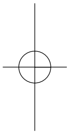
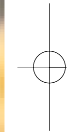
EUROPEAN ECONOMIC REFORM: TACKLING THE DELIVERY DEFICIT

Alasdair Murray

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European Economic Reform: Tackling the delivery deficit

Alasdair Murray

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Foreword

European Economic Reform: Tackling the delivery deficit

The Corporation of London welcomes the opportunity to be involved with the Centre for European Reform in this initiative, which comes at a timely moment in the EU's history, as it prepares to welcome ten new members. We must ensure that the EU's institutional and legislative framework is improved and strengthened to face the demands of enlargement.

Much of the City's business is influenced by EU legislation. The Corporation of London, together with City businesses and trade associations, is keen to ensure that developments do not impede the growth of the City within the global financial market. This in turn will facilitate the EU's goal of becoming the "world's most competitive and dynamic knowledge-based economy" by 2010. Research demonstrates that the City makes a significant contribution to the EU as a whole. The goal can only be achieved if the EU is determined to improve not only its decision-making processes but looks beyond these to an improved system of implementation and enforcement.

The Lamfalussy recommendations are welcome as a means of streamlining the regulation of the securities markets and their principles should be further strengthened. One of the most important aspects of this is to ensure that at all stages in the legislative process, and most importantly in advance of the formal adoption of legislative drafts, those who will be directly affected by their content should be fully consulted. There is a considerable breadth of expertise within the EU which can be tapped into to ensure that every new proposal also provides a workable solution.

This document is a significant and helpful contribution to the current debate which will gain momentum over the coming months.

Alderman Michael Oliver

Lord Mayor of the City of London 2001-2

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1 Introduction

For half a century, economic integration has been the engine of the European Union. From the creation of the European Coal and Steel Community, through the customs union and the single European market of 1992, to the launch of euro notes and coins at the beginning of 2002, the EU has displayed an unwavering commitment to co-operation in the realm of economic policy.

The EU has set itself a further series of ambitious economic goals for the next decade. Eurozone countries are committed to ensuring the long-term health of the single currency, which will require further economic integration. With eastward enlargement the Union needs to incorporate another ten dynamic but diverse economies. Above all, the EU is determined to meet the target, set in Lisbon in 2000, of becoming the "world's most competitive and dynamic knowledge-based economy" by 2010.

However, the EU's existing institutional structure is inadequate to cope with these economic challenges. The EU has so far made only patchy progress towards meeting its Lisbon commitments.[1] At the Barcelona summit in March 2002, EU leaders again failed to make substantial headway – despite Tony Blair's insistence that it was a "make or break" meeting for economic reform. Member-states have missed a series of important deadlines, such as the end 2001 target for a Community patent. EU leaders have only been able to agree on a slow and partial liberalisation of the EU electricity market and postal services, despite the promises made at Lisbon of much faster progress. Frits Bolkestein, the internal market commissioner, summarised the EU's general inability to proceed with its economic reform agenda in early 2002. Speaking after member-states had

[1] See Edward Bannerman, 'The Barcelona scorecard', CER, 2002.

failed to reach agreement on a Community patent, the Commissioner said: "Ministers again demonstrated their inflexibility and their inability to put long-term considerations to enhance the competitiveness of Europe before short-term considerations of national pride and protecting the status quo."

The Lisbon agenda poses a new set of problems to the EU's traditional way of taking decisions. The EU has set out a broad reform programme, which could influence almost every aspect of the member-states' economic and social structures. The EU will need to employ a mixture of policy measures to achieve its Lisbon goals. This means the Union must not just improve the quality of single market legislation based on the long-established 'Community method'.[2] It must also make better use of the 'open method of co-ordination' – the recently developed system of target setting, benchmarking and peer pressure. Member-state governments must provide strong leadership, and remain focused on their policy objectives, even more than usual because the Lisbon programme is designed to last a decade. Yet leadership – in the form of the ability to take tough decisions and tackle vested interests – is a quality that too often seems in short supply within the EU. Recent European summits have been plagued by a series of petty disputes – and none more so than the Laeken summit in December 2001, which degenerated into unseemly squabbling over the location of minor EU agencies.

[2] According to which the Commission has the sole right of initiative, and both the Council of Ministers and the European Parliament need to approve a measure before it becomes law.

Moreover, budgetary co-operation between eurozone countries is faltering. The German government succeeded in watering down a formal Commission warning about the state of its public finances in the spring of 2002. Then in October 2002, the new French government tore up a commitment to balance its budget by 2006. The same month the German government admitted that it would exceed the Stability and Growth Pact's 3 per cent limit for public deficits in 2002. Eurozone countries urgently need to reconsider

how the institutional architecture of the single currency – and especially the Stability and Growth Pact – is to function in future.

The imminent enlargement of the Union is likely to exacerbate the problems the EU faces in turning its economic reform rhetoric into action. An EU of 15 members already finds it extremely difficult to reach agreement on many economic policy issues. The existing EU member-states have still not forged an accord on vital elements of the single market, such as the takeover directive, despite a decade of trying to do so. Soon, the EU will need to take into account the political sensitivities and economic idiosyncrasies of up to ten new member-states when trying to finalise policy agreements. The Union may also find that apparently settled rules and regulations, which underpin cherished achievements such as the single market, could be undermined unless the Commission and the member-states improve their record on implementation and enforcement.

Unless the EU urgently re-examines how it formulates and implements economic policy, this 'delivery deficit' – the gap between the EU's aspiration to become the world's leading economy and its inability to take effective action – is set to become even larger.[3] At the time of writing, in the autumn of 2002, member-states, the Commission and the Convention on the future of the EU have begun a debate on institutional reform, which should culminate in action at the inter-governmental conference (IGC) scheduled for 2004. The Commission argued in May 2002 that the Community method should be strengthened for EU budgetary policies. However, the Commission was silent on which institutional reforms may be necessary to ensure that the EU can make real progress towards the Lisbon goals. The member-states, meanwhile, proposed a modest streamlining of the European Council, and a reduction in the number of specialist formations of the Council of Ministers, at the Seville summit in June 2002. And a Convention working

[3] See David Miliband, 'A reforming voice in Europe', Financial Times, December 11th 2002.

group has been looking at ways in which the EU's economic governance could be improved – but appeared to be struggling to provide any firm answers.

This paper is a contribution to this growing debate about the reform of EU economic governance. It focuses on tackling the institutional obstacles to an effective programme of economic reform. It argues that the Commission must improve its record of devising and enforcing single market legislation. However, only if the member-states intensify co-operation, both on the Community and open methods of co-ordination, will the EU have any chance of meeting its Lisbon targets. The EU particularly needs a radical overhaul of the way the Council functions. The six-monthly rotation of the presidency too often leads to policy discontinuity, as the agenda becomes cluttered with the particular concerns of the latest chair. The still excessively large number of separate councils means that policy decisions are often disconnected, and there is sometimes little coherence between overlapping initiatives.

Meanwhile, the Commission should develop a formal warning system, to increase the pressure on the member-states to take the open method of co-ordination seriously. The Union should develop more efficient mechanisms for producing detailed technical regulations in vital areas of the single market such as financial services. The EU should consider the creation of some independent regulatory agencies as well as the reform of its opaque and complex system of expert committees (comitology). The European Parliament should be granted a formal role in the scrutiny of agencies and expert committees. Finally, the Commission and the member-states should take both consultation during the drafting of legislation, and enforcement, much more seriously than in the past.

This paper does not directly address the problem of the EU's so-called democratic deficit, which is at the centre of the Convention's deliberations. However, the paper does touch on the EU's democratic problems in two indirect ways. First, it argues that only

by reducing the delivery deficit can the EU hope to restore its credibility with the people of Europe. The Convention's tinkering with democratic mechanisms will do little to bolster the EU's legitimacy unless the EU can fulfil its promises.

Second, this paper argues that the EU will only deliver better policies through enhanced accountability and increased transparency. Neither the Commission nor the Council possess a monopoly on legislative wisdom. Poorly drafted and unpopular legislation can be avoided if the EU consults fully at an early stage. Good governance does not simply stem from a democratic mandate. Most governments now recognise that they need to be accountable at all stages of the legislative process and that they should involve civil society in policy formulation as much as possible. Enhanced accountability and transparency are even more crucial to the credibility and, ultimately, legitimacy of the EU because of its very limited direct democratic mandate.

2 A question of leadership

A stronger role for Ecofin

If the EU is going to deliver on its economic promises it is essential that the council of finance ministers (Ecofin) assumes centre-stage in the Lisbon process. Only finance ministers are likely to possess the political clout within their governments to deliver on the full range of Lisbon targets. Few European finance ministers have as powerful a grip on economic policy as Gordon Brown, the British Chancellor. However, the trend across Europe is towards just one senior minister overseeing both economic and budgetary policies. The arrival of the euro means that finance ministers are now arguably second only to the heads of government in their power and prestige on the European stage.

Moreover, only Ecofin can ensure the EU develops harmonious micro-economic and macro-economic policies. Structural economic reforms, such as the overhaul of labour markets and the liberalisation of product markets, are vital to ensuring the long-term health of the EU economy and the single currency. A concerted European economic reform effort would enable the EU to raise its long-term growth rates. High and stable growth would help to reduce unemployment and make it easier for governments to meet fiscal targets such as those laid down in the Stability and Growth Pact.

The constancy of EU economic policy-making has suffered – like other policy areas such as the Common Foreign and Security Policy – because of the natural tendency of each new EU presidency to push forward its own concerns. Difficult political issues, such as tax policy, tend to drop off and on the agenda, depending on the

sensitivities of the member-state holding the presidency. The Lisbon agenda more than doubled in length following the Swedish presidency during the first half of 2001, because the Swedes wanted to add sustainable development targets to the reform programme. Some minor adjustments to the Lisbon targets may be desirable: the Swedish presidency also sensibly introduced a series of interim employment targets. But there is a real risk that by the end of its ten-year life, the Lisbon programme could contain too many targets to serve as a basis for effective economic reform.

The EU's rotating presidency has reached the end of its usefulness. The half-yearly rotation system dates back to a period when the six founding members of the European Community could expect to hold the presidency every three years. The original concept was to provide each member-state with regular experience of guiding the European agenda and to ensure parity between large and small member-states. However, the gap between any one member-state taking the chair is now seven and a half years and this will rise to around twelve years after enlargement. After more than a decade's wait, few officials – let alone politicians – will have any previous experience of preparing and managing the presidency. Moreover, there is a real risk that some countries will lack the resources to successfully manage a presidency for an EU consisting of 25 countries.

