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**25th ANNUAL REPORT FROM THE COMMISSION  
ON MONITORING THE APPLICATION OF COMMUNITY LAW (2007)**

{SEC(2008) 2854}  
{SEC(2008) 2855}

## 25<sup>th</sup> ANNUAL REPORT FROM THE COMMISSION

### ON MONITORING THE APPLICATION OF COMMUNITY LAW (2007)

#### 1. INTRODUCTION

In September 2007 the Commission adopted a Communication on 'A Europe of results – applying Community law'<sup>1</sup> stating that it would "develop the focus of its Annual Report on strategic issues, evaluation of the current state of the law in different sectors, priorities and programming of future work" to "assist strategic inter-institutional dialogue on the extent to which Community law achieves its objectives, the problems encountered and possible solutions".

This report highlights challenges in the application of law, indicating three main priority areas of action: 1) prevention, 2) information and problem-solving for citizens, and 3) prioritization in handling complaints and infringements. It further stresses the importance of a strong partnership between the Commission and Member States, working in expert groups to manage the application of the legal instruments and co-operating pro-actively to resolve problems.

Further details on the situation in the different sectors of Community law, as well as the lists and statistics concerning all infringement cases are contained in Commission Staff Working Documents annexed to this report<sup>2</sup>.

#### 2. CURRENT STATE OF PLAY – ISSUES AND CHALLENGES

As guardian of the Treaty, the Commission has the authority and responsibility to ensure respect for Community law, verifying that Member States respect Treaty rules and Community legislation. The rules of the EC Treaty, 10 000 regulations and over 1 700 directives in force for 27 Member States - make up a substantial body of law. Issues and challenges in the application of Community law are inevitably many and varied. Certain areas face particular implementation challenges which are reviewed in the following sections.

##### 2.1. Complaints and infringements

The infringement process plays an essential role in guaranteeing the correct application of Community law. Around 70% of complaints can be closed before a letter of formal notice is sent; around 85% before the reasoned opinion; and as many as 93% before a ruling from the Court.

Comparing 1999-2002 with 1999-2006, the average time taken to process infringements, from opening the file to sending the letter of referral to the Court of Justice under Article 226 of the EC Treaty, fell from around 28 months to 23. The average time taken to process proceedings for failure to notify national measures transposing directives remained at around 15 months. The average time taken on cases based on complaints and own-initiative actions fell from

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<sup>1</sup> COM(2007) 502, 5.9.2007.

<sup>2</sup> SEC(2008) 2854 and SEC(2008) 2855.

around 39 months to 35 months. In 2007, a second referral to the Court under Article 228 of the Treaty was made in seven cases, compared with ten in 2006.

At the end of 2007, the Commission was handling over 3400 complaints and infringement files. The total number of files increased by 5.9% from 2006, with a 32.3% increase in proceedings for failure to notify transposition measures. Complaints accounted for 35.9 % of the total, or two thirds of all cases on issues other than late transposition, an 8.7% decrease from 2006. The number of new own initiative cases decreased by 9.4%. In January 2007 an average of 99,07 % of required notifications of measures transposing all adopted directives had been received, rising to 99,46 % by the end of the year. This compared with 98,93%, rising to 99,06% in 2006. However, for directives with a transposition deadline in 2007, 64.55% of notifications were late .

## **2.2. Petitions**

The number of petitions to Parliament with information requested from the Commission depends in part on citizens' interests. Even if most petitions do not concern, or lead to, infringement proceedings, they provide Parliament and Commission with useful information on citizens' concerns.

Environment continues to account for the highest number, (146 out of around 420 – on air, water and noise pollution in particular), followed by 89 petitions in employment, social affairs and equal opportunity (labour law (30), gender equality (28), free movement of workers and social security (25)).

Over 20 petitions concerned public procurement (especially urban development projects in Spain) around 20 were on recognition of diplomas (in particular tourist guides and ski instructors), 15 on services and on financial institutions (intra-Community payments). Petitions led to the Equitable Life Report of the European Parliament. In justice, freedom and security, there were more than 30. There were 21 petitions on transport, 16 on taxation and customs union (most on indirect taxation of cars and double direct taxation) and 11 on agriculture.

## **2.3. Sector Analysis**

There continues to be a significant complaints and infringements case-load in environment, internal market, taxation and customs union, energy, transport and employment, social affairs and equal opportunities as well as health and consumer affairs and justice, freedom and security, with a rapidly increasing body of legislation of high interest to citizens.

