Editorial

Legislative and Administrative Simplification?

The publication of the Molitor Report[1] which was established by the Commission in September 1994 has attracted widespread interest. The attack on red tape is evident: no question of intervening before breakfast, before lunch and even before dinner. Eighteen general proposals and myriad proposals relating to specific areas lay down a number of principles, some of which are major contributions to transparency (such as the publication of expert studies made for the preparation of legislation; the publication of the grounds on which a Member State supports or opposes a proposal; results assessment with publication, and the extension of the use of White and Green Papers).

The plea for acceleration of legislative codification, at the Community and at the national level, deserves support in the interests of promoting the transparency of Community legislation and its implementation. Simplification does not, however, always mean a bare choice between continuing with existing legislative instruments and scrapping them: in some areas it has become apparent that a Directive is no longer an adequate instrument for the achievement of Community policy. The use of a Regulation removes problems of transposition, gets round the problems of no horizontal direct effect of Directives, and replaces at a stroke thirteen, now sixteen, sets of legislation (including the Community instruments) by one act. But it may not be popular with those who seek to maintain the loopholes which national implementation leaves. In the case of customs legislation, considerable gaps in the common commercial policy were closed with the switch to Regulations and the consolidation, although the implementation of the Customs Code has also had to be further tightened. If the Commission proposes that this line should be pursued in relation to public procurement and procurement by the utilities, life is likely to become tougher for contracting entities, but also tougher for contractors, as the cosy "ordered" (frequently Dutch terminology for what is merely a cartel) national markets are forced open to the wind of competition in reality and not just in theory. The Commission may well conclude with Molitor that there may be areas in which a Regulation best reconciles the objectives of simplification and the unity of the single market.

Molitor is right to stress the desirability of user-friendly and unambiguous legislation, as well as the need for the Commission to pay more attention to enforcement, although Molitor fails to take *sufficient* account of the need to safeguard the *acquis communautaire* particularly in relation to health and safety at work and the environment. In the latter case the emphasis on targets rather than prescription is simply an open invitation to industry to ignore environmental considerations, although the Report rightly recognises the need for new ways to check that firms meet their obligations as responsibility increasingly shifts from the public to the private sector. The credibility of voluntary agreements, or covenants, is low, and the dangers of temptations to indulge in cartel behaviour too strong: the request to the Commission to indicate the conditions under which voluntary agreements in the field of waste disposal are consistent with EC competition legislation seems like a second-rate sop.

The Molitor Report is a bag of mixed blessings; perhaps like such a bag, may the good be remembered and the evil be forgiven.

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[1]COM(95) 288 final (the Report itself is in COM(95) 288 final/2).