EU member-states agreed at the Seville summit in June 2002 to investigate a number of reforms to improve continuity and overcome the practical burden of holding the presidency. One possibility is that team presidencies would in future run the EU: the member-states would divide up into, say, teams of five and share the burden of running the various councils for a period of two years. This option would at least ensure that all member-states gain some experience of managing the presidency on a regular basis. However, it would also mean that different countries chaired the different councils, which hardly seems conducive towards improving cross–sectoral policy co-ordination. A team presidency would

require a steering committee – which would mean adding yet another layer of governance into the EU system.

An alternative approach – designed to introduce greater coherence and dynamic leadership into economic policy – would be to create a High Representative for economic affairs, along the model of Javier Solana's position as the High Representative for foreign and security policy. The economics High Representative would be based permanently in Brussels, chairing Ecofin meetings and leading both the EU's micro and macro-economic co-ordination efforts. Advocates of this reform argue that member-states would be far more likely to accept the judgement of a 'peer' than of the European Commission, particularly on issues which are not exclusive EU competences, such as budgetary policies or labour market reforms. A High Representative could also become the public face of the euro, representing the eurozone in international fora such as the G7.

While there is a certain appeal in the concept of a single all-powerful figure bringing direction and leadership to Ecofin, the problems inherent in the creation of a High Representative may well outweigh any possible benefits. It is likely to prove extremely difficult to provide a clear demarcation between the roles of the new High Representative and the commissioner for monetary and economics affairs. Javier Solana and Chris Patten, the commissioner with responsibility for external affairs, have struggled to resolve exactly who does what in terms of EU foreign policy. Indeed, such are the difficulties in defining their foreign policy roles that reform seems inevitable at the next IGC.[4]

[4] See Steven Everts, 'Shaping a credible EU foreign policy,' CER, 2002.

Economic policy is much more closely bound up with the traditional Community method than is foreign policy. Many key areas of economic policy – such as the financial services action plan – are a matter for legislative action at the EU level, where the Commission retains the sole right of initiative. The Commission also has a legally defined role in monitoring and enforcing the Stability and Growth Pact. Thus, a High Representative risks

ending up either simply as a nominal figurehead or duplicating the efforts of the Commission.

Nor are there good reasons to believe that a High Representative would possess more clout than the economic and monetary affairs commissioner as a supposed 'peer' of the finance ministers. After all, the current commissioner, Pedro Solbes Mira, is a former finance minister of Spain and consequently as much a 'peer' as any future candidate for the High Representative's post. The High Representative's job is just as likely to go to an unpromising compromise candidate or a semi-retired European grandee.

The case for an international representative of the euro has also been overstated. The eurozone at present has no exchange rate strategy. Unless the Euro Group, the informal council for eurozone finance ministers, decided to adopt a clear exchange rate policy, a High Representative would have no formal role in the international economic fora. It is the job of the European Central Bank, not the chair of the Euro Group, to comment on monetary policy issues. Individual eurozone finance ministers, meanwhile, will continue to pass their own judgements on the global economic situation as it relates to their own country.

A far more practical and straight forward method of improving the continuity of European economic policies would be for finance ministers to elect their own chair. The fact that other international fora, such as the International Monetary Fund, already elect their chair provides a strong precedent for such a reform. Equally, Ecofin's supporting committees, such as the Economic and Financial Committee, elect their chair rather than changing the post with each successive presidency.

The chair, who should serve for a period of two-and-a-half-years, would be responsible for drawing up the Ecofin agenda and for helping finance ministers to deliver on their agreed policy goals. The chair should also work closely with the economics and

monetary affairs commissioner on reviewing EU budgetary policies: the priority should be to refine the workings of the Stability and Growth Pact in a less rigid direction, rather than increase the Commission's powers to bring member-states into line.

In order to make this innovation a success, the EU would first need to overcome a series of practical problems. So long as there remains a distinction between the Euro Group and Ecofin, the chair should hail from a eurozone country and oversee both formations. The election of separate chairs for each group would undermine continuity and hamper the co-ordination of EU economic policies. If there were a single elected chair, the case for granting the Euro Group formal legislative power – as the Commission has proposed – would be weakened: the chair should ensure key Euro Group concerns are also top of Ecofin's agenda. The creation of a Euro Group with legislative powers could also prove politically divisive, particularly in an expanded EU where a large number of member-states are likely to be, initially at least, outside the euro.

As is the case with any EU appointment, there is a risk that EU finance ministers may not reach agreement on a suitable candidate for the chair. But finance ministers have never faced great difficulty in electing a governors' chair at the IMF. In Ecofin there are normally one or two dominant figures within the council. In recent years, for example Philippe Maystadt and Dominique Strauss-Kahn, the former finance ministers of Belgium and France respectively, would have been the prime candidates for the chairmanship.

A bigger question mark must hang over whether a serving finance minister would find the time and energy to act as an effective chair. Certainly, the support provided by the Council secretariat would need to be increased. The EU should bolster the secretariat by seconding staff from the chair's own finance ministry and including officials from other member-states on a rotating basis. There is also a risk that the chair might lose his or her government post following elections or a cabinet reshuffle, obliging Ecofin to

a find a new incumbent. However, the European electoral timetable is reasonably predictable, and reshuffles in mid-term are relatively uncommon.

In the longer term, finance ministers may have to consider the appointment of a full-time chair – if this extra secretariat support proved insufficient, or Ecofin found that it was repeatedly re-electing the chair. However, it would be better if the chair remained a serving minister, who is thoroughly grounded in the realities of his or her domestic economic and political situation and, presumably has greater sympathy with the problems faced by fellow ministers. Such a chair would have a strong understanding of where agreement is possible and would be far more likely to steer the agenda in the direction of the genuine needs of the European economy. In contrast, a permanent chair, or High Representative, would be further removed from the day-to-day experience of managing an economy. A permanent chair may want to take the lead on all EU economic issues, rather than partner the Commission, thus increasing the potential for counter-productive turf battles with the commissioner for economic and monetary affairs.

Finally, smaller member-states may resist the creation of a permanent Ecofin chair, because of fears that it would lead to the larger EU countries dominating the economic agenda. Finland, for example, has expressed concern that the abolition of the rotating presidency would diminish the status of small countries within the EU. Yet the reality is that small countries would be very likely to occupy the Ecofin chair. Large countries would be more inclined to accept a candidate from a smaller country than they are to cede the chair to each other. Moreover, a finance minister from a large member-state could struggle to find sufficient time to manage the chair. Small countries have often run the best presidencies under the rotation system, because they are more realistic about the goals that can be achieved in a six-month period.

Whoever assumes the chair, if this reform is instituted, he or she should consider three specific innovations to improve the continuity and the transparency of Ecofin decision-making. First, the chair should prepare an annual work programme – similar in style to that presented to the European Parliament each year by the Commission President – with the agreement of the finance ministers and the support of the Commission. The European Parliament should have the opportunity each January to question the chair about the choice of policy goals, and at the end of each year to produce a critical progress report.[5]

[5] This could also be a job for the Congress of MEPs and National parliamentarians proposed by Valéry Giscard d'Estaing. See Charles Grant, 'New leadership for Europe', in 'New designs for Europe', CER, October 2002.

Second, the chair should produce a synthesis report for the spring European Council, drawing on each member-state's assessment of their own progress towards meeting the Lisbon commitments. This report should also review the Commission's Lisbon work. It should be available to the Commission ahead of the summit, so that the Commission has the opportunity to issue its own verdict on how well member-states are performing. This dual reporting system should greatly enhance the transparency of the Lisbon process.

Finally, the chair needs to ensure that the EU places greater emphasis on Europe's micro-economic performance. The EU is already making efforts to improve the co-ordination of macro-economic policy through mechanisms such as the Stability and Growth Pact, which set the broad parameters for the conduct of member-state fiscal policy. Member-states and the Commission are busy debating how these structures can be fine-tuned and improved.[6]

[6] See for instance Pierre Jacquet and Jean Pisani-Ferry, 'Economic policy co-ordination in the eurozone', CER, 2001.

However, to date Ecofin has only made a limited attempt to co-ordinate micro-economic policies. The Commission does provide some analysis of structural economic issues in its annual assessment of member-state economic performance under the Broad Economic Policy Guidelines (BEPG). The Economic and

Financial Committee, made-up of senior finance ministry and central bank officials, has also begun work on establishing a series of EU structural economic indicators. The Ecofin chair will need to ensure that a thorough and transparent annual review of these indicators, and their relationship to the EU's overall economic performance, becomes a key part of the BEPG process.

Ecofin and the European Council

The European Council no longer fulfils the strategic leadership role envisaged at its creation in 1974. The quarterly summits are supposed to provide an opportunity for the heads of government to think about long-term issues in an informal atmosphere. However, the summits now resemble full-scale international conferences as more and more officials and ministers attend. Recent summits have also attracted tens of thousands of non-participants – ranging from an ever-expanding press contingent to anti-globalisation protestors. EU leaders have, perhaps not surprisingly, found it difficult to conduct meaningful discussions under such conditions. At the Seville summit in June 2002, the heads of government made an attempt to return to first principles. They agreed to restrict the size of each national delegation to 20 people, with just 2 seats each in the European Council meeting itself.

The political pressure on each presidency to secure a success has led to a proliferation of EU initiatives, each named after the city where the 'historic' agreement was reached. In the last five years, the EU has launched no fewer than four major initiatives in the field of economic policy alone. Even the Commission has difficulty remembering that besides the Lisbon process, it is supposed to be overseeing work on the Luxembourg employment process, the Cardiff structural reform process and the Cologne agenda for macro-economic co-ordination.

EU leaders are not entirely to blame for this situation. As the range

and complexity of EU policies increases, member-states find it more and more difficult to reach agreement on cross-sectoral issues at the Council of Ministers level. As a result, the heads of government are forced to try and resolve too many disputes of a minor nature in the European Council. Among the issues that EU leaders considered at the Seville summit were planning rules for mobile phone masts and the development of new indicators for measuring public service performance. The summits are also becoming overloaded with position papers and background documents, all of which need at least a token approval from the heads of government.

The General Affairs Council (GAC), which brings together the EU's foreign ministers, is supposed to act as a clearing-house for cross-sectoral issues, or to intervene when individual councils are unable to reach agreement. However, most member-states increasingly regard EU policy areas, such as the environment or the euro, as a matter for domestic not foreign policy. Foreign ministers do not possess the expertise or the political clout to reach deals on important policies where their senior ministerial colleagues have failed.

The EU needs to reinvigorate its General Affairs Council, by properly splitting the GAC into two separate councils: one focused on foreign affairs and the other dedicated to truly horizontal 'general' issues. Javier Solana has suggested that Europe ministers, rather than foreign ministers, should in future oversee 'general' matters leaving the foreign ministers free to deal with diplomatic matters in a new external relations council. The Europe ministers would need a status similar to that of a deputy prime minister to give them sufficient political clout. EU leaders took a modest step in the direction of the Solana proposal at the Seville summit, by reconstituting the GAC as the general affairs and external relations council. This Council will now discuss general EU issues and foreign policy in separate sessions, and member-states can send different ministers to attend each session.

