
Air protection	9.6	4.3	5.3
Noise protection	0.7	0.4	0.4
Nature protection	2.2	1.7	0.5
Other domains	5.9	1.8	4.1
Total	32.1	12.1	20.0
% of the industry added value	2.0	0.8	1.2

- In achieving such results, European industry has been shown to have contributed considerably to the reduction of the pressure it puts on the environment. It is clear that these results have been achieved by using additional resources made available by both the economic growth and the increase in productivity. A further increase in environmental spending, due to the adoption of legislative measures lacking in correct costs evaluation, could minimise European industry's competitiveness, above all by a decrease in economic growth.

- The achievable balance between economic growth and environmental policies increasingly depends on national governments, taking into account that the results obtained so far in a sector such as industry could be nullified by the expansion of other sectors (energy, transport, agriculture, etc.). It will be necessary, on one hand to elaborate transport, energy and agricultural policies integrating them with a sustainable development approach, while on the other hand revise the instruments that have been used to achieve the goals foreseen within these policies.

3.4 Confindustria's proposals for the simplification of existing legislation

- The same considerations about the urgency to simplify existing legislation expressed in the *executive summary* can be expressed for the environmental sector. A simplified legislative framework will not only help businesses, but will also facilitate the environmental *acquis* adoption by countries, that will join the Union in the coming years avoiding extremely serious environmental dumping problems. Consequently, the Commission, together with the industrial sectors involved, should identify the areas where it is urgent to start such a process.

- At national level, it is essential to rapidly re-organise implementation of legislation in order to ensure it conforms to Community regulations and eliminate unnecessary restrictive interpretations.

3.5 Confindustria's proposals on the production of new regulations

3.5.1 Modifying working methods

- Promotion of policies that satisfy the principle of sustainable development means starting with a holistic and integrated working methodology able to evaluate social, economic and environmental implications during the definition of policies and adoption of acts. It is therefore vital that the Community and national institutions reflect **on which internal working methods must be adopted to improve the regulatory process**.

- The transition from a compartmented working method to an integrated working method has already started in part, but it should be reinforced and structured and will have to become an integral part of all complex organisations. The elaboration of policies inspired by the principle of sustainable development call for a different working method: not the superimposition of contributions often conflicting with different managements, but the initial formulation of an integrated approach. It is therefore suggested that:

    - *The European Commission* should improve coordination of general directorates dealing with policies with a strong environmental impact (transport, energy, industry, agriculture) and revise interservice consultation procedures. In this way, consultation between Industry/social affairs DG and environmental DG should be strengthened.

    - *The European Parliament, in order* to rationalise its works, should split the "Environment, Public Health and Consumer Policy" committee in two different committees: "Environment" and "Public Health and Consumer Policy". During the examination of environmental proposals with strong consequences for industry, the European Parliament should systematically apply the reinforced Hugh procedure at the Industry committee, that, in this case, should assume an equal role (referred to the Environment committee) in view of the amendments to be presented at the Plenary Session. Environmental/industrial and social affairs commissions should be better coordinated when dealing with policies relating to sustainable development;

    - *The Council* should define intersectorial consultation times within working groups, in cases of proposals that assume economic, environmental and social implications.

3.5.2 Improve legislative proposals

- To improve legislative proposals the Commission must adopt analysis and evaluation methods that are more appropriate than those currently in use. Integration of environmental policies in other sectors needs an economic impact evaluation in order to minimise costs.[19] Therefore, it is suggested as soon as possible to adopt methodologies that allow:

    - **An analysis of the economic, social and environmental impact of the proposed intervention and an analysis of the cost/benefit ratio** of the proposal's objectives and of the ways suggested to achieve them. The analysis should be able to stress the risk of European system losing competitiveness with regard to third countries (considering, for example, the impact on European businesses of the Kyoto Protocol or the policy on chemical products that will not be applied by the USA and Japan, two main competitors)**;**

    - **Analysis of respect levels**: considering the numerous problems of respect and implementation of environmental regulations up to now, the Commission, before presenting new specific sector proposals, should proceed to a "respect analysis" of the present environmental legislation, to understand the reasons of a difficult application at member states level and to draw the necessary conclusions;

    - **The use of instruments to evaluate the effects and efficiency of the legislation**. From the start of the elaboration process, it is essential to adopt mechanisms that allow evaluation of intervention effects and efficacy. In a 2001 report, [20] the Environmental Agency claims the lack of information to evaluate the effect and efficacy of Community environmental policy. Only 12% of environmental legislation obliges Member State to make such evaluations.

3.5.3 Choice of appropriate instruments

- The improvement of regulation in the environmental sector does not rule out adoption of an approach aiming to maximise the possibility of companies ' self-regulation and their ability to solve problems through techniques avoiding methods such as "*command & control*". The choice of instruments to be adopted in order to achieve a certain environmental objective is crucial and instruments such as agreements and voluntary practices have by now been recognised. The chemical business programme "Responsible Care", the costal operators "Green Award" and the IRU (International Road Unions) "Safety on Road" have led to brilliant results and are some examples of good behaviour both in environmental and social areas. Such behaviour in businesses should be encouraged at a local level where agreements could be developed with other bodies (Public administrations, Insurance, Financial Institutions) aiming to reward the efforts made, through simplified administrative procedures and costs differentiation etc.

