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REPORT FROM THE COMMISSION

**27th ANNUAL REPORT ON MONITORING THE APPLICATION OF EU LAW
(2009)**

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1. INTRODUCTION

In 2007 the Commission Communication on 'A Europe of results'¹ stated that the Commission would develop the focus of its annual report on strategic issues, evaluation of the current state of the law, priorities and programming of future work.

This report will follow a structure similar to last year's, modified to accommodate the main issues relevant to 2009.

2. GENERAL INFORMATION

2.1. Introduction

The Treaty on European Union (TEU) and the Treaty on the functioning of the European Union (TFEU) entered into force on 1 December 2009. These treaties modify some competences of the EU and add some monitoring and enforcement functions for the Commission while maintaining some of the general rules. Article 4 TEU maintains the primary obligation of Member States to ensure the correct application of EU law (ex-Art. 10 of the Treaty establishing the European Community (TEC)). Article 17 TEU maintains the responsibility of the Commission to ensure the application of EU law (ex-Art. 211 TEC). Articles 258 and 260 TFEU concern the authority of the Commission to bring infringement proceedings (ex-Art. 226 and 228 ECT). Article 260 TFEU contains two new elements:

- the Commission may ask the Court of Justice of the European Union (ECJ) to impose financial sanctions on a Member State for late transposition of a directive adopted under a legislative procedure when bringing a case before the Court of Justice under Article 258 TFEU; and
- the Commission has only to give the Member State the opportunity to make any observations before making a second referral to the ECJ under Article 260.2 TFEU, following a first ruling under Article 258 TFEU.

The Commission plans to adopt a communication updating its approach to the application of these provisions.

At the end of 2009², EU law comprised, apart from the rules of the Treaty, some 6140 regulations and just under 1820 directives in force throughout the 27 Member States.

¹ COM(2007)502.

2.2. General statistics on complaints and infringement procedures

The infringement process plays an essential role in guaranteeing the correct application of the law. At the end of 2009, around 77 % of complaints were closed before the first formal step in an infringement proceeding; around a further 12 % of the total were closed before the reasoned opinion and around a further 7 % before a ruling from the ECJ.

At the end of 2009, the Commission was handling around 2900 complaints and infringement files. The total number decreased by 16 % from end-2008, with a 26 % decrease in proceedings for failure to notify measures transposing directives. Complaints accounted for 54 % of the total or 63 % of all cases on issues other than late transposition of directives, a 15 % decrease from 2008. The number of own initiative cases under examination at the end of 2009 decreased by 11 % compared to 2008.

An average of 51 % of the total of required transposition measures in 2009 were late, compared with 55 % for 2008, in the context of a reduced number of directives falling to be transposed in 2009.

Comparing infringement registration years 1999-2003 with 1999-2008, the average time taken to process infringements, from opening the file to sending the application to the ECJ under Article 258 TFEU, fell from around 27 to 24 months. The average time taken to process cases concerning failure to notify Member State measures transposing directives remained around 15 months. In 2009, 2 second referrals were made to the Court under ex-Article 228 ECT (now Article 260 TFEU), compared with no cases in 2008.

The Commission notes that the volume of registered complaints and infringement proceedings is being affected by changes in its working methods being tested.³ As these changes will take some time to take full effect, it is too early to draw conclusions.

2.3. Petitions

The number of petitions to the European Parliament raising issues concerning the correct application of EU law depends on decisions by citizens, businesses and civil society to manifest their concerns in this way. Even if most petitions do not concern infringements, they provide Parliament and Commission with useful information on citizens' concerns.

Environmental protection and the internal market continue to stimulate most petitions: 173 and 82 new petitions respectively. In environmental protection, impact assessment (52), nature (50), waste water (26), water quality management and resource protection (17), air quality and noise (13) as well as industrial emissions (6), accounted for most volume. In the internal market, recognition of professional qualifications (28), services (19), company law (10), public procurement (8) and financial institutions (17) figured highly. Fundamental rights (43), free movement of persons (36), citizenship and electoral rights (12) in the field of justice, freedom and security; road safety, including recognition of driving licenses and road

² All references are to 2009 except where otherwise indicated.