However, it remains unlikely that finance ministers, or foreign ministers for that matter, would be willing to cede such co-ordinating powers to a reformed GAC. In many member-states the creation of a minister of deputy prime-minister status would involve a major constitutional innovation. Nor is it clear that the new Europe ministers would have the necessary technical support to resolve complex economic or technical internal markets issues.

Instead, Ecofin should become a 'super–council', taking on the over-arching authority of the existing General Affairs Council, with regard to economic issues. Ecofin would oversee other sectoral councils which deal with economic issues. The finance ministers would broker deals on, say, energy and postal liberalisation if their ministerial colleagues in the respective sectoral councils failed, rather than leaving these often extremely complex issues to the heads of governments in the European Council. In effect, Ecofin should become the clearing-house for the Lisbon economic reform programme.

Such a reform would represent only a modest increase in Ecofin's existing powers and would not require a Treaty change. The EU *de facto* recognises that only finance ministers, with the support of the heads of government, are able to push forward the EU agenda on economic issues. Ecofin already holds a special status within the EU system: it is the oldest of the specialist EU councils and the only one formally recognised by the EU's treaties. And finance ministers have the right to attend European Councils when euro-related issues are under discussion.

In return for this formal super-council role, finance ministers should cease to attend the European Council itself. This would have two direct benefits: first, it would further reduce the number of ministers and officials present at European Councils, helping to restore their informality. Second, it would increase the pressure on Ecofin to reach agreement ahead of a summit. After all, this

would be the only way that finance ministers could take political credit for progress on important issues.

However, one Ecofin representative – the elected chair – should continue to attend any summit where economic issues are discussed. The chair should present Ecofin's recommendations to the heads of government and deliver the Lisbon process synthesis report at the spring European Council. The chair would also communicate back to the finance ministers the strategic goals agreed by the heads of government.

Ecofin will not be able to act as a clearing-house for all EU issues. The EU should consider creating super-councils in other EU policy areas as well – most notably foreign policy, and justice and home affairs.[7] But if finance ministers are allowed to oversee the EU's entire economic agenda, the quality and coherence of EU economic policy-making should improve.

[7] See Charles Grant, 'A strategic European Council, a streamlined Council of Ministers', in 'New designs for Europe', CER October 2002.

An 'enterprise council'

Ecofin's reconstitution as a super-council, combined with the election of a chair, should ensure greater strategic leadership and improve co-ordination on economic policy issues. Further progress on the EU's ambitious economic reform agenda will require other ministers and EU councils to play an important supporting role. In particular, the raft of single market-related councils – such as energy and telecoms – continue to conduct vital work towards the completion of the single market.

However, the EU has had far too many specialist councils for effective decision-making: the EU should instead create a single 'enterprise council'. Such a reform would greatly enhance both the transparency and status of single market policy-making, by providing a single forum for all business-related issues.

EU leaders took a first step in this direction at the Seville Summit when they agreed to merge the internal market, industry and research councils into a single 'competitiveness council'. However, a separate council will continue to consider transport, telecoms and energy issues while the social and employment council now takes the lead on consumer affairs. The danger with this solution is that sectoral issues such as telecoms or energy liberalisation will still be considered in isolation from related EU economic reforms. It would be better to merge the new competitiveness council with transport, telecoms and energy to create an enterprise council under the guidance of industry ministers.

The biggest obstacle to the creation of a single enterprise council has been the reluctance of the ministers attending the specialist councils to give up their European role. However, there is no reason why industry ministers should not delegate sectoral ministers, such as those responsible for energy, to attend the council when their particular interests are under discussion. But industry ministers should be ultimately accountable for all decisions taken under the umbrella of the enterprise council.

The establishment of a single enterprise council would bring some distinct benefits to the EU economic policy process. First, it would enable the EU to develop a more coherent approach to business-related policy-making. The council should focus on all those micro-economic reforms, such as the liberalisation of the utilities sector, that are designed to improve Europe's competitiveness. It would take the lead on initiatives to encourage entrepreneurs and improve the environment for small businesses. And it would develop – and pursue – a meaningful system of benchmarks and targets to achieve this goal. Member-states should establish a permanent supporting committee, along the line of Ecofin's Economic and Financial Committee, to prepare the agenda. At present, the enterprise policy group – a committee of senior officials – meets just two or three times a year, leaving the overworked Committee of Permanent Representatives to prepare the ground for council meetings.

Second, one senior minister in each member-state would in future take full responsibility for overseeing this key part of the EU's economic reform agenda. Industry ministers have not had a clear-cut role on the European scene. The creation of an enterprise council would ensure that industry ministers developed 'ownership' of this aspect of the EU's agenda. Moreover, a powerful enterprise council should also provide a political counter-weight to a stronger Ecofin. Ecofin would still have the right to broker agreement on key economic reform issues. For example, if the enterprise council failed to make progress on opening up the consumer electricity market to competition – a key Lisbon goal – then Ecofin would intervene. But the EU would greatly benefit from having a single council working full-time on business and competitiveness issues.

A 'Lisbon commissioner'

The reform of the EU's economic councils should not diminish the power of the Commission. On the contrary, the Commission will continue to play a pivotal role in preparing legislation and, increasingly, developing benchmarks and targets for the member-states to pursue.

At present, responsibility for economic reform issues is split between a number of commissioners – those for social affairs, the single market, enterprise, and energy and transport. If member-states ratify the Nice treaty, the number of commissioners working on such economic issues is likely to increase even further. EU member-states agreed at Nice to permit each country to appoint one commissioner, meaning the Commission president will have to find portfolios for up to 25 commissioners following enlargement.

Such a large college of commissioners is likely to prove unwieldy and difficult to manage. The Commission could become fractious and lose any sense of direction. In June 2002, Romano Prodi suggested that these problems could be overcome if the Commission president

appointed an inner core of vice-presidents to steer the Commission's work programme. The president can already allocate posts to the commissioners chosen by the member-states. Prodi's proposal, therefore, merely extends his existing powers and does not require a treaty change.

One of the new vice-presidents should oversee the Commission's work on economic reform issues. The new 'Lisbon commissioner', would work in tandem with the chair of Ecofin to ensure that the EU's strategic economic targets are fulfilled. The commissioner would monitor the progress of the various Commission directorates-general in meeting their legislative goals. The commissioner would also develop the Commission's approach to the non-legislative elements of the reform programme.

The leading candidate for this new post would be the existing economics and monetary affairs commissioner. The commissioner's portfolio would correspond precisely to that of the new Ecofin chair. Moreover, the economic and monetary affairs directorate is principally a non-legislative department of the Commission. The directorate is more thoroughly schooled in the benchmarking and peer pressure processes – so pivotal to many areas of the Lisbon agenda – than any other part of the Commission.

As a result, the economic and monetary affairs commissioner would be more likely to place a much-needed emphasis on fulfilling the non-legislative elements of the Lisbon programme, such as labour market and pension reforms. The Commission tends to adopt an ambivalent attitude to those aspects of policy-making that fall outside the scope of the traditional Community method (see next chapter). It has tended to measure its success in pushing forward the Lisbon process simply in terms of its own legislative agenda. However, the open method of co-ordination is often the most suitable policy tool for economic reforms, such as reducing red tape that hampers business start-ups. Rather than focusing on legislation only, the Commission should be leading EU

efforts at co-ordinating economic policy in this fashion. Only the Commission possesses the resources, and crucially, the independence, to ensure that the open method finally becomes a powerful tool for European economic reform.

3 Sharpening the EU's economic policy tools

The EU has different policy tools to turn its economic goals into reality. Most importantly, the 'Community method' provides the legal foundation for the single market project. However, as the EU begins to embrace a wider range of economic goals, it has become increasingly apparent that the Community method suffers from major weaknesses. The EU normally takes around six years to draft, amend, pass and implement a major new directive. Politically contentious directives can take even longer to wind their way through the EU's institutions. For example, member-states took two decades to pass the European company statute, in part because of a dispute between Britain and Spain over the territorial status of companies based in Gibraltar.

Member-states can use qualified majority voting (QMV) to speed up political agreement on most single market legislation. In practice however, member-states often prefer to spend time searching for consensus – fearful that one day they might be isolated on some other sensitive issue. Dissenting member-states frequently win lengthy implementation periods for new measures: in the spring of 2002 France successfully delayed a further opening of the European postal market until 2007, even though rapid postal liberalisation is a key Lisbon aim.

EU enlargement will add even more countries to Council discussions, and may further slow the legislative process. The EU has made an attempt to reform its voting rules to take account of enlargement. However, the complex formula agreed by

member-states at Nice in December 2000 would make it harder rather than easier to pass laws using QMV.[8]

[8] The Nice agreement means that a majority vote would require: 74.1 per cent of the weighted votes; the support of a simple majority of member-states; and the support of member-states with populations amounting to 62 per cent of the EU's total population.

The EU faces a particularly acute problem when it needs to supplement broad-brush legislation with detailed implementing rules and regulations. The EU produces a vast array of technical rules – from the dioxin levels in food to the thickness of safety glass – to ensure the smooth functioning of the single market. Yet the EU lacks a transparent and legally watertight method for the speedy and effective provision of such detailed technical measures. The Union is currently forced to fall back on a complex and opaque system of expert committees, dubbed 'comitology' in euro-speak, to help refine and pass implementing rules. The only alternative is for the Commission to try to insert highly detailed rules into the original directive – creating cumbersome and lengthy legal texts which the member-states find difficult to transpose into domestic law. For instance, a seemingly straightforward directive on the mutual recognition of professional qualifications grew to epic proportions because member-states ended up wanting to define each and every diploma which should be recognised throughout the EU.

Moreover, the EU cannot meet many of its Lisbon objectives through traditional legal means. Only the member-states have the tools and the expertise to tackle problems such as educational under-achievement or structural problems in the labour market. As a result, the EU is increasingly turning to the 'open method of co-ordination' – a non–binding system of targets, benchmarking and peer pressure – in an effort to improve its track record in these policy areas. However, the EU can point to few cases where the open method has helped to push forward reform. The EU needs to reconsider both how best to use the open method, and produce detailed technical rules, if

it is to have any hope of meeting its long-term economic goals.

The open method and its critics

The EU first began to explore the open method of co-ordination for economic and social policy-making in the mid-1990s. The European Roundtable of Industrialists likes to assume credit for introducing this new policy tool to the EU, drawing on the experience of businesses which have long used benchmarking to improve their own corporate performance.[9] The business antecedents of the open method perhaps help to explain why some social and environmental non-governmental organisations (NGOs) remain sceptical of its merits. They see it as a mechanism by which businesses can avoid binding social or environmental legislation.