- Recourse to other instruments (market and economic) could generate important results but it should not rule out deeper consultation of the interested industrial sectors and a preventive evaluation of an eventual best practice. Furthermore, it is essential to maintain a coherent and overall view between the interventions in order to guarantee coherence between identified instruments in the elaboration of sector-based environmental policies.

[19] OECD: Encouraging environmentally sustainable growth: experience in OECD countries.2001 pag.17
[20] Agency for the environment 2001: *Reporting on environmental measures: are we being effective?*

- Returning to the proposal put forward in the White Paper on Governance, the Commission should evaluate the feasibility of promotion of environmental agreements at regional level, on the basis of the experience and intervention methodology developed with the management of structural funds. Several environmental problems can be solved through coordination of local and regional planning initiatives that will allow more flexibility and relevance to the specific characteristics of an area.

- Recourse to *command & control* type regulation should only occur when it can be shown that there is no other way to reach the given objectives. Therefore, in order to guarantee respect of competitiveness and to ensure consolidation of the internal market, the Commission should:

  - **legislate on the basis of art.95 of the Treaty** to *facilitate uniform application of environmental law,* preventing Member States from adopting more restrictive measures that would influence business competitiveness creating distortions in the internal market;

  - **extend recourse to regulations**, rather than laws, for proposals that have an impact on the internal market, particularly with regard to enlargement.

CONFINDUSTRIA'S RECCOMMENDATIONS FOR THE ENVIRONMENTAL SECTOR

- ***Simplify existing legislation:*** Environmental policy causes the highest number of problems in directive implementation and application. To this end, Confindustria would like:

  - The European Commission to revise directives that, because of intrinsic defects, have not been implemented by several Member States, paying particular attention to analysis of the content of the texts and, if appropriate, to handle the abridgement of these laws;
  - Member States to revise national regulation with the aim of eliminating distortions caused by poor implementation of Community directives, which often goes further than necessary.

- ***Reformulate the new regulation production process.*** Any legislative proposal in the environmental sector should be based on the principle of sustainable development as defined in the Amsterdam Treaty. This means that the legislator must carefully evaluate the environmental, social and economic implications of the objectives under consideration and decide on the best course of action to meet these objectives. Therefore, Confindustria suggests that in the preparation and presentation phase:

- Institutional **working methods** are revised. This will facilitate the coherent integration of social, environmental and economic variables. To this end:

  - *The European Commission* should improve coordination of general directorates dealing with policies with a strong environmental impact (transport, energy, industry, agriculture) and revise interservice consultation procedures. In this way, consultation between Industry/social affairs DG and environmental DG should be strengthened.

  - *The European Parliament, in order* to rationalise its works, should split the "Environment, Public Health and Consumer Policy" committee in two different committees: "Environment" and "Public Health and Consumer Policy". During the examination of environmental proposals with strong consequences for industry, the European Parliament should systematically apply the reinforced Hugh procedure at the Industry committee, that, in this case, should assume an equal role (referred to the Environment committee) in view of the amendments to be presented at the Plenary Session. Environmental/industrial and social affairs commissions should be better coordinated when dealing with policies relating to sustainable development;

  - *The Council* should define intersectorial consultation times within working groups, in cases of proposals that assume economic, environmental and social implications.

- To **improve legislative proposals** the Commission must adopt analysis and evaluation methods that are more appropriate than those currently in use. Integration of environmental policies in other sectors needs an economic impact evaluation in order to minimise costs.[1] Therefore, it is suggested as soon as possible to adopt methodologies that allow:

    - **An analysis of the economic, social and environmental impact of the proposed intervention and an analysis of the cost/benefit ratio** of the proposal's objectives and of the ways suggested to achieve them.

    - **Analysis of respect levels**: the Commission, before presenting new specific sector proposals, should proceed to a "respect analysis" of the present environmental legislation, to understand the reasons of a difficult application at member states level and to take necessary conclusions;

    - **The use of instruments to evaluate the effects and efficiency of the legislation**.

- **More suitable regulatory instruments, alternative to regulation, are selected** in consultation with the relevant industrial sectors. Therefore, the Commission is invited to adopt the directive dealing with the Community definition of voluntary agreements in the environmental sector as soon as possible. Recourse to *command & control* type regulation should only occur when it can be shown that there is no other way to reach the given objectives. Therefore, in order to guarantee respect of competitiveness and to ensure consolidation of the internal market, the Commission should:

    - on the basis of art.95 of the Treaty, legislate to **facilitate uniform application of environmental law**, preventing Member States from adopting more restrictive measures that would influence business competitiveness creating distortions in the internal market;

    - **extend recourse to use of regulations**, rather than laws, for proposals that have an impact on the internal market, particularly with regard to enlargement