A summary analysis of key issues in a selection of important sectors follows covering a wide range of issues. More details are given in the Commission Staff Working Document on the 'Situation in the different sectors'<sup>3</sup>.

In *agriculture*, there are over 2400 legislative measures, mostly regulations. This body of law has been reasonably stable, subject to frequent technical up-dating and regular policy review. Most of the law is directly applicable, concerning market financial support, managed through the conformity-clearance mechanism to avoid incorrect payments out of the Community budget. This results in any legal proceedings being brought by Member States against the

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<sup>3</sup> SEC(2008) 2854.

Commission, rather than vice versa. Management is ensured through over 140 committees and expert groups. Simplification was introduced through the Single Common Market Organisation regulation and by reforms in the wine and fruit and vegetable sectors. Difficulties in the application of the cross-compliance system for direct support schemes have been addressed. Attention has turned to the 'health check' objectives of more effective and simpler direct aid, modernisation of market support and the needs of climate change, bio-energy production, water management and biodiversity.

The *Internal Market and services*, continues to give rise to a wide range of issues and infringement proceedings, such as on cross-frontier investment and health service provision. Late transposition of directives continues to be a problem, with 206 infringement actions launched<sup>4</sup>, with widespread delays for markets in financial instruments, company law and anti-money laundering, professional qualifications and public procurement. Recent figures indicate significant improvement yet to be confirmed as a reliable trend. Major efforts need to continue in management instruments, for example making good use of the three-tier network of committees in financial services, and the expert groups on company law and anti-money laundering.

*Free movement of goods not subject to harmonisation* involves a high volume of detailed preventive work and dialogue by Member States and the Commission in the notification and review of draft new technical rules on the basis of Directive 98/34. It prevents issues of compatibility of national regulations with Community law and contributes to the clarity, effectiveness and, in general, to the drive towards Better Regulation. Most issues are resolved within a few months. This directive applies also to national regulations concerning information society services.

The *legislative acquis on the free movement of goods* is reasonably stable apart from the problem of late transposition, requiring 227 new infringement actions in 2007. A main challenge continues to lie in the need for regular technical updating. Implementation of the REACH regulation on chemicals requires priority work over some years on the start-up of the agency and the network of contact points.

In *health and consumer protection*, late transposition of directives required the launch of over 330 infringement actions. Inspections as well as other specific measures continue to play a key role in ensuring safe food and foodstuffs. Priority attention is being paid to strengthening the network for Consumer Protection Co-operation to ensure effective support for citizens' interests.

Rapid development of the *acquis* continues in *transport*. Late transposition remains problematic. Continuously improving information-exchange and problem-solving with Member States remain priorities. Adequate progress is being made on the transition to a Community regime on Open Skies with the United States. The implementation of air passenger rights, including those of passengers with reduced mobility, is likely to require close monitoring. Inspections continue to constitute a main guarantee of air and maritime safety and security.

EU legislation is also rapidly developing in the *energy* sector. Co-ordinated security of gas supplies is a key challenge as is timely and correct application of the third package of

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<sup>4</sup> All figures for 2007 unless otherwise stated.

directives on the Internal Market for electricity and gas, while verification and inspection missions should continue to monitor respect for the rules on radiation and nuclear safeguards.

In *customs, direct and indirect taxation*, the wide coverage of the acquis and the limits of harmonisation lead to a high volume of infringement proceedings and references for preliminary rulings to the Court of Justice on taxation generally, and VAT in particular. There is a significant increase in proceedings on non-discrimination in direct taxation. In customs, the challenge is to simplify legislation and streamline procedures. .

In the field of *employment, social affairs and equal opportunities*, the significant volume of infringement proceedings for late transposition has diminished. However, workload remained heavy regarding social security, free movement, labour law and equality/anti-discrimination. The risk to human health of occupational disease and accidents requires a high level of attention to be given to the health and safety at work directives including those on the construction, maritime and mining industries.

In *Information society* the 2002 regulatory framework for electronic communications continued to face a significant volume of incorrect implementation and application issues, and the Commission proposed a package of instruments in order to amend and complement the existing framework. Implementation of the recently amended Audiovisual Media Services Directive may give rise to an increase in complaints. Late transposition of the Public Sector Information Directive caused an almost two year delay in conformity assessment.