[9] See Keith Richardson, 'Big business and the European agenda', Sussex European Institute working paper 35, 2000.

The EU formally introduced the open method in the employment chapter of the Amsterdam treaty – which sought to establish, and co-ordinate, a series of member-state employment targets. However, its role within the EU was greatly extended at Lisbon. The open method is now used on issues as diverse as labour market reform, improving the environment for business start-ups, and spreading the use of information technology (IT) throughout Europe. For instance, member-states are close to meeting a commitment to ensure that all schools have access to the internet. At the Barcelona summit in March 2002, heads of government agreed to extend this target to ensure there is one computer for every 15 pupils by 2003. Member-states are also working towards guaranteeing that all teachers are trained in the use of IT by the end of 2002, and that IT is fully integrated into the school curriculum by the end of 2003.

Initially, businesses and reform-minded member-states, such as Britain and Spain, strongly supported the extension of the open method to these new policy areas. They argued that the open method would provide a flexible and effective means of pushing forward the economic reform agenda across the EU. However, by

the time of the Barcelona summit in March 2002, even some erstwhile supporters of the new policy tool were beginning to question whether the open method could deliver policy goals at the European level.[10]

[10] See 'Barcelona bid', Financial Times, March 1st 2002.

Critics argue that member-states are using the open method as a glorified talking-shop rather than a dynamic new policy tool. The absence of legal compulsion means that governments are insufficiently disciplined to pursue vital reforms. Instead, member-states are able to wriggle out of their Lisbon commitments by setting vague targets and constantly calling for further studies of key issues. The EU's attempt to improve the skills of its workforce is a case in point. Member-states agreed at Lisbon to halve by 2010 the number of 18 to 24 year olds who possess no more than a basic secondary education. They also agreed to foster a 'culture' of lifelong learning. However, in early 2002 the Commission reported that the EU had made no progress towards meeting these targets. Adult participation in recognised training stands at less than 10 per cent across the EU. Member-states have responded to this inadequate performance – not by increasing investment in education and training – but by charging another high level task force on skills and mobility to investigate the problems further.

The Commission has been unenthusiastic about the development of the open method as a policy tool, fearing that it represents nothing more than the renationalisation of important areas of policy-making. Officials also resent that the open method reduces the Commission's role to that of an information provider rather than the initiator of legislation. The Commission is concerned it could be transformed into a non-legislative international body, such as the Organisation for Economic Co-operation and Development, if the open method becomes common-place. The Commission's ambivalence emerges clearly in its white paper on governance, where it warns that the open method must not "upset the institutional balance or dilute the achievement of common objectives in the Treaty".[11]

[11] See 'European governance: a white paper', European Commission, July 2001.

"The open method should be a complement rather than a replacement for Community action... It should not be used when legislative action under the Community method is possible," the white paper concludes.

Some of the proponents of the open method, in particular the British government, were undoubtedly over-optimistic about its potential to accelerate reform in key Lisbon areas. But its critics miss important points about the role of the open method in EU policy-making. The open method is a necessary policy device in complex areas of structural economic reform. No single law can ever take into account the huge diversity of practice within European labour markets – consider the differing role of trade unions or national wage bargaining, for instance.

Many of the Lisbon targets also directly impact on issues such as tax and social security, which go to the heart of national sovereignty. The EU is committed to overhauling European social protection systems and to tackling social exclusion. The member-states agree that high marginal tax rates are a disincentive to poorer people seeking a job or coming off benefits. But each government must try to unravel the peculiarities of their own tax and benefits system in order to work towards the common EU goal of reducing marginal tax rates for low paid workers. The open method is thus the only method by which the EU can develop a pan-European approach in such sensitive areas.

Consequently, the EU needs to consider how it can better use the open method. First, the EU needs to re-examine and fine-tune the targets it uses for benchmarking. This is not as straightforward a task as it sounds. If targets are too tightly defined, they can have perverse effects as governments strive to meet these objectives at the cost of other policy goals. The British government, for instance, heavily revised its own targets for reducing health treatment waiting lists, after discovering that health workers were prioritising patients they could remove quickly from the waiting lists at the

expense of more complicated medical cases. On the face of it, the EU's target of internet access for every school is clear. However, member-states could meet this target by simply ensuring there is a computer in the headmaster's office, rather than making PCs accessible to pupils. Hence the decision by member-states to institute a new, more demanding target stipulating the ratio of computers to pupils.

Conversely, if governments define targets too broadly, in an attempt to add a qualitative dimension to the benchmarking process, the exact policy goals may become opaque. The EU has yet to define clear measures and targets for tackling social exclusion, partly because definitions of and data on poverty and exclusion vary greatly between member-states. For instance, different data on EU member-state educational performance led the OECD to produce two widely conflicting reports on EU educational standards in 2002.[12]

[12] *See Nick Clegg and Richard Grayson, 'Learning from Europe: lessons in education', CER, 2002.*

Ecofin should publish a full list of the EU's economic benchmarking targets – together with a measure of progress – as an annexe to its Lisbon synthesis report. The annexe should also list where and why targets may have been revised. Such a review would bring some much-needed transparency to the open method elements of the Lisbon agenda, and hopefully increase the pressure on member-state governments to deliver.

The EU also needs to find a means of making the 'peer pressure' element of the open method more effective. Clear targets and the annual progress review should make it easier for the Commission, and the European media, to name and shame those governments which are failing to push forward reforms. Pressure groups have used naming and shaming tactics very successfully to force multinational businesses to change their behaviour – perhaps most famously when Shell backed down over the disposal of the Brent Spa oil platform. However, in an EU context, naming and shaming is a double-edged sword: governments can respond by claiming

they are being victimised by 'Brussels'. Many of the EU's economic reform goals – such as a continued reduction in state aid, tight budgetary policies or the liberalisation of utility sectors – are politically contentious in member-states. France has long stalled work on energy liberalisation, despite the very public anger of the Commission and other member-states, such as Britain, Spain and Italy. In spring 2002, the German government succeeded in toning down Commission criticism of its budgetary policies, by appealing both to domestic public opinion and to other member-states, which were fearful that they might be the Commission's next targets.

The EU needs to consider devising a more formal legal framework for the open method. There is an existing precedent for such an approach in the form of the Stability and Growth Pact. The Commission annually scrutinises member-state budgetary policies and is able to issue a formal warning to any eurozone government which is not striving to meet the goal of a balanced budget in the medium term. The Commission, in fact, is legally obliged by the terms of the Stability and Growth Pact to issue the warning. However, as long as a government does not run a budget deficit of greater than 3 per cent of GDP, the warning is simply a form of peer pressure. Only if the 3 per cent threshold is breached, does the member-state risk further action, including the possibility of having to pay a fine.

The EU would find it impossible to devise a system of mandatory fines to punish member-states for failing to meet complex structural economic reform targets. Fines could also prove counter-productive: they would fall on those member-states with the worst economic record, perhaps making reforms even more difficult. Instead, the EU should introduce a new treaty clause, to increase the effectiveness of the open method. The system could be based on the sporting model of 'yellow card, red card': the Commission issues a public 'yellow card' warning to a member-state that is at risk of not meeting its reform commitments, and a 'red card' for a persistent failure to take action. Such a system still

would not guarantee that member-states took their economic reform obligations seriously. However, yellow and red card warnings would make it much more apparent to governments, the Commission, and above all, the EU population at large, when member-states were failing in their reform duties.

Ultimately, member-states and the Commission must ensure the open method becomes an integral part of the policy-making culture of the EU. The Commission needs to stop viewing the open method as a threat to its status. It will continue to take the lead on many economic reform issues, such as the creation of a single market in financial services, where the Community method remains the most suitable policy tool. But it cannot expect to use legislation to force member-states to reform their taxation or labour market systems. Rather, it should embrace its role as the EU's 'referee' and employ the yellow/red card warning system sparingly, but effectively, to cajole national governments into making progress. The member-states must also take the various elements of the open method process – from target setting to peer pressure – much more seriously. National parliaments should oblige member-state governments to provide regular explanations of how their domestic policies fulfil EU economic reform commitments. The EU, and particularly an enlarged Union, has the potential to become a great policy laboratory, where member-states can learn from the success and failures of others. The open method is the EU's only policy tool that will allow governments to benefit from this diversity.

Resolving the problem of EU technical legislation

The open method is not applicable in all areas of EU policy-making. The single market, in particular, requires a degree of legal uniformity so that businesses are able to compete on a level playing field. In this context, the EU will remain reliant on the traditional Community method. In recent years, the EU has attempted – not always successfully – to develop a more flexible legal framework for the single market. The Union has moved away from insisting on

complete legal harmonisation across the EU, to focus instead on devising broad-brush 'framework' directives. Framework directives seek to establish the basic regulatory principles for the industry concerned, but then permit member-states to adapt the legislation to local conditions. In general, framework directives provide a more efficient approach to extending the single market than complex harmonising directives.

However, framework directives are not in themselves sufficient to guarantee the smooth functioning of the single market. In fast-moving industries such as financial services or telecommunications, the EU frequently needs to supply additional detailed technical standards, in order to ensure a directive is implemented effectively. But the EU has no treaty clause governing how to devise and pass these 'implementing' measures.

EU institutions have responded to this problem in two ways. The Commission has sometimes fallen back on drafting overly detailed primary legislation, with directives amounting to eighty or more pages, as is the case with the investment services directive. This approach is cumbersome, inflexible and time-consuming. Complex legislation, such as the capital adequacy directive which governs the level of bank reserves, is often out of date by the time it is implemented across the EU. Yet any revisions of a directive must pass through the time-consuming full legislative procedure, which normally takes between three and five years.

More recently, the EU has made increasing use of 'comitology' procedures. A new directive will contain a clause which grants the Commission the power to produce detailed, technical implementing measures, without having to go through the full legislative procedure. The Commission then works with small committees consisting of expert member-state representatives to devise the necessary implementing measures. The Commission presents its proposal to the committee, which is then able to

recommend amendments and (normally) vote on it. If the committee is unable to agree with the Commission on the implementing measures, the matter is then referred to the Council of Ministers which can use QMV to block the Commission's proposals.

[13] See Fabio Franchino, 'The determinants of control of the Commission's executive functions', European Integration Papers, vol 3, 1999.

The EU has used comitology procedures to enact around 20 per cent of all legislation since the single market programme began in 1987.[13] There are currently around 700 different comitology committees – working on topics as diverse as seed types, food additives and corporate law. Moreover, the EU classifies three different types of committee, each with slightly different rules of procedure. Advisory committees, which can only issue an opinion rather than vote on Commission proposals, work on a wide variety of 'scientific' issues such as vetinary matters. Management committees are most commonly used in the detailed implementation of the Common Agricultural Policy. Regulatory committees deal with health and safety and other single market issues. Not surprisingly, even many member-state governments and EU insiders are confused about the rules and procedures of this comitology process.

