



Quality standards for EU legislation & how to safeguard them

Conference 'Simple is Better'

Amsterdam

October 8 2004



Improving quality: what is the problem?

- What is the problem? What are the standards?
- Studies c.a.
 - Molitor-group 1995 (*Legislative & administrative simplification* - Com (95) 288)
 - Koopmans 1995 (*The Quality of EC Legislation*)
 - Mandelkern 2001 (*Mandelkern Group on Better Regulation*)



Universal quality standards?

- **Not a single ‘gold’ standard**
 - depends on context and function
- **Quality =**
 - making it ‘work’
 - allow legislation to perform its functions: to ‘serve and protect’
 - *to provide legal certainty & be an instrument to achieve policy goals at the same time*



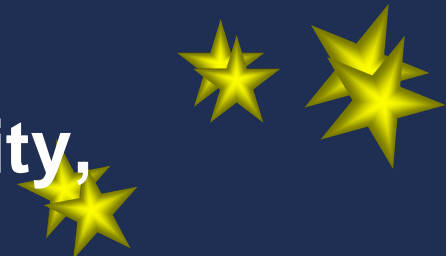
EU standards

- **Koopmans 1996, Piris 1998 - EU standards**
- **1. Necessity (alternatives)**
- **2. Legality**
 - legal basis, subsidiarity, in accordance with law, etc.)
- **3. The principle of the right fit**
 - what was the (cause of the) problem & does the Act solve it?
 - a.k.a. principle of effectiveness






EU standards


- **4. Co-ordination**
 - What kind of instrument?
 - Coherence and consistency
 - Margin of discretion (for the Member States)
- **5. Proportional effects**
 - Formal or informal impact assessment?
- **6. Implementation & enforcement**
- **7. Technical quality (drafting quality, consolidation, accessibility)**



Legislative problems

- **Drafting quality**
 - **Technical quality** (legal quality, clarity, simplicity, internal consistency, translatability, comprehensibility, etc.)
 - **Accessibility and consistency of the EC legislation**
- **Implementation, incorporation and transposition**
 - **Paper-implementation culture**
 - **‘Silent’ losses** - *good-repute requirement* 
Directive 96/26 for road haulage operators and 
road passenger operators - ‘serious offence’ 

Legislative problems

- One-dimensional, policy oriented legislative process?
 - Pushing/rushing to ‘yes’
 - No systematic assessment of alternatives, or (external & technical) legislative review
 - Focus on achieving policy goals
 - Cooperation between legislative partners
 - Horizontal communication between institutions *Free access to information on the Environment 90/313*
 - Vertical: policy preparation and implementation
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Legislative problems

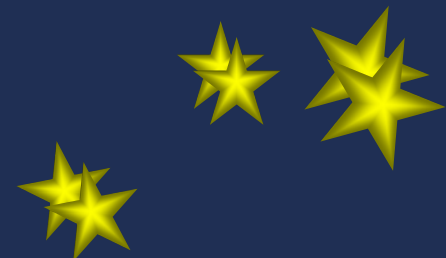
- Compliance and enforcement
 - How to cope with deliberate ambiguity?
 - Enforcement expertise, capacity
 - *Preserved woods in the Basle regulation 259/93 (Quality, implementation and enforcement 2000)*
- Impact assessment
 - Unforeseen administrative, bureaucratic burdens, environmental impact, complications implementation and enforceability, boycotts because of sentiments of oppressiveness & intrusiveness (*public procurement legislation?*)

Legislative problems

- **Feedback**
 - **No feedback-culture - no cyclic processes (inception, design, legislation, implementation and review)**
 - **Byzantine corpus of Community legislation**
 - **Legislative 'flood' (completion of the internal market)**
 - **Overcomplicated, inaccessible**
 - **Piece-meal legislation (consolidation/recast)**
 - **(Ab)use of legislative instruments**
 - **Directives and regulations - legal base**
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Legislative problems

- **Consultation**
 - **At what stage?**
 - **Transparency**
- **Delayed transposition**
- **Double play by the Member States?**
 - **White paper on European Governance 2001**
- **etc.**



Serious problems or politics?