³ See further below, section 3.4

traffic laws (30); co-financing of projects under regional policy (18); and information society (9) also featured prominently.

Among the many and varied matters covered by petitions, particular mention may be made of the petitions drawing attention to the waste situation in Campania in Italy and a wider range of waste management issues, particularly in Greece and Spain. In the internal market, many petitions identified sometimes complex aspects of individual situations of recognition of professional qualifications. Restrictions on the activities of pharmacies and gambling and sports betting were also targeted in the area of services generally, while credit institutions, securities, free movement of capital and payments issues attracted attention in the financial services area. Numerous petitions concerned the infringement proceeding currently before the Court of Justice concerning the urban law in Valencia.⁴

3. CURRENT ISSUES IN IMPLEMENTATION, MANAGEMENT AND ENFORCEMENT

3.1. Late transposition and reporting and preventive action

a) Late transposition

Despite recent improvement of the overall transposition deficit, the number of infringement cases opened for late transposition of directives continued as a major concern. High volumes were evident for: medical devices (22 new cases), working conditions in inter-operable cross-border railways (17), amended rules on deposit guarantee schemes (17) and the groundwater directive (17), for example. Late transposition was also widespread in the area of technical updating of directives in the area of enterprise. 24 Member States received letters of formal notice for late or inadequate communication of reports in the priority area of greenhouse gas emissions.

Sometimes the delay was prolonged: judgments of the ECJ were delivered in seven cases on the 2005 directive on the recognition of professional qualifications, these transpositions being over two years late. In the field of company law, corporate governance and anti-money laundering, around 140 infringement proceedings for late transposition had to be managed of which 11 reached the stage of an ECJ ruling. Four cases reached ECJ rulings on Directive 2004/83 on the refugee status of third country nationals or stateless persons. In the area of civil justice, Greece was referred to the ECJ a second time with a request for the imposition of financial sanctions for being over three years late with the transposition of Directive 2004/80 on compensation to crime victims.

Conclusion: *Late transposition and late reporting continue to constitute a widespread, systematic problem, affecting both technical updating of measures important to EU industry, priority EU policies and measures of interest to individual citizens. Although some improvement has been registered this year over last, extensive and constant delay continue to undermine the attainment of EU objectives.*

b) Preventive measures

⁴ Case C-306/08, Commission v. Spain.

Contact networks for directive transposition and web-based question-and-answer tools have continued to be created. A good example is the web tool created for the payment services Directive 2007/64, later extended to the e-money Directive 2009/110. It contains information on the directive itself and on the progress of transposition, including use of options. Likewise a public database including texts of national laws, European and national case-law has been created in the field of unfair commercial practices.

Expert groups played important roles on the transposition and implementation of EU legislation including significant developments in areas such as: temporary agency work, European Works Councils and air safety. Interpretative guidelines and aides to stakeholders have been established in such areas as: managing vibrations and noise at work, remedies in public procurement and inspection of tissue and cell procurement. Guidelines have been made available for the marketing of plant protection products (47 in total) and bathing water quality.

The Payment Services Directive Transposition Group met ten times since January 2008, including participation of payment market and consumer representatives, collecting around 300 questions, providing written observations contributing to a common understanding. Meetings of the contact group continue to be held to examine how the requirements of the directive on returning illegal third country nationals can be met, including workshops to which international organisations and NGOs were invited.

Important preventive work continued under directive 98/34 with advice and guidance provided by the Commission and Member States on over 700 national draft technical regulations concerning products not subject to EU harmonisation and information society services. The Committee on Standards and Technical Regulations met three times to discuss the functioning of the directive and a new working group was set up to consider possible developments.

The implementation and application of the Services directive has been the subject of 20 bilateral meetings with Member States and 9 expert group meetings.

A new Body of European regulators (BEREC) has been created by Regulation 1211/2009 to inter alia ensure the further development of consistent regulatory practice in electronic communications. An Agency for Cooperation of Energy Regulators (ACER) has been created by Regulation 713/2009 to ensure an integrated framework for the uniform application of the internal market in electricity and gas.