More fundamentally, the European Parliament and external actors, such as lobby groups or businesses, find it difficult to scrutinise comitology measures. The committees still often work in secret: there is no central register, either of committee members or the issues being examined. While much of the work is on non-controversial technical standards, there is always the danger that the Commission and the committee could produce more far-reaching proposals, especially in politically sensitive areas such as financial services. In the late 1990s, the Commission almost inadvertently started a major trade dispute with Japan after taking the advice of a food safety committee and banning the import of Japanese seafood. The Commission failed to inform either the member-states or the Japanese government that it was taking this action, which was due to concern over the quality of

Japanese canning factories. Only some delicate diplomacy and the swift repeal of the ban prevented a tit-for-tat trade war.

The European Parliament plays a very limited role in the comitology process: it can ask the Commission to re-examine a proposal if it concludes the Commission has over-reached its implementing powers. However, the Parliament has no formal power to block or amend measures that pass through the comitology process, as it is able to do with legislation developed under co-decision procedures.

The problem of Parliament's limited scrutiny role came to a head in 2001, following proposals made by the high-level Lamfalussy group to speed up the passage of financial service legislation. Lamfalussy recommended the establishment of two new comitology committees in the financial services sector, to oversee work on the 'technical' issues related to the EU's programme to create a single market in securities. The aim was to accelerate the passage of new capital markets laws by reducing the quantity of legislation which needed to pass through the long-winded co-decision procedures.

The European Parliament objected that such a reform would undermine its powers to scrutinise vital financial services legislation – much of which might prove to be 'political' rather than 'technical'. A standoff between the Commission, which supported the proposals, and the Parliament ensued. In the spring of 2002 the Commission succeeded in brokering a compromise: the Parliament would enjoy 'equivalent treatment' to the Council of Ministers, meaning that it can now recommend changes to Commission proposals during a three month scrutiny period. The Parliament also persuaded the Commission that a 'sunset' clause should be written into the new procedures: the Commission's powers to use comitology procedures to produce financial services implementing measures will lapse after four years, unless all the institutions agree to extend them. In October 2002, EU finance ministers agreed to further extend the Lamfalussy model to the banking and insurance sectors.

Establishing EU agencies

One possible solution to the problems the EU faces in adopting technical rules and regulations would be to create a series of independent regulatory agencies. Most EU member-states already employ agencies to develop detailed technical rules and to police markets, particularly in sectors such as telecoms and medicines, where there is a clear public interest case for continued state involvement.

Indeed, agencies are becoming an increasingly important part of the institutional framework of western economies: consider, for example, the powers of the Securities and Exchanges Commission in the United States. A properly constituted agency can increase the long-term credibility of policy, by reassuring businesses and consumers that a change of government will not repeal the existing legal framework. Governments are increasingly reliant on credibility rather than coercion to enforce their policies, particularly since it is now relatively easy for businesses to relocate abroad if they object to heavy-handed policies.

The enforcement problem is even more acute at the European level. The Commission is almost entirely reliant on the goodwill of member-states for the day-to-day enforcement of EU legislation. Yet regulatory expertise and management skills vary widely across the member-states – and this gap is likely to increase after enlargement. The EU's existing system, with its heavy focus on new legislation and weak control of the enforcement process, may not be able to cope with the regulatory challenges posed by enlargement.

Independent agencies could also help the EU tackle its resource deficit – the fact that the EU is undertaking an increasingly wide variety of tasks without raising its administrative budget or staffing levels. With 18,000 staff, the Commission, it is frequently pointed out, is no larger than an average European municipal council. The Commission can seek help in drafting technical rules from member-state experts through the comitology procedures explained above. But the Commission is ultimately responsible for

drafting often extremely technical legislation. Increasingly the Commission lacks the expertise to be able to produce effective legislation for all sectors of the single market. The Commission's attempts at drafting the recent market abuse directive, which seeks to outlaw certain forms of share price manipulation across the EU, displayed a limited understanding of the problems of policing fast-moving capital markets. The Commission ignored the special position of financial journalists, for example.

Moreover, good regulation is not simply a matter of passing a law. It also requires detailed knowledge of, and intimate involvement with, the regulated activity on an on-going basis. Indeed, agencies can often improve the transparency of policy-making because they are closer to key stakeholders than government bureaucracies, in effect acting as intermediaries between the state and civil society. The absence of credible agencies at a European level is a major obstacle to the completion of a single market.

In theory, the EU already possesses a dozen institutions which are categorised as 'agencies'. But the vast majority of these bodies primarily gather information and lack full regulatory powers. Only three play any regulatory role: the office for harmonisation in the internal market, which is based in Alicante and deals with trademarks; the Community plant variety agency, which is located in Angers and examines plant variety rights; and the London-based European medicine evaluation agency, which makes technical assessments of medicine approvals. There is arguably only one European institution that resembles a fully-fledged independent agency, although it is rarely described in such terms: the European Central Bank.

A number of industries could benefit from the creation of a formal EU agency to oversee future regulatory developments in their sector. The telecoms sector is a clear case in point: rapid technological development means there is a constant need to update standards

and amend rules of access for the sector's companies. An EU telecoms agency would fulfil a number of important roles, advising national regulators and producing regulations to govern cross-border issues such as licensing, interconnection, frequency allocation and numbering. Unfortunately, in early 2002 a coalition of national telecom regulatory authorities (NRAs) scuppered a Commission suggestion to create a European telecoms agency, fearing a loss of their own powers.

The Commission has stated that agencies could contribute usefully to legislative and enforcement work. The Commission's white paper on governance states that the creation of "further autonomous agencies in clearly defined areas will improve the ways rules are applied and enforced across the union."

However, the EU's failed attempt to establish a dozen new agencies at the Laeken summit in December 2001 – albeit with highly restricted powers – has not set a happy precedent. More fundamentally, an obscure European Court of Justice ruling, dating from 1958, has hamstrung the EU's efforts to establish fully-fledged agencies. The so-called Meroni doctrine restricts the ability of the EU to delegate administrative tasks to institutions which are not named within the EU's treaties. The Court ruled that the EU could only delegate powers provided that: the delegation process does not disturb the balance of powers between the main institutions; that it only relates to powers already possessed by the Commission; that it relates to the preparation and formulation of executive acts; that the new body is not granted any discretionary powers; and that the Commission must continue to be held responsible for the new body's performance.[14]

[14] See G Majone and M Everson, 'Institutional reform: independent agencies, oversight, co-ordination and procedural control', in O De Schutter, N Lebessis and J Paterson (eds), 'Governance in the European Union', European Commission, 2001.

The Meroni doctrine is the principal reason why the EU has so far failed to develop a network of independent agencies that is capable of producing rules and regulations. In effect, the EU can only create agencies with real power through the laborious and politically difficult mechanism of writing specific new treaty provisions. A treaty revision may be the most suitable means of establishing a new institution in a very sensitive policy area, such as the European Central Bank. However, it is hardly a practical way of establishing regulatory agencies for individual sectors of the single market.

The EU should use the inter-governmental conference (IGC) in 2004 to establish a specific enabling provision within the treaty for the creation of agencies. Above all, the provision should clearly define accountability mechanisms for any new agency. The EU needs to strike the right balance between giving the agency sufficient independence to devise credible policies and ensuring the agency remains accountable both to member-states and the other EU institutions.

National governments typically have employed a number of mechanisms to achieve this balance: tightly defining the agency's remit; permitting the elected government to appoint the head of the agency; and ensuring parliament can scrutinise the agency's work. The EU should follow similar principles in developing a solid framework for the creation and policing of European agencies:

★ The Commission should draw up the statutory objectives for any new agency under the co-decision procedure, which means both the Council and the European Parliament could suggest amendments to the statute. The objectives should be narrowly defined, with strict procedural requirements that the agency must fulfil when developing new regulations. In particular, the statutory provisions should establish minimum consultation and transparency levels.

★ The Council of Ministers should have the right to appoint the head of the agency and to remove him or her in cases of under-

performance. The member-states should appoint a non-executive management board to oversee this appointment and to monitor the agency's performance. But all other staff appointments should remain the preserve of the agency itself.

★ The Commission should set-up an EU audit body along the lines of the US Office of Management and Budget. This audit body should monitor the overall performance of EU agencies, including expenditure and the quality of staff. The audit body should also conduct regular reviews of new regulations to ensure they are proportionate and remain within the confines of an agency's mandate. The audit body should present an annual review of the performance of each agency for scrutiny by both the Council of Ministers and the European Parliament.

★ The European Parliament has a key role to play in ensuring that agencies remain accountable and transparent. Parliament should have the formal right to scrutinise agency performance – in particular it should be able to summon key agency officials to hearings.

★ EU heads of state should not devote valuable summit time to disputes over the location of new agencies. Instead, the EU should establish an agency location committee – chaired by the head of the Commission's new agency audit body, and containing member-state representation – to consider where agencies should be sited. The committee should ask interested cities or regions to bid for the right to host an agency on the basis of published criteria, and select the preferred site on a QMV basis.

★ Businesses and individuals should have the right to seek a judicial review from the Court of First Instance, the European Union's junior court, of any agency decision that they believe to have breached its mandate.

Reforming comitology procedures

Agencies could help to reduce the problems the EU faces in dealing with technical regulatory issues, while actually enhancing the transparency and accountability of policy-making. However, agencies cannot help the EU resolve all of the problems in producing timely and efficient technical legislation. In order for an agency to be successful, the member-states need to have reached a broad political consensus about its core principles. While this may be the case in the telecoms sector, such a consensus does not yet exist in other sectors such as post and energy. The new European agencies would need to draw much of their staff and expertise from their national equivalents. So a new EU agency could not function properly without having highly professional agencies already in place in the member-states. Moreover, the regulatory and legal treatment of certain sectors – most notably financial services – still varies greatly across EU member-states. In the UK and Sweden, for instance, there is just one regulator for financial services companies, while other EU member-states have three or more regulatory bodies. A European regulator would find it impossible to function effectively while there was such a diversity of practice amongst member-states.

Thus, the Commission and the other EU institutions must continue to play an important role in drawing up detailed implementing measures. However, it is essential that the EU seizes the opportunity of the forthcoming IGC to reform the opaque and complex comitology system.

Recent European food scares, such as the BSE crisis, have demonstrated many of the weaknesses inherent in the existing comitology process. In a number of EU member-states, most notably France, the decision of the EU's vetinary committee to recommend that the Commission lift the ban on British beef exports was perceived as a political, not a scientific, move. Few understood why this group of previously anonymous experts were charged with taking such a major decision. The sprawling

nature of the EU's committee system means it is often impossible to tell who is really making policy: the Commission, experts or member-state officials.