The acquis on *environment law* is broad and ambitious, applies to widely diverse situations in Member States, is administered by many different government agencies acting at different levels and gives rise to a high level of public interest. Many problems are due to late and incorrect transposition of directives, the former accounting for 125 new infringement actions during 2007. To these are added the sectoral challenges described in detail in the Communication on 'Implementing European Community Environmental Law'<sup>5</sup>.

Efforts have been made to simplify and modernise long standing laws for waste, water, air and industrial emissions, to help Member States respond to problems of application. The Waste Framework Directive was revised to clarify definitions and to consolidate and simplify. There remain critical delays in the field of waste management, mainly due to inadequate investment. Likewise, further infrastructure development is required in thousands of larger centres of population to comply with the Urban Wastewater Directive. The Water Framework Directive is representative of a past effort to simplify and consolidate various laws. An increased case load is likely as deadlines for the application of various provisions expire.

Serious problems are evident in widespread non-compliance with air quality limit values, including for sulphur dioxide and particulate matter in many cities. A major effort has been made to simplify and streamline rules on industrial emissions. But there have been extensive delays in the issuing of permits for thousands of industrial installations and there is an ongoing challenge to keep 'best available techniques' and related reference documents updated. Whilst the volume of infringements of the Environmental Impact Assessment Directive remains high, if stable, there is an increasing volume of cases under the Strategic Environmental Assessment Directive. On climate change, full implementation of the Emissions Trading System, including twice-yearly reporting obligations, present a major

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<sup>5</sup> COM(2008) 773.

challenge. Progress continues to be made in recognising protected sites under the Birds and Habitats directives but further efforts are needed to improve the health of some habitats and species.

On *Justice, freedom and security*, the acquis has been growing significantly. The main challenges lie in ensuring timely and correct implementation of much recently adopted legislation together with managing a high volume of correspondence, complaints and a growing infringements case-load. The conclusion in 2008 of the study on the transposition of ten immigration and asylum directives may give rise to infringement proceedings, as may the development of rights for third-country nationals. The high volume of enquiries and complaints on fundamental rights, citizenship and free movement of persons is likely to continue.

### **3. PRIORITY ACTIONS**

#### **3.1. Action 1: Strengthen preventive measures**

To ensure the effective application of Community law in an EU of 27 it is important to strengthen efforts to prevent infringements from arising. Remedial action on identified infringements necessarily comes after citizens and businesses have been deprived of the full benefit of the Law. A sustained effort is required from the Commission and Member States to correct this situation.

##### **a) Improved legislative instruments**

Maximum effort is made to ensure the clarity, simplicity, operability and enforceability of legislation. Increased attention is being paid to aspects of implementation, management and enforcement in the development of proposals, at the impact assessment stage and throughout the policy cycle. The impact assessment guidelines are being modified to ensure that implementation and enforcement options, as well as the choice of legal instrument, are thoroughly examined.

Regulations will be proposed wherever appropriate for technical implementing measures. For example, regulations have been adopted for roaming tariffs, proposed for cosmetics and construction products and are being considered for animal health, biocides and textiles. In the motor vehicle sector, framework rules are now implemented through Commission regulations. Regulations are used to implement directives for the regulated professions and to implement technical standards on eco-design for energy-using products. Regulations have been adopted on chemicals harmonisation through REACH and proposed to strengthen mutual recognition in the free movement of goods.

Parliament and Council should contribute to clarity and simplicity of legislation when dealing with Commission proposals in co-decision.

##### **b) Preparing the correct implementation of Community Law**

The Commission and Member States are working to improve the transposition of directives. The Commission's aim is to ensure that risk-based transposition plans, identifying the work required according to the content and likely difficulty of implementation, accompany proposals for new directives through the legislative cycle. The Commission will set up

networks of responsible officials in the Member States for transposition of all new directives and for on-line exchange of questions and answers.

Transposition workshops are being organised for many new directives including regulated professions, insurance, banking, securities, company law, accounting and auditing in the Internal Market. Transposition package meetings continue to be held in different areas. Frequent meetings of the Regulators Group and Contact Committee on the Audiovisual Media Services Directive help with transposition issues. The Industrial Pollution Prevention and Control (IPPC) Expert Group is being transformed into the Industrial Emissions Expert Group (EIG), with a wider remit on transposition. Six expert group meetings were held in 2007 and another six are scheduled in 2008 on the implementation of the Services Directive.