Following the entry into force of the TEU, the area of police and judicial cooperation in criminal matters is governed, subject to a transitional period, by the same procedures and rules as the rest of EU legislation. An array of measures has been designed to improve the implementation of the *acquis*, including: the organisation of regional workshops with national legislators and practitioners; streamlined contacts and bilateral meetings with national administrators; publication of handbooks; support for stakeholder networks and involvement of Commission services in national training of judicial professions.

The Commission has also reviewed the overall range of preventive measures being used with Member States in the expert group on the implementation and application of EU law to ensure transparency and identify useful developments.

Conclusion: The Commission invites Member States actively to participate in the identification and take-up of preventive measures for each new legislative measure thereby reducing the need for recourse to longer term judicial interpretation or legislative revision.

3.2. Correlation tables and the evaluation of the conformity of Member State legislation with the requirements of EU directives

Correlation tables constitute one of the main elements of preventive action by listing the provisions of Member State regulations that transpose the obligations of directives into the national legal system. They assist initially in ensuring the conformity of draft transposition measures. Later on they assist in ensuring that the transposition process is fully and correctly completed and they also help business and consumers to see how EU law has been transposed nationally. They facilitate cooperation between Member States and the Commission when reviewing transposition, allowing early identification of issues and dialogue. They also contribute to legal transparency and access to the law, pointing to the legal provisions relevant to different citizens' and business interests. They can make an important contribution to the work being done in the Council of the European Union to connect EU with national databases containing legislative texts.

The Commission will continue to support the need for correlation tables in discussion with Member States and the other Institutions.

Conclusions: Correlation tables contribute to transparency and improve access to the law. They represent an important element of Member State cooperation with the Commission in ensuring the correct implementation of directives. The Commission will continue to seek support from all EU institutions for the comprehensive provision of these tables.

3.3. Management of Treaty articles and EU legislation by expert groups

The Commission has continued to develop the work of managing EU law with Member States through expert groups.

The Type-Approval Authorities Expert Group (TAAEG) has been created to ensure uniform application of technical requirements for the marketing of motor vehicles in connection with the system becoming mandatory in 2012. The Group of Coordinators adopted the Code of Conduct on national administrative practices under the Directive on the recognition of professional qualifications (2005/36) clarifying what the directive requires and best practice in its application. In the area of permitted health and nutrition claims in food labelling (Regulation 1924/2006), meetings with Member States have been held on a monthly basis to manage some 44,000 Member State claims.

Following the Metock judgment⁵, guidelines were discussed in the expert group on the application of Directive 2004/38 before the launch of a programme of bilateral meetings with all Member States on the transposition of EU rules on free movement of citizens and their family members.

⁵ C-127/08 of 25 July 2008, Blaise Baheten, Metock and Others v. Minister for Justice, Equality and Law Reform.

In January 2009, the EU reacted effectively to the major gas crisis involving significant interruptions of supply. Security of supply was effectively safeguarded through a common response, building on the work of the Gas Coordination Group established by Council Directive 2004/67/EC, confirming that an EU approach can cater for the specificities of all Member States and common action is the most effective.

In financial services, the Capital Requirements Directive Transposition Group continued to work on interpretation and clarification issues, to ensure coherent implementation of the existing rules. It assisted the Commission in the preparation of two implementing directives and the Commission proposal on the prudential treatment of re-securitization operations. These measures responded to the financial crisis by reinforcing rules on liquidity, large exposures and the quality of capital, while ensuring the necessary emergency action to maintain confidence in Deposit Guarantee Schemes.

A new expert group on the management of Natura 2000 has also been established to collect and exchange information on best practice including reconciling nature conservation and economic development.

Conclusions: These examples confirm the great variety and volume of management work required between Commission and Member States to maximise the benefits of EU legislation.

3.4. Information-provision and problem-solving for citizens, business and civil society interests and complaints registration and management

Citizens need to know where to find the kind of information they seek. The Commission has developed a number of services. Citizens need to be able to find the right service for their needs. The Commission is continuing to improve access, information and help on rights and opportunities through further development of the 'Your Europe' web portal.⁶

The complaints procedure constitutes a specific source of information for the Commission and a process by which citizens and business can express concerns on the correct application of EU law. Up to October 2009 the Commission operated a system⁷ under which an initial evaluation was made of in-coming correspondence to decide whether sufficient indications of a potential infringement were present to warrant registration as a complaint. This resulted in some correspondence not getting registered as complaints.