The EU has tried to restore confidence in European food standards by establishing an agency to deal with decisions on public health and safety. However, only the Commission, in its white paper on governance, has so far considered the broader problem of how to reform the comitology system as a whole. The Commission's preferred solution – the greater use of EU regulations and the complete abolition of the comitology system – is unrealistic and undesirable.

In principle, the greater use of regulations – Commission-drafted laws which, once approved by the Council, are immediately applicable in all member-states – should speed up the legislative process. Regulations, unlike directives, do not need to be transposed into national law, which means they come into effect more quickly. Big business often prefers regulations: they create only one set of rules across the whole EU and do not leave room for non-uniform implementation at the member-state level.

However, as the Mandelkern high-level committee noted, the use of regulations can slow down the legislative process and even increase its complexity.[15] Member-states may insist that their particular concerns are taken into account during the drafting of the regulation, because they do not have the option of adapting the law for local conditions at a later stage. As a result, the EU often takes as long to negotiate a regulation as a directive, and the resulting legislation may end up even more complex and unwieldy.

[15] The Mandelkern group of member-state experts was charged with exploring ways to improve the quality of EU regulation. See Mandelkern group on better regulation, 'Final report', November 2001.

The greater use of regulations would ensure that the Council of Ministers and the European Parliament remained part of the legislative process. The abolition of the comitology procedure, however, would imply that the Commission had complete control over all 'technical' implementing measures. The Commission is in effect demanding full executive powers to draft and implement the detailed rules and regulations which supplement EU directives.

There are two substantial objections to granting the Commission such powers. Firstly, this would hardly solve the problem of the Commission's lack of resources that led to the creation of the comitology procedure in the first place. In many policy areas, the Commission does not have the expertise to draft effective rules and regulations – its knowledge of complex issues such as financial markets regulation, for example, is extremely limited. Furthermore, the exclusion of member-state representatives from the drafting process would increase the risk of the Commission failing to take national differences into account when producing new rules and regulations. The sheer volume of rules and regulations produced through the comitology process means that the Council cannot scrutinise each and every measure – many problems only come to light when the measures are implemented.

For all its limitations, the comitology process does as least imply that member-state governments are involved in the drafting of technical implementing measures. Member-state representatives are able to point out any particular difficulties they face with the proposed new rules, and can request that the Council vetoes the passage of unwarranted rules and regulations.

The EU urgently needs to improve the legal foundations and transparency of the comitology procedures, rather than abolishing the entire process. The Commission revealed in June 2002 that it would soon work on new proposals to streamline and improve the comitology system. The Commission should consider how the legal right of the Council and the European Parliament to monitor and scrutinise these expert committees could be more clearly defined:

- ★ The EU should follow the precedent set by the Lamfalussy agreement and make the Commission's right to draft technical implementing legislation subject to a 'sunset' clause. Thus the Commission's powers would lapse after four years unless the Council and the Parliament decided there was a specific need for an extension.

- ★ All comitology committees should be able to vote using the same rules. The committees should be able to block or amend Commission proposals using QMV.

- ★ Comitology committees should be subject to the same consultation and transparency procedures as the Commission. The committees should publish minutes of their meetings on a regular basis and engage in a consultation process with interested parties. The Commission should maintain a central web database of all committees and their current activities, including biographical details of their members.

- ★ The Council of Ministers should have the power of veto over all measures drafted through the comitology system. The veto should require a qualified majority vote, where a similar power exists for the primary legislation (the directive which granted the Commission its implementing powers). The Council should use the veto power sparingly, but it would help guard against the comitology procedures being used to disguise highly political decisions as 'technical' regulations.

- ★ The EU should amend the treaties to give the European Parliament a formal scrutiny role, on the basis of the right to 'equivalent treatment' which Parliament has gained from the Lamfalussy agreement. Parliament's role should extend beyond the oversight of capital markets legislation to cover all implementing legislation. Ideally, Parliament should have three months to examine a piece of implementing legislation, if it so chooses. MEPs should be able to exercise a veto, on grounds of

quality, or if the Commission has exceeded its implementing powers. However, the Commission should be able to appeal to the Council of Ministers to override a parliamentary veto.

Reform of the comitology system is vital, if the EU is going to be able to deliver on its economic goals. The EU's three main institutions should focus on swiftly agreeing the broad principles of new directives, leaving expert committees to flesh out the details. However, even detailed technical rules and regulations must be open to proper scrutiny and amendment where necessary, if mistakes are to be avoided.

4 Improving the quality of EU regulation

The previous two chapters have focused on what the EU needs to do to bring greater strategic leadership to economic policy, and to develop new tools to handle an increasingly complex legislative agenda. However, the proposed reforms will make little difference if the Union does not also improve the quality of its laws and regulation.

The EU is prone to producing poorly drafted or disproportionate legislation because it does not yet employ proper regulatory impact analysis (RIA) procedures when preparing new laws. Equally, the consultation process for new legislation is often rudimentary. Important practical, as well as political, problems are missed during the drafting phase. The Council of Ministers prefers to reach most decisions by consensus, sometimes sacrificing the quality of the legislation in favour of ambiguous and complex compromises. For instance, the existing investment services directive – the cornerstone of the EU's single market in securities – contains a number of poorly framed clauses which continue to hinder cross-border securities activity in Europe. These clauses, which ambiguously define what regulatory obligations security exchanges must fulfil to trade stocks, were the result of an Anglo-French compromise following intense competition between the London Stock Exchange and the then Paris Bourse (now part of Euronext) to list domestic French shares.

The quality of legislation can deteriorate, even after member-states reach agreement at the EU level. Member-states may 'gold–plate' directives meaning that governments supplement the EU legislation with additional regulations of their own. Member-states sometimes find it difficult transposing EU legislation into national law. For instance, in June 2002 a British parliamentary select committee

heavily criticised the British government for its poor implementation of new EU rules on the disposal of old fridges. The select committee claimed the government had drafted the legislation without understanding the full implications of the new European rules. In particular, the British government appeared to have little idea of how many fridges would need recycling. As a result, Britain was faced with a mountain of discarded fridges and very few facilities for recycling them.

Above all, the EU lacks effective enforcement procedures to ensure that European laws are fully and fairly applied at the national level. The Commission has powers to warn – and even fine – member-states for failing to pass, or ignoring, key elements of EU legislation. However, member-states can drag out infringement proceedings for years. For instance, France took three years to comply with a Commission decision to lift the ban on British beef exports despite intense political pressure. The French government also provoked a major row with the Commission and other member-states in 2000 because of its refusal to meet an EU deadline in opening up parts of its electricity market to competition.

EU enlargement will make the task of drafting, implementing and enforcing good quality regulation even harder. The Commission will need to take account of a greater range of national sensitivities and idiosyncrasies when drafting new rules. Moreover, many of the new member-states lack the administrative capacity to effectively implement new EU rules. The Commission already struggles to ensure that European law is fully implemented in the existing 15 member-states.

In the last two decades, the EU has begun to shed the belief that only Commission bureaucrats and their member-state political masters should participate in the legal and regulatory processes. However, the Commission has made only sporadic efforts to fully involve parties affected by EU law – such as businesses, unions and NGOs – when drafting new laws. EU institutions have begun to make an

attempt to improve the quality of law-making: 'better regulation' is a formal target in the Lisbon conclusions. The high level Mandelkern group on improving EU regulation reported to the Barcelona summit in the spring of 2002 with a number of useful suggestions for reform.

However, the EU is still a long way from resolving its regulatory problems, as the furore in late 2001 over the Commission's proposals for a prospectus directive demonstrates. The Commission failed to consult adequately before drafting the directive – designed to establish common rules on the information companies must provide when trying to raise capital – because it felt under pressure from the Council of Ministers to deliver the new law quickly. As a result, the Commission drafted legislation, which, though meant to make it easier for companies to quote their shares anywhere in Europe, risked undermining the EU's smaller company stock markets. A series of European Parliament and Council amendments, designed to remedy these flaws, subsequently greatly delayed the passage of the directive.

Clearly, some parts of the Commission still hold to the view that it possesses a monopoly on legislative wisdom, and that consultation is an optional extra rather than an integral part of good law-making. This chapter examines five areas of the legislative process – simplification, impact analysis, consultation, implementation and enforcement – where reform would contribute greatly towards improving the overall quality of European regulation.

Simplification

The conclusions of the Lisbon European Council stressed that poorly framed and cumbersome legislation is a growing burden for European businesses. Smaller companies, which lack the well-staffed legal departments of multi-nationals, find compliance with many EU directives and regulations particularly costly and time-consuming. As

the Commission admits, the 80,000 pages long *acquis communautaire*, the EU's consolidated body of law, is "clearly cumbersome for economic operators and the man in the street alike."[16] For example, the EU has passed no fewer than 24 different directives which contain details on safety standards for agricultural tractors.

[16] *See 'Simplifying and improving the regulatory environment', communication from the European Commission, December 2001.*

The EU has taken some first steps towards both removing superfluous legislation from the *acquis* and simplifying other overly complex regulations. The Simpler Legislation for the Internal Market programme (SLIM), established in 1996 by the Santer Commission, represented the first serious attempt to try and prune the EU law-book. A number of specialist committees have so far examined EU laws relating to 14 sectors, ranging from ornamental plants to the recognition of educational diplomas, and subsequently simplified some legislation.

However, the SLIM programme remains small in scale and is restricted to dealing with legislation that has been on the statutes for at least five years. Moreover, some member-states have tried to obstruct the work of the SLIM programme, fearing it could either provide an excuse for full-scale deregulation, or re-open political discussions on already agreed rules. Belgium, Italy and Portugal, for instance, blocked a planned expansion of the SLIM programme, claiming that it would dismantle settled Community legislation.

The EU needs a more systematic and targeted programme of simplification of existing European regulation. The Mandelkern committee has proposed an ambitious agenda which would lead to the codification of existing laws and a 40 per cent reduction in the number of pages of legislation by 2004. The member-states and the Commission should strongly support this proposal. Indeed, the codification process should run in tandem with the EU's efforts to devise a clear and concise constitution – the goal of both the Convention on the future of Europe and the forthcoming IGC.

However, the EU must quickly agree on interim targets and a method for fast-tracking the codification procedure. A team of independent experts, advised by Commission and member-state legal staff, should undertake the codification procedure to avoid the politicisation of the process. The Council of Ministers should have the opportunity to review the results as a whole, but not negotiate on individual revisions.

While the Mandelkern plan would help clear up the clutter of existing legislation, the EU should also step up efforts to guarantee future rules and regulations are clear and concise. The EU should consider greater use of 'sunset' clauses – which ensure that legislation will expire unless formally renewed – to keep the rulebook clean. The Commission should also devise indicators to monitor the clarity of new legislation and regularly consult on how it could further improve the accessibility of EU law.