Extended transposition periods may be required for more complex instruments, such as the three year period proposed for the Solvency II Directive on insurance. In particular circumstances, different elements of transposition may be phased-in to different deadlines, allowing improved tracking, identification of delays and early remedial action.

The Commission also works together with Member State administrations and stakeholders on the timely implementation and correct enforcement of regulations as through the development of improved Member State procedures, a standard complaint form and guidance document on the air passenger rights regulation.

#### **c) Conformity evaluation of transposition measures and preventing bad application**

A number of instruments are being deployed in an effort to prevent non-conformity of Member State law with Community law and bad application of Community law by Member State administrations. These include conformity evaluation of transposed texts, committee and expert group meetings, inspections, questionnaires, implementation reports, fact-finding missions, advance notification of draft new technical regulations and studies or analyses.

Conformity evaluation is risk-based, taking account of experience of reliability of transposition, the content of the measure, work done to prepare transposition and stakeholder reporting.

While conformity evaluation plays a major role in many areas including environment law, other areas such as animal feed and human food require verification of Member State control systems through inspections by the Food and Veterinary Office. Other forms of inspections are also organised in such fields as maritime and aviation safety and security and nuclear safeguards.

#### **d) Active management: the role of committees and expert groups**

Some 260 committees and 1200 expert groups manage the acquis, update technical requirements and help to identify the need for legislative amendment. They work on interpretative guidelines, codes of conduct, specific difficulties and ways to increase efficiency in the application of legislation. Major contributions are also made by NGOs, business and other stakeholders. In agriculture alone, 256 meetings of 31 management and regulatory committees and 118 meetings of advisory and expert groups took place in 2007. 38 guidelines were adopted on plant protection products while major efforts have been made through expert meetings, guidance and training on food safety. In financial services, three

tiers of committees support the common interpretation and application of the law and improve the practical management.

### **3.2. Action 2: Information-provision and problem-solving for citizens and business**

The significant scope and volume of the body of Community law applying in 27 Member States necessarily triggers many questions, queries and complaints. Citizens' and business' interests are served best if solutions are found in a rapid and informal manner. Many issues can most efficiently be treated through initial information exchange and cooperative problem-solving. The Commission responds to citizens through Europe Direct, Citizens' Signpost Service, ECC-Net, Euro-jus, plus a large volume of work of Commission services.

Community Law provides some mechanisms of recourse for citizens to claim their rights vis-à-vis business operators, such as the specific complaint-handling procedures on air passengers' rights, the telecommunications Universal Service Directive dispute-settlement and co-operation for enforcement of consumer protection laws. The Commission coordinates the SOLVIT network, where Member States work together to solve cross-border problems caused by the potential misapplication of Internal Market law by public authorities without recourse to legal proceedings.

Furthermore, the Commission launched EU PILOT to provide quicker and better answers to questions and solutions to problems arising in the application of EU laws requiring confirmation of the factual or legal position in a Member State. Fifteen Member States are participating. The project started on 15 April 2008. By mid-September, over 130 cases were in the system, in areas such as health and safety at work, social security and free movement of workers, visa issues, free movement of persons, protection of personal data, public procurement, environmental law, free movement of goods, and indirect and direct taxation. An initial evaluation of the project will be made after one year.

These instruments represent an important commitment of the Commission and Member States to help citizens and business, working more closely together to draw out the full benefits of the EU.

### **3.3. Action 3: Complaints and infringements management – prioritisation by sector**

The effective and efficient enforcement of Community law in an EU of 27 Member States requires that the Commission establishes clear enforcement priorities. The objective is to maximise the benefit for citizens and business. To do this, the Commission must prioritise work on infringements having the greatest impact on the general good. The Commission will also handle other cases via problem-solving mechanisms, such as SOLVIT or EU PILOT. Often such cases, where cooperation with Member States in the task of ascertaining the factual and legal situation related to a complaint could be useful, can be handled more efficiently via such mechanisms and so the result for the individual citizen can be improved. If necessary, recourse will be had to infringement proceedings. In its 2007 Communication, the Commission established general priorities, with the possibility to develop criteria for prioritisation for any given sector. In this way, the Commission will ensure that a follow-up is ensured on all issues, evaluating the most likely means of achieving a quick and good result



while keeping the right to initiate formal proceedings on any infringement of Community law and maintaining the guarantees of the 2002 Communication on relations with complainants.<sup>6</sup>

