

Speech by Minister Donner of Justice for the conference Conference Better Regulation: simplification of regulations for a more competitive Europe, Amsterdam 8 October 2004.

Simple is better

Ladies and Gentlemen,

Simple is better. Or as Boerhave once said: Simplicity is the hallmark of quality – a maxim that I am sure will meet with your full approval. The question remains however, how can that ‘simplicity be attained’. Sir Joshua Reynolds – the British painter from the 18th century – had his own recipe: ‘simplicity is the right balance between too little and too much’. Could this recipe perhaps be used to improve the quality of laws and regulations?

Over the past few years, legislative quality has been an item on the European agenda. And not without reason: inadequate legislation affects the performance of the Community as a whole. Poor legislation causes confusion for European citizens, business and industry concerning the precise scope of rights and obligations, as well as aspects of compliance. It also has the further consequence of unnecessary administrative burden. The national governments in turn are confronted with uncertainty regarding the transposition into national rules, and with higher costs for implementation and enforcement. In short: insufficient quality undermines the effectiveness of European rules.

Over the past few years important initiatives have been taken and agreements have been concluded in the field of European legislative quality, such as the action plan ‘Better Legislation’ and the Interinstitutional Agreement concluded last year. However, this does not mean that we have reached our objective. Given the importance of legislative quality, the methods to attain this deserve our undiminished attention. The Commission is working on this in collaboration with the Member States. Over the next years, efforts must focus on in-depth examination, broadening and actual implementation of the measures taken. Furthermore, as is the case here today, attention must be paid to special aspects of ‘Better legislation’, such as the reduction of the administrative burden and the improvement of the implementation and enforcement of European rules.

There are various ways of assessing legislative quality. For example, from the point of view of the effectiveness of the procedures, the lawfulness of the rules or the consequences of these rules. The technical and legal accuracy of adopted legislation has been well embedded in European decision-making. Has the right legal basis been applied? Are the provisions clearly formulated? Are there no

conflicting provisions? Are constitutional rights and freedoms respected? In broader terms, this also concerns the question as to whether legislation will be useful in practice. Legislation is primarily a means to realize certain objectives. Consequently, legislation must not only be technically correct, it must also be useful to the people working with it. It must be clear to people who derive rights and obligations from it. It must provide clarity in social and economic life and it must provide methods to interested parties to enable them to resolve conflict situations. All of this involves more than the mere aspect of legal quality. Are the rules necessary or are less far-reaching means available to attain the same goal? Are there real opportunities to implement the rules? Are the rules enforceable in practice and how should the enforcement be organized? Have interested parties been able to make a sufficient enough contribution that results in broad level support among those who must comply with the rules? What is the administrative burden created by the obligations imposed and at whose expense, and how does this burden affect the business operations?

No one will dispute that legislation must be technically and legally correct. The fact that attention must also be paid to the preconditions enabling the proper performance of the regulation within society is – wrongly in my opinion – often not taken for granted. I hope and expect that this conference will highlight the importance of such a broad perspective. I believe that the meetings of yesterday afternoon demonstrated that a proper law in technical and legal terms is not necessarily a properly functioning law. Unfortunately, practise shows that the easy application of rules is often hampered by their complexity. The public and implementing bodies have little patience with rules that cause confusion and irritation.

European institutions and the Member States must therefore consider methods that bring European legislation closer to the people. I am thinking, for example, of the development of further guidelines and 'best practices' for the application of available legislative instruments with more due care and to increase the usefulness of the regulations for authorities and citizens.

That is not simply a matter of copying national instruments and quality requirements to a European level. Too often, European policy and legislative processes are simply viewed from a national perspective. European legislative products are assessed in accordance with national measures. Quality is however not an absolute norm, but rather a relative concept.

Quality requirements are related to the context within which, and the objective for which something is deployed. European legislation is concluded within a different context and often has a different function than national regulations. It is

therefore important to apply methods and criteria that are in line with the European context and the function of the instrument concerned. This is a greater challenge than might be assumed at first glance. For example, because the Community itself is still under construction and its precise nature and function have not yet been finalized, we are not always able to indicate exactly what requirements the Community legislative processes must meet.

The selection of instruments is of particular importance within the European context. In other words: the answer to the question as to where and by whom the rules are best concluded and to what degree the implementation and enforcement method must be prescribed. Perhaps self-regulation or co-regulation is an option instead of legislation? The New Approach and Global Approach with regard to product safety regulation already demonstrates that citizens and businesses are in certain cases capable of successfully taking care of part of the regulations and may also be involved in monitoring compliance. It seems likely that interested parties could be involved in regulating in many more fields.

And when legislation must be prepared, should it be a directive or a regulation? Must the European legislature specify obligations in detail? Or is it better to leave the detailed implementation to the national governments given that they are familiar with the wishes and customs of the country? Another topical question is whether the implementation and enforcement modalities must be laid down at European level or whether the Member States should take care of this. Perhaps in some countries civil law may suffice to effectuate certain rules as a result of which the government does not have to impose criminal law sanctions to enforce compliance. In order to avoid the creation of impractical rules that are difficult to comply with, these aspects must be discussed in the early stages of the policy processes. The preparation and implementation of regulations must revolve around the position of citizens and businesses. In the implementation Member States must have sufficient room to bring the regulations in line with what is customary in social and economic life. If not, we will have legislation that not only fails to contribute effectively to European objectives, but also diminishes the level of support for such objectives among citizens and businesses.

This brings me to the point that structures must be strengthened at a European level in order to enable such useful, practical and enforceable legislation. The technical and legal aspects of legislative quality are given a more prominent place at European level – partly through the tasks undertaken by the legal service. It is also important that the policy-oriented consequences of legislation receive more attention. Fortunately, effect assessments, for example, play an increasingly important role in the European policy and legislative process. Over

the coming years, the mechanisms that can give legislative quality a prominent place within the European institutions must be further defined.

I would like to emphasize that European legislative quality is a task for all involved parties. The Member States must see to a sound and expeditious implementation. At European level, the Commission, the Council and the European Parliament must jointly seek to improve European laws and regulations. The Interinstitutional Agreement 'Better legislation' concluded last year confirms this joint responsibility. It expresses the fact that all parties involved in the European legislative process must make a concerted contribution. The previous Interinstitutional Agreement on legislative quality from 1998 already demonstrated that the institutions are prepared to do so. This latter Agreement, concluded under the Dutch Presidency, is currently being given a place within the organization of the institutions in the form of a common manual with practical guidelines for clear and consistent legislation. I hope and expect that the new Agreement, which goes a step further than the previous agreement, and is based explicitly on the broad perspective of legislative quality, will have its effect within the institutions.