Moreover, if the EU is serious about easing the burden of regulation on European businesses, member-states will also need to review the quality of their domestic legislation. EU legislation represents only a small part of the law-book in any member-state. A recent survey conducted by the Swedish federation of businesses estimated that just 10 per cent of business regulations in Sweden derive from the EU. Italy has around 150,000 different laws on its statute book.[17] The Commission, in conjunction with the new enterprise council, should draw up a series of member-state indicators and targets for improving the regulatory environment as a whole.

[17] *See Claudio M Radaelli, 'Governing European regulation: the challenges ahead', European University Institute, RSC Policy Paper, no 98/3, 1998.*

Regulatory impact assessments

Ill-considered regulation can add disproportionately to business costs, limit consumer choice and undermine economic competitiveness. Poor quality laws can have a particularly negative impact on small businesses. The OECD estimates that

small and medium sized enterprises in Europe (SMEs) spend around 4 per cent of their total turnover on complying with national and EU law.

Most member-states recognise that regulatory impact assessments (RIAs) should form an integral part of the legislative drafting procedure. By fully examining the costs and benefits of the proposed new regulation, a thorough RIA can reduce the compliance cost for businesses, and prevent superfluous rules reaching the statute book. A fully-fledged RIA should not just be limited to an examination of business costs. It should also consider environmental and social factors. RIAs are a tool to help policy-makers reach an informed choice about the economic, social and environmental costs and benefits of new legislation. However, RIAs are not an exact science and they cannot replace the political process, nor be limited to factors which are easy to quantify. Instead, RIAs should reduce the risk of introducing disproportionate or counter-productive regulation.

At present, RIAs are still not fully integrated into the EU's legislative procedures. Some Commission directorates-general, along with some member-states, remain sceptical about the benefits of RIAs – perhaps fearing that they may undermine their ability to take independent political decisions. They falsely believe that RIAs will dictate the style and form of all legislation. In reality, however, the Commission and national legislators are still free to make rules as they see fit. Moreover, some business organisations resent the inclusion of environmental and social factors. In contrast, many NGOs feel RIAs are too often used as an excuse by businesses to ward off new social and environmental legislation.

At present, RIAs are employed on a piece-meal basis in the drafting of EU legislation. However, the Commission is now committed to introducing a more coherent analytical process, to ensure that all major proposals include an assessment of their economic, social and environmental consequences. RIAs need to become a standard part of

the Commission's legislative culture. The Council and the European Parliament should also carry out RIAs, if they substantially amend a piece of legislation. The Commission should establish a regulatory assessment office within the secretary-general's office to monitor compliance and spread best practice throughout the directorates-general.[18] Only in extreme emergencies – such as rules tightening aircraft security following terrorist attacks – should the Commission draft legislation without conducting a RIA. The onus should be on the Commission to justify any decision to dispense with the analysis process. The Commission should also conduct an impact review of any legislation passed without an RIA within two years.

18 See 'Regulatory impact analysis: improving the quality of EU regulatory activity', European Policy Centre, Occasional Paper, September 2001.

Consultation

The idea that business organisations, NGOs and the wider public have a crucial role to play in the European legislative process is a relatively recent innovation. The EU has possessed a limited consultative body, in the form of the economic and social committee (Ecosoc), since its inception. However, it is only in the last few years that the Commission has begun to try and make wider consultation a formal part of the legislative process. Indeed, the Commission has arguably made greater progress in consulting a broad range of opinion than many member-states – the Commission currently organises no fewer than 700 consultation forums.

But the experience of the prospectus directive, which was not an isolated incident, suggests that the EU has not yet fully integrated consultation into its law-making procedures. The EU is still inclined to see consultation as an optional extra: an ideal rather than a fundamental part of the legislative process.

Wide-ranging consultation procedures should yield both practical and political benefits. In practical terms, the legislative process will

be quicker and produce better quality regulation if consultation is carried out at an early stage. Certainly, a proper consultation process would have helped the Commission to avoid the major drafting flaws in the prospectus directive.

Moreover, proper consultation procedures greatly enhance the accountability and the credibility of new legislation. In increasingly complex societies, governments should not just rely on traditional mechanisms of political and administrative accountability, such as parliamentary scrutiny, to ensure legislation is credible and proportionate. Governments, and the EU, have to develop a wider sense of accountability: one which recognises that civil society is not just a passive object of the administrative process but that it has an active role to play in the formulation of policy. Consultation is the main mechanism by which this goal can be achieved. Consultation is an even more fundamental requirement at a European level, because individuals and organisations affected by EU legislation cannot register their disapproval of new rules and regulations directly through the ballot box.

This is not to say that the Commission and the Council should take on-board all the views received during a consultation procedure. Legislators should continue to use their political judgement and choose between competing arguments. But the EU needs to engage with all interested parties and explain why it has opted to take a particular course of action. Consultation imposes discipline on the legislator and ensures the legislative process is transparent.

The major risk in extending consultation procedures within the EU is that the best organised lobby groups, whether they be business, environmental or social, could 'capture' the legislative process. After all, there are reputedly as many lobbyists as Commission staff in Brussels.

However, there is little evidence to suggest that the EU legislative process is vulnerable to capture. Moreover, well-designed

consultation procedures should be able to guard against this risk in the future. One option is that groups which wish to participate in EU legislative consultations should join a central register. The organisations would need to provide details of their membership structure and sources of funding to demonstrate they are genuinely representative of an important civil society interest.

However, rules which seek to govern which groups can and cannot participate in the consultation process would be extremely difficult to define, and could lead to the whole-scale exclusion of perfectly reputable groups. For instance, a minimum size requirement could discriminate against newly formed groups.

In a sense, the creation of a centralised register of interest groups could suffer from the same drawbacks as the Ecosoc. The Ecosoc was established by the Treaty of Rome to ensure that trade unions and business organisations are represented in the EU's decision-making process. There was a certain logic to establishing a formal consultative body during a period when consultation was not normal practice within government, pressure groups barely existed and communication with Brussels was more difficult.

But the Ecosoc has long outlived its usefulness. The EU has made various attempts to modernise the Ecosoc's mandate and make-up – most recently in the Nice treaty which widened the Ecosoc's membership to encompass 'civil society'. Yet a limited number of nationally appointed members can never reflect the real diversity of European society. The Ecosoc's permanent presence in Brussels means it is too much part of the EU establishment. The Ecosoc is now an obstacle to the EU embracing more wide-reaching consultation procedures. The Commission is still too tempted to regard the consultation process as complete, once the Ecosoc has supplied its views on the latest piece of legislation.

Above all, technology is making such a centralised approach to consultation unnecessary. Any group or even an individual with

access to the internet can theoretically take part in a consultation exercise. The Commission is perfectly able to make its own judgement on which comments it values the most. However, groups which wish to participate in the consultation process should follow the same standards of openness as the Commission. All comments submitted during the consultation process should be available on the relevant Commission website. Any participating organisation should attach basic background information to their comments, including details of any other EU consultation they are involved in. Such transparency will guard against the risk of 'capture', ensuring that all participants can see what has, and has not, influenced the Commission's decisions.

Consultation is arguably so important that the EU may need to legally compel the Commission to consult on all new legislation. However, a legal approach would reduce flexibility and innovation – the Commission could simply grudgingly follow the letter of the law. Equally, groups that are excluded from the process, for whatever reason, may be tempted to launch a discrimination case against the EU due to their non–participation.

Instead, the EU should draw-up a code of best practice for all Commission directorates-general. The code should include guidelines on: how Commission staff advertise that a consultation procedure is to take place; how the Commission collects and publishes the results; and what information participating organisations need to supply. Equally, the code should encourage directorates-general to be pro-active in developing their consultation procedures by regularly reviewing which groups are participating, and attempting to fill any notable gaps.

However, the new code of best practice should also take into account the practical limits of the consultation process. Clearly, there is a risk that the Commission could become overwhelmed by the paperwork produced by a wide-ranging consultation process. The EU should introduce a time limit on the consultation process –

the Mandelkern group suggests a standard minimum consultation procedure of 16 weeks. The Commission should also limit the length of comments that groups are permitted to submit – 2,000 words should be sufficient for any organisation to present their case.

Implementation

Ultimately, it is individual EU governments which are responsible for transposing and implementing the vast majority of EU laws. As the Commission regularly points out, many of the perceived problems of EU legislation do not derive from a failure in its own role, but from inadequate transposition and implementation of EU legislation by the member-states.

The failure of member-states to implement European law is only part of the problem. Businesses often complain that governments 'gold-plate' EU legislation, adding extra requirements and complexity to European legislation when transposing it into national law. For instance, in June 2002 the Corporation of London, together with a number of UK based financial services trade organisations, asked the British government to extend the consultation period for the implementation of the various directives contained in the EU's financial services action plan. The financial services groups argued that the British government too often adds unnecessary extra detail to EU measures during the transposition stage, thereby increasing the regulatory burden on businesses.

The Commission is the only institution with the means to tackle recalcitrant governments. The Commission should develop a clear strategy aimed at improving the implementation record across an enlarged EU:

⋆ *Establish an implementation monitoring office*

The Commission should set up a dedicated monitoring body within the secretary-general's office, to oversee the

implementation of EU law in member-states. The new office should lay down broad guidelines as to how the directorates-general liaise with national governments during the implementation process. The office should develop a body of expertise to help governments with particular implementation difficulties. The monitoring office should also conduct an annual survey on the implementation of all EU legislation – not just for the internal market, which is already monitored by the Commission – and present the results to the Council and the European Parliament. The Commission should also place greater emphasis on helping member-states transpose and enforce European laws. The Commission's new monitoring office should recruit staff, placing particular emphasis on member–state secondees with legal expertise. The Commission should also ask the Council to provide financial and human resources to those countries facing difficulties in implementing EU laws. Low pay and standards of training in some member-state bureaucracies could in future jeopardise the integrity of the single market.

★ *Member states should appoint transposition correspondents*

Member-states should act on a Commission suggestion to appoint 'transposition correspondents' to manage the exchange of information between member-states and the Commission. At the moment, bureaucrats who are not involved in the drafting of the original EU law too often carry out the transposition process. The fact that separate officials manage these two tasks means that member-states often fail to foresee the full implications of new EU rules. For instance, the British government is facing criticism for its failure to effectively oversee the transposition and implementation of a series of waste directives – including one on the disposal of television sets and other electrical equipment. As a result, the country is blighted by growing mountains of old fridges and tv sets. Around half of all EU member-states, including Spain, Portugal, Italy and the Benelux countries, are struggling to meet a deadline on the introduction of the late payments directive, because of problems transposing the key demands into national law. As a result, businesses will only be able to seek redress for late payment in those countries, such as France and Germany, which have implemented the new rules.