Examples of priorities, explained in more detail in the Commission Staff Working Document on the 'Situation in the different sectors' - SEC(2008) 2854 - include:

- *Internal market and services* - policy priorities focus on breaches of Community law (1) violating fundamental freedoms having a broad impact on citizens' rights, (2) threatening the overall functioning of sectoral legislation or involving important legal precedents or (3) likely to have an important economic impact on the internal market or a specific sector of it. In the services sector, work focussed on cases of clear discrimination on grounds of nationality or impact on categories of service providers in important sectors.
- *Financial services* - issues such as investment restrictions based on national security considerations or affecting pension schemes.
- *Employment rights, labour law, social security and anti-discrimination* - where there are important consequences for citizens, prioritisation can generate the greatest benefit for the greatest number. Complementary measures will be applied to help citizens find solutions to their individual problems and the overall situation will be monitored with a view to any appropriate further action.
- *Fundamental rights, free movement of persons, immigration, asylum, citizenship and civil justice* - priority will continue to be given to problems having wide-ranging impact on fundamental rights and free movement and civil law issues in matrimonial and parental responsibility matters. Complementary measures will be applied to help citizens find solutions to their individual problems and the overall situation will be monitored with a view to any appropriate further action.
- *Environment* - the collective handling of similar individual infringements through horizontal cases, such as on waste management and air pollution; large infrastructure projects, especially those receiving Community finance; infringements where citizens are on a significant scale or repeatedly exposed to direct harm or serious detriment to their quality of life<sup>7</sup>.
- *Transport* - passenger safety and security of operations as well as sustainability policies having a broad impact.
- *Energy* – actions having a significant impact on the fight against climate change and ensuring secure and competitive energy supplies.
- *Information society* – issues of systematic importance concerning the functioning of national regulators, consumer protection issues (as the European emergency number 112) in telecommunications, TV advertising rules, protection of minors and prevention of incitement to racial hatred in media as well as non-discriminatory access to public sector information.

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<sup>6</sup> COM(2002)141.

<sup>7</sup> See further COM(2008) 773.

- *Competition policy* - effective competition in liberalised network industries such as energy markets, including non-discriminatory access to infrastructure and in financial services. Recovery in cases of illegal state aid.

#### **4. CHANGING THE LAW IN THE LIGHT OF EXPERIENCE**

The *acquis* continues to evolve in the light of experience gained in implementation. There is a need to strengthen the Better Regulation cycle, to select the most appropriate response to each kind of issue at the relevant point in the cycle ensuring that information on application feeds into legal review.

In some areas, such as the contribution of particulate matter to air pollution or the treatment of waste oils, legislative change can improve objectives, amend substantive provisions, delay implementation or introduce more flexibility in requirements in response to difficulties encountered. In other areas, major up-grading, administrative simplification and improved management is being introduced, for example in the customs code. Structural difficulties in electricity and gas market-opening have been addressed by the third legislative package. Legislative clarification and re-casting is at various stages of development on food and feed labelling and marketing and plant protection. Significant legislative development has been, or is being, developed on mutual recognition of the free movement of goods and in sectors such as automobiles and medical devices, pharmaceuticals and late payments with particular focus on small businesses.

#### **5. CONCLUSIONS**

This report highlights the need for continued pro-active co-operation between Commission and Member States to ensure the general management of the law and to work in partnership to ensure the quick and effective responses to citizens' concerns and the correction of infringements the importance of which has been highlighted by Parliament. Co-ordinated action by Commission and Member States, tailored to the specific challenges, will produce the best results. The Commission will remain vigilant in its pursuit of infringements and will continue to work closely with the European Parliament in reporting on and discussing developments in the application of Community law.

The effective application of Community Law continues to face major challenges, such as extensive late transposition of directives. Some areas of Community law also continue to rise a high number of claims by citizens and businesses of violation of their rights under Community Law. In the coming year, the Commission will concentrate in particular on the following measures:

- Dealing with the problem of extensive late transposition of directives;
- Stepping up preventive measures, including the continuing need to develop the analysis of implementation and compliance issues when preparing Impact Assessments;
- Improving information and informal problem-solving in the service of citizens and business; and
- Prioritising the most important cases and working closely with Member States to accelerate correction of infringements.