- **Gaining Perspective:**
 - Problems are the result of the unique EC system, (community method)
 - They come with the territory
 - Muddling through, step-by-step-approach
- **Dutch (British, Swedish) preoccupation?**
 - Quality problems are in the eye of the beholder
- **Result of boycott-strategies of the Member States?**
- **Blame it on Brussels?**



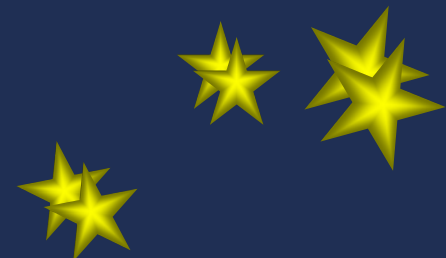
Some effects of poor legislation

- Non-compliance
- Heterogeneous application
- Market distortions
- Damage to competitiveness
 - **burden of regulation 2-5% of GDP EU**
- Problems with enforcement & compliance
- Delayed or incorrect implementation



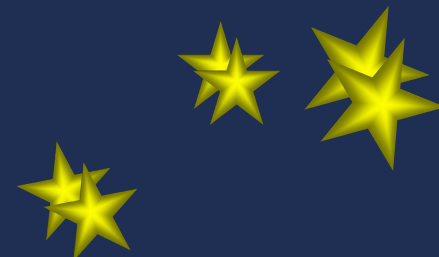
Some effects of poor legislation

- Law suits - damages
- Ineffectiveness of policies
- Interpretation problems



Remedies

- Legislative policies EC until 2002:
 - **Simplifying legislation**
 - SLIM-groups (14 projects since 1996, 5th phase)/Best - business effect test
 - **Interinstitutional Agreement 1998**
 - on common guidelines for the quality of drafting of Community legislation (**OJ EC 1999 C 73/1**) – 22 December 1998
- Stepping it up after 2002



Remedies

- 1. Regulatory impact assessment structure
 - (Action plan Commission) impact analysis ex ante
- 2. New Interinstitutional agreement on Better Law-Making
 - (31 December 2003, **OJ C 321, 1**)
- 3. Simplification
 - Simplification program - codification and consolidation/reducing volume



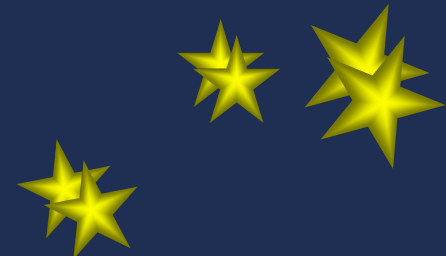
IA 2003 Better Law Making

- Less technical, more substantial than IA 98
- Common commitment to improve quality
- Better coordination between institutions
 - Multiannual programming/indicative timetable
- Improve transparency and accessibility
- Explanation/justification choice of legislative instrument (legal basis)
- Use of alternative methods of regulation
 - Co-regulation/self regulation



IA 2003 Better Law Making

- **Improve implementation of EC Acts**
 - **New comitology-decision (?) - Treaty establishing the Constitution of the EU**
 - **New competence for the Commission (articles 35-37 European Constitution) – delegated regulations**
- **Improving the quality of legislation**
 - **Pre-legislative consultation**
 - **Impact analysis (ex ante evaluation)**
 - **Check on consistency of texts**



IA 2003 Better Law Making

- **Better transposition and application**
 - **Stricter application of time limits transposition**
 - **Annual reports on transposition (name & blame)**
- **Simplifying & reducing the volume of legislation**
 - **update, condense and simplify legislation**
- **Strict implementation and monitoring IA**
 - **Monitoring by High-Level Technical Group for Interinstitutional cooperation**
 - **Means and resources for staff required for proper implementation**



What is Lacking?

- Concept of 'learning' legislative cycle
- Notion of *intrusiveness* of legislative instruments
 - **A. Alternatives to regulation**
 - 1. 0-option,
 - 2. Information,
 - 3. Non-legal activities,
 - 4. Economic instruments,



What is Lacking?

– B. General regulatory frameworks


- Self-regulation
- Co-regulation
- Contract compliance
- General - framework - rules, etc.

– C. Classic Command and Control Legislation

- Mechanism to prevent legislative proliferation
- New Evaluation (systematic - objective)



Will IA 2003 be effective?

- **IA 1998**
 - **22 Technical guidelines**
 - **Not very well or widely known (experience EP)**
 - **IA 2003 more substantive**
- **Dutch Experience**
 - **Dutch Recommendations for regulations (1993) - 347 Guidelines (Outlooks for legislation 1990)**
 - **Success hard to assess (is compliance a success?)**
 - **Key success factors: awareness, new culture, training, acknowledgement of quality as a relevant dimension, strict application, enforcement** 

Will IA 2003 be effective?

- *How to find the Holy Grail of Good Legislation?*
 - **Try** to learn from experience (evaluation)
 - ‘**Frappier** toujours’ (on notions of legislative quality)
 - **Assume** responsibility: Legislation is a joint responsibility; everyone involved is responsible
 - **Keep** the faith