Enforcement

The final weakness in the EU's regulatory system lies in the enforcement process. The Commission is able to take action against member-states for failing to adhere properly to EU law under Article 226 of the EU Treaties. Any individual or business can ask the Commission to pursue a case against a member-state for an alleged failure to apply EU law. However, the Commission's secretariat-general, which oversees the enforcement process, is also increasingly initiating its own infringement cases. In 2000, for instance – the last date for which there are comprehensive statistics – the Commission initiated nearly 900 of the 1300 new cases.[19]

[19] See '19th annual report on monitoring the application of community law', European Commission, 2001.

The infringement process has three stages:

★ first, the Commission issues a 'letter of formal notice', setting out the complaint and requesting the member-state to respond within two months;

★ second, if the Commission is not satisfied with the member-state's response, it can issue a 'reasoned opinion', explaining exactly why it believes there has been an infringement of EU law and requesting the member-state to remedy the problem within two months;

★ finally, the Commission can take a member-state to the European Court of Justice for a persistent breach of EU law. If the Court rules in favour of the Commission, the Commission can then ask

the Court to impose a punitive fine for non-compliance.

Preliminary figures show that in 2001 the Commission issued 1050 letters of formal notice and 569 reasoned opinions for infringement of EU law by member-states. The Commission referred a further 162 cases to the European Court of Justice.[20] These infringement cases show how far the EU is from having a uniform single market. The most recent internal market scoreboard, published in November 2001, found that nearly 10 per cent of single market legislation was not implemented across all EU member-states.[21]

[20] See 'Application of EU law', Commission website, http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm.

[21] See 'Internal market scoreboard', European Commission, November 2001.

The Commission also faces a serious problem in trying to deal with a repeated breach of European law by a member-state. The Court process is long and convoluted: the Commission must normally wait several years to secure a judgement. Even after a favourable judgement, the Commission must then take a second case to the Court to impose a fine on the offending country. For instance, in May 2002 the Commission referred France back to the Court – and requested that the Court impose a daily fine of €242,650 – because of the French government's persistent failure to implement in full directives on life assurance and non-life insurance. The Commission first won a Court ruling against France in 1999, while the original implementation deadline for these directives was eight years earlier in July 1994. France is also guilty of an even more long-standing breach of Community law, despite an adverse court judgement: the government has still not implemented a directive protecting wild birds which dates back to the late 1970s.

The Court has only ever forced one country – Greece – to pay a fine. In July 2000, the Court fined Greece €20,000 a day for its failure to enforce waste disposal rules, which had led to the repeated pollution of a river in Crete. The Commission greeted the

decision as a landmark ruling, claiming that its enforcement powers had real teeth. Indeed, the Greek government remedied the problem within a year and the case is now closed. However, the Commission received the original complaint about the pollution problem in 1987, while the Court first upheld infringement proceedings against the Greek government in 1992. In total it took 14 years for the case to wind its way through the Courts and for the Greek government to take remedial action.

The enlargement of the EU will only make the Commission's job more difficult. The Commission will need to monitor the implementation of EU law in a total of 25 countries. If existing trends continue, the Commission would need to issue around 1750 letters of formal notice a year, while the back-log of cases reaching the Court would only increase.

The Commission's secretariat-general has made a number of reforms in recent years in an attempt to improve the efficiency of its enforcement work. It has introduced fortnightly discussions of infringement cases and now monitors developments in all cases via a central database. However, the Commission urgently needs to consider three reforms to prevent its enforcement efforts grinding to a halt under the sheer weight of cases:

★ *Increase the resources devoted to enforcement*

The Commission should allocate additional resources to the secretariat-general to deal with enforcement. It should also ask the Council for extra financial help for its enforcement efforts, emphasising that the EU's credibility is at risk if its laws are not enforced. The Commission should also encourage the Court to devote more resources to infringement cases so that serious breaches of EU law by member-states are dealt with more speedily.

★ *Pursue infringement cases in a more systematic manner*

The Commission is not obliged to pursue any individual infringement case. While it has often acted quickly, such as on the French ban on British beef exports, the examples given above demonstrate that many cases languish unresolved for years. Such uneven enforcement of rules causes resentment between member-states and damages its credibility, providing perfect ammunition for critics of the EU. The Commission should set down clear guidelines, complete with a timetable on how it intends to deal with infringement cases. For instance, it should review member-state implementation of a new directive after six months and launch infringement proceedings, if necessary, within a year. The Commission could also ensure that future directives contain non-compliance penalty clauses, so that member-states are forewarned of the costs of non-implementation.

★ *Toughen Court of Justice procedures*

Infringement cases take far too long to wind through the Court of Justice and consequently do little to deter governments from ignoring EU laws they dislike. The Commission should press for a new fast-track infringement procedure to be introduced in the IGC of 2004. The Commission should be able to ask the Court for the right to levy a fine as soon as the system of formal warnings is exhausted. This reform would effectively halve the time it takes to fine a member-state. Member-states would have the right to appeal, and consequently have the fine repaid. However, governments would lose the incentive to drag out infringement proceedings unless they had a very strong case. The Commission already possesses similar powers in state aid cases.

These reforms would help toughen enforcement procedures. But the EU's record on implementation will only truly improve if there is

also a change of culture within the Commission. In an enlarged Union, the Commission's role as Europe's legal 'policeman' will be absolutely crucial. There is a real risk that the single market, in particular, could fragment if the member-states fail to implement and enforce EU law in an effective manner. However, the Commission too often believes that its main role is to invent and develop new policy rather than act as the guardian of the treaties.

The success of the Commission's competition directorate does give some grounds for optimism. The competition directorate is arguably the most respected arm of the Commission, precisely because its work is focused on ensuring the even and effective implementation of competition law throughout the EU. The directorate is not afraid to face down member-states when they contravene state aid rules or attempt to intervene in support of a national industrial champion. Rather than dismissing the vital work of enforcement as beneath its dignity, the Commission should accept it as one its most important tasks in an enlarged union.

5 Summary of recommendations

★ The council of finance ministers should elect its own chair to serve for a period of two and a half years. The chair should prepare Ecofin's annual work programme and produce a synthesis report each spring, on progress towards meeting the Lisbon targets. So long as the Euro Group and Ecofin remain separate, the chair should hail from a eurozone country and head both formations of finance ministers.

★ The council of finance ministers should assume leadership of the EU's efforts at economic reform. Ecofin should become a super-council, in effect acting as a general affairs council for all of the Union's economic policy-making. In return for this key strategic role, only the elected chair should in future attend European Council meetings.

★ The EU should go a step further than the Council reforms proposed at the Seville summit in June 2002, and merge the plethora of single market councils into a single enterprise council. This new council should push forward structural reform and place a special emphasis on improving the environment for entrepreneurs and small businesses.

★ The Commission president should appoint a senior commissioner to oversee the Commission's work on economic reform. The 'Lisbon commissioner' should focus, in particular, on refining and developing the Commission's approach to the non-legislative elements of the economic reform programme.

★ The EU needs to make better use of the open method of co-ordination to meet its economic policy goals in fields such as labour market and pension reform. The EU should introduce a

new treaty clause allowing the Commission to issue formal 'yellow' or 'red' cards to member-states which fail to meet their reform targets. In addition, Ecofin should publish a full list of the EU's economic benchmarking targets, together with a measure of progress, as an annex to its Lisbon synthesis report each year. Such a system would increase the clarity and transparency of the peer pressure system. However, ultimately the open method will only succeed if it becomes an integral part of the policy-making culture of the EU.

★ The EU should adopt a new treaty clause to make it easier to establish regulatory agencies. The creation of independent agencies would help the EU to improve the quality and transparency of regulation for sectors such as energy and telecoms. The EU should also establish a solid framework for the creation and policing of agencies, including the establishment of an audit body within the Commission secretariat-general to monitor agency performance. The Council of Ministers should have the right to appoint the head of an agency but not other staff. The Council should establish a non-executive management board to oversee agency performance. The European Parliament should also monitor agencies through regular hearings with key officials, and have the right to amend an agency's statutory objectives – subject to a veto by the Council.

★ The EU should adopt a new treaty clause which clarifies the different roles of the Commission, Council and European Parliament in approving and monitoring implementing rules and regulations. The European Parliament should have the formal power to scrutinise and recommend changes to measures developed by the Commission and the system of specialist committees – known as comitology – within a three-month period. All comitology committees should follow the same voting rules and be subject to the same consultation and transparency procedures as the Commission.

★ The EU should introduce a systematic and targeted programme of simplification for existing regulations. The EU should endorse the target established by the Mandelkern high-level committee of a 40 per cent reduction in the total number of pages of legislation. To have any chance of success, the EU should establish a team of independent experts to undertake this task. The Council should have the right to review the results as a whole but not to negotiate on individual revisions.

★ The Commission should establish a regulatory assessment office, within the secretariat-general, to spread best practice in the use of regulatory impact analysis throughout the Commission's directorates-general.

★ The EU should draw up a code of best practice on consultation for the Commission. The code should ensure that all the Commission directorates-general undertake a wide-ranging consultation process which is open to all. The spread of new technology means there is no longer a need for permanent institutionalised consultative bodies, such as the economic and social committee, which should be abolished.

★ The Commission should establish clearer guidelines on how member-states should implement EU legislation. To improve the Commission's understanding of the difficulties that governments face in implementing EU law, the Commission should recruit more staff, or ask for secondees, with experience of national laws. Member-states should in turn appoint transposition correspondents to liaise with the Commission during the implementation period.

★ The Commission should increase the resources devoted to enforcement and not be afraid to ask member-states for more money to fulfil this vital task. Infringement cases pass too slowly through the Court of Justice and consequently do little to deter governments from ignoring EU law. The Commission needs to

develop clear and consistent guidelines on how it intends to pursue future infringement cases. The EU should amend the treaty to introduce a new, fast-track infringement process. In future, the Commission should only need to win one case in the Court of Justice to be able to impose a fine on a member-state for a breach of EU law. Member-states should have the right of appeal, and have the fine repaid, but only if the Court overturns the Commission's original complaint.

★

★ **New designs for Europe**
Katinka Barysch, Steven Everts, Heather Grabbe, Charles Grant, Ben Hall, Daniel Keohane and Alasdair Murray
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EUROPEAN ECONOMIC REFORM: TACKLING THE DELIVERY DEFICIT

Alasdair Murray

The EU has set itself a series of ambitious economic reform goals, but so far failed to deliver on its promises. Alasdair Murray argues that the council of finance ministers should in future take the lead on all economic reform matters. The EU should also make better use of its 'soft' policy tools, build-up a system of independent agencies and overhaul its complex and opaque system of expert committees. After enlargement, the EU will only be able to guarantee the long-term success of the single market and economic reform if it pays much more attention to the implementation and enforcement of existing European laws.

Alasdair Murray is director of the business and social policy unit at the Centre for European Reform.

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