This gave rise to concerns among correspondents, in Parliament and with the European Ombudsman. Since October 2009 the Commission has been testing a new method by which all correspondence on the application of EU law obtains a specific registration and all correspondence containing clear indications that it is intended to be a complaint about the application of EU law is registered as a complaint, thereby providing a more direct and positive response to citizens. This method is beginning to produce the expected significant increase in the volume of registered complaints, whatever their content. A full year of

⁶ <http://ec.europa.eu/youreurope/>

⁷ described in its 2002 'Communication on relations with the complainant in respect of infringements of Community law' - COM(2002) 141

operation of this new method should provide a sufficient basis for the Commission to consider consolidating a number of improvements in a re-cast of its 2002 communication.

During 2009 SOLVIT managed a further 50% increase in the volume of files beyond the 22% increase the previous year, while maintaining a constantly high 86% rate of success. Rights of residence, social security, professional qualifications and the freedom to provide services figured highly among the issues raised. SOLVIT has continued to increase its value and efficiency, offering assistance and solutions to citizens and business while also playing an important role in the identification of structural impediments to free movement.

The first EU Pilot Evaluation Report was adopted in March 2010.⁸ In view of the success of the project, the Commission has proposed the extension of EU Pilot to all Member States and its general use in the search for early resolution of potential infringements of EU law.

Close cooperation between the Commission and Member States at all levels of government is also crucial to improve correct application of EU law by Member States and decrease the volume of complaints. It is necessary to improve dissemination of knowledge of EU legislation among legal professionals, step up training on EU-related issues and make information accessible to all involved in the implementation of EU law, for instance through the European e-Justice Portal.

***Conclusions:** The Commission plans a review of its general policy on the registration of complaints and relations with complainants in the light of experience of the new methods now being tested. Horizontal instruments, such as SOLVIT and EU Pilot, continue to develop and prove their worth, quickly resolving problems faced by citizens and enterprises. EU Pilot provides a very effective complement to the range of means dedicated to ensuring the application of EU Law, allowing for the early resolution of infringements without recourse to formal proceedings or preparing the ground for such proceedings where necessary. The Commission acknowledges the high level of commitment shown by the Member States to ensure the success of these instruments. It commits itself to continue to work closely to develop this partnership, having invited all Member States to participate in the further development of EU Pilot.*

3.5. Enforcement issues

The REACH regulation (1907/2006) is due to be enforced primarily through a system of official controls and other actions at Member State level still being developed as the main REACH obligations are phased-in. The enforcement of obligations to restrict the marketing of certain chemicals became operational in the second half of 2009. The results of a study on national penalties are due for discussion with Member States in 2010 with a view to ensuring consistency.

In 2009 the Commission produced a report on the first two years of application of Regulation 2006/2004 on consumer protection cooperation and adopted a Communication on the 'Enforcement of the Consumer Acquis' setting out five areas for further work.⁹

⁸ COM(2010) 70

The Commission also revised and strengthened the guidelines on the EU Rapid Information System for dangerous consumer products (RAPEX) under Directive 2001/95. A framework was also established to measure the effectiveness of enforcement at national level. The Commission is also preparing a regulation to be adopted under Regulation 216/2008 on common rules in the field of civil aviation to provide for intermediate sanctions to withdrawal of certification.

Infringement proceedings ensure the correct interpretation of EU law and the correction of infringements. National administrative and court proceedings allow for the actions of Member State authorities to be reviewed. Sometimes, it has been found appropriate for EU legislation to include provisions on appeal procedures, such as in connection with access to environmental information, environmental impact assessments, integrated pollution prevention and control permit decisions, remedies in public procurement or in the regulatory framework for electronic communications.

More attention needs to be paid to enforcement measures in the preparation of new legislation, including rights to review or appeal decisions, to ensure effective application. Existing enforcement methods may be developed or new ones introduced, dependent on the nature and volume of issues arising in different areas.

Where EU legislation refers to such measures, they need to be used and their adequacy assessed. The Commission will therefore focus its activity on the correct implementation of those processes, reviewing and reporting on their functioning and effectiveness for their purposes, refraining from substituting its own action for their use to avoid undermining their role.

In 2009 the Commission further developed its practice in the organisation of inspections, sometimes in co-operation with Agencies. A record number of visits was carried out by the European Aviation Safety Agency resulting in requests for urgent correction of a number of significant non-compliance issues. Close to 200 inspections were carried out to ensure the effectiveness of national maritime security measures mainly concerning port and ship assessments and the effective application of security plans.

***Conclusions:** The Commission confirms the need for increased focus on effective instruments to ensure the enforcement of EU law. These can be of horizontal application or designed for specific sectors. Where EU legislation refers to national procedures, the Commission will prioritise the implementation and review of the performance of those enforcement provisions, avoiding competing or alternative action. Inspections, long-established in connection with human health, are being used increasingly in other areas such as transport safety and security, where they can play a strong role in confirming the interpretation of the law and ensuring its correct application, confirming a strong commitment to results.*

3.6. The role of infringement proceedings

The 2007 Communication on 'A Europe of results', set out current Commission policy on its work to ensure the correct application of EU law. It explained the new focus for the

⁹ COM(2009)330.

Commission's Annual Reports: on strategic issues, evaluation of the current state of the law in the different sectors, priorities and programming of future work. The Commission staff working document annexed to this Report contains detailed indications for the different sectors, including priorities in infringements management.

Priorities have now been developed across the full range of the Commission's monitoring work down to the level of individual complaints and infringement proceedings according to the criteria set out in the 2007 Communication. The progress of complaints and infringements work is regularly reviewed in the light of the nature of the case and the benchmarks set. Particular attention is being paid to cases which have been open for a long time or for which no recent sufficient progress has been made. Justifications for delayed treatment of some cases are taken into account, for example while a different test case is being taken forward or where a reference has been made from a national court for a preliminary ruling from the ECJ on the same issue. Where there is an open proceeding before a national court, the Commission could consider to close files on which no formal step in infringement proceedings has yet been taken, and suspend active infringement proceedings, in particular, in cases where the national proceeding has the same subject as the infringement proceeding, as it would have a clear basis on which to consider further action once the national court process has been concluded. In these cases, the Commission will remain open to consider any continuing concerns of citizens following the conclusion of the national proceedings.

***Conclusions:** The priorities set out in the accompanying document to this Report on the "Situation in the different sectors" are designed to ensure that the Commission focuses on the actions most likely to ensure the timely and effective application of the law in the widest interest of the greatest number of citizens and enterprises, ensuring efficiency by avoiding the duplication of existing proceedings. The Commission confirms its intention to work to these priorities.*

3.7. Reporting and reviewing implementation

Increased attention is being paid to ex-post reporting on the impact of EU rules. Parliament has an increased focus on implementation issues. Provision is often included in EU legislation for reports on the first years of application of the measure. The Commission staff working document annexed to this Report contains references to many studies and reports produced by the Commission in 2009 and envisaged for 2010.

***Conclusions:** The increased focus on ex post evaluation of the impact of EU legislation draws attention to the reports which the Commission is required to produce on the performance of different EU legislative measures. The Commission signals the value of these reports, often including detailed contributions from Member States, as one of its main contributions to the evaluation of the performance and impact of EU law.*

4. CONCLUSIONS

This annual report demonstrates the critical importance of the full and correct application of EU law in delivering the rights and obligations created by EU law. This year's report makes it clear that priorities have continued to be developed and followed but furthermore that the instruments developed over time to facilitate and improve the monitoring of EU law are

gaining in maturity and increasing their contribution to the overall effectiveness and timeliness of the monitoring process.

Challenges remain notably on some essential and basic aspects such as the correct and timely transposition of directives. The preventive approaches now being developed in partnership with the Member States represent a considerable investment by all concerned which should pay dividends in terms of ensuring a faster and deeper conformity with EU law in the coming years.