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REPORT

drawn up on behalf of the
Committee on Legal Affairs and
Citizens' Rights

on the monitoring of the application
of Community law by the Member States

Rapporteur: Mrs VAYSSADE

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PE 98.522/fin.

By letter of 13 April 1984 the then President of the Commission of the European Communities, Mr Gaston Thorn, forwarded the first annual report on the monitoring of the application of Community law - 1983, to the then chairman of the Legal Affairs Committee, Mrs Simone Veil.

By letter of 17 October 1984 the Committee on Legal Affairs and Citizens' Rights requested the enlarged Bureau, pursuant to Rule 102 of the Rules of Procedure, for authorization to draw up a report on this first annual report and on the second report promised by the Commission for February 1985. The enlarged Bureau gave its authorization on 18 January 1985.

On 23 January 1985 the Committee on Legal Affairs and Citizens' Rights appointed its chairman, Mrs Vayssade, rapporteur.

By letter of 7 May 1985 the President of the Commission, Mr Delors, forwarded the second annual report on the monitoring of the application of Community law to the European Parliament, describing it as an annex to the Commission's annual general report.

The committee considered the annual reports and the draft report at its meetings of 15 and 16 October 1984, 23 and 24 May 1985 and 26 and 27 June 1985. The debate on 23 and 24 May 1985 was attended and participated in by several chairman (or their representatives) of appropriate committees of national parliaments in the European Community.

The motion for a resolution was adopted on 17 September 1985 by 10 votes to 0 with 2 abstentions.

The following took part in the vote: Mrs Vayssade, chairman and rapporteur; Mr EVRIGENIS and Mr GAZIS, vice-chairmen; Mrs BOOT, Mr HOON, Mr PORDEA, Mr PRICE, Mr PROUT, Mr SCHWALBA-HOTH, Graf STAUFFENBERG, Mr VETTER and Mr WIJSENBECK. Mr CICCIOMESSERE was also present.

The report was tabled on 30 September.

The deadline for tabling amendments to this report will be indicated in the draft agenda for the part-session at which it will be debated.

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The Committee on Legal Affairs and Citizens' Rights hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

on the monitoring of the application of Community Law by the Member States

The European Parliament,

- A. with reference to the report drawn up by Mr Sieglerschmidt on behalf of the Legal Affairs Committee on the responsibility of the Member States for the application of Community Law (Doc. 1-1052/82) and the resolution of 9 February 1983 adopted as a result¹,
- B. having regard to the first and second annual reports by the Commission of the European Communities on the monitoring of the application of Community Law - 1983 (COM(84) 181 final) and 1984 (COM(85) 149 final - Doc. C 2-40/85),
- C. having regard to the report of the Committee on Legal Affairs and Citizens' Rights (Doc. A 2-112/85),
 1. Stresses that uniform, full and simultaneous application of Community Law in all Member States is an essential prerequisite for the existence of European integration in the form of a Community governed by the rule of law;
 2. Knows that the Commission shares its view that the monitoring of the application of Community law is of fundamental importance;
 3. Welcomes the fact that the Commission has submitted its first two annual reports on such monitoring;
 4. Regrets the delays in forwarding them and hopes that in future the annual report will be submitted by not later than the end of March of the following year;
 5. Considers that the tables and sector-by-sector analyses contained in these annual reports are extremely informative and congratulates the Commission on the formalization and improvement of the monitoring and implementation of proceedings for infringement of the Treaty;
 6. Reiterates its request for direct access to the Asmodée data base which contains the statistics and hopes, as the Commission has promised, for full information facilities by the end of 1985, with the exception of data of a confidential nature;
 7. Takes the view, however, that the Commission does not give in the annual reports a full picture of the application of Community law in the Member States;

¹ OJ No. C 68, 14.3.1983, p. 32

8. For this reason, calls on the Commission to add to its report a Member State-by-Member State analysis, broken down by the authorities concerned, legislative, executive and judicial;
9. Requests, in addition, a report on compliance with the preliminary ruling procedure pursuant to Article 177 of the EEC Treaty covering both requests for and compliance with such rulings;
10. Stresses once more the need for Member States to bring national Law into line with Community law, inter alia in order to comply with preliminary rulings given by the Court of Justice establishing that national provisions are incompatible with Community Law;
11. Calls on the Member States to recognize that when the Court of Justice has delivered a preliminary ruling they are required to comply with that ruling to ensure that no further action need be taken against them under Article 169 of the EEC Treaty;
12. Stresses that, in addition to action taken by the Commission, individuals must be able to enforce their rights under Community law through national courts, particularly in cases of Member States' non-compliance with judgements of the Court of Justice; requests the Commission to investigate and report in the next annual report on difficulties which individuals have encountered in so doing and to take all action necessary to encourage and facilitate such claims;
13. Is struck by the increasing number and range of infringements of Community Law established by the Commission and Court of Justice, even allowing for the fact that some of the increase is due to the improvement in the Commission's monitoring procedures;
14. Takes the view, nevertheless, that an even gloomier picture of the facts would ensue if sources other than the annual reports were consulted;
15. Hopes that the Commission will, in addition, investigate the reasons for this disturbing phenomenon;
16. Recalls the example of the Pruvot report, by the Committee of Inquiry into the Treatment of Toxic and Dangerous Substances by the EC and its Member States (Doc. 1-109/84) of 9 April 1984, which established that sophisticated and exceedingly complex issues of national law arose in the consideration of Member States' attempts in good faith to implement the relevant Directive (see Annex 3 of the report);
17. Notes that substantial expert legal studies commissioned by the Commission and carried out by national experts in this area were required to establish the extent to which important but complex aspects of the Directive had been put into national laws inaccurately;
18. Considers it therefore absolutely vital on a selective basis for the Commission to continue to commission legal experts in Member States to make in-depth spot checks, and to increase the number of occasions when such checks are made;
19. Calls on the Commission to incorporate the results of these studies, together with a full appraisal, in future annual reports;

20. Hopes that this appraisal will help a strategy for combating both the infringements of Community law and their causes;
21. Notes the considerable difficulties encountered by countries which are joining the Community at a time when Community law is at an advanced stage of development;
22. Is confident that Spain and Portugal will manage to overcome these difficulties within the deadlines laid down;
23. Reminds the Commission of its duty to assist the new Member States while stressing its role as guardian of the Treaties; and calls on it in future to make special mention of this problem in its state-by-state analysis;
24. Considers it vital for the Commission to submit proposals for the improvement of the sanction mechanisms contained in the Treaties and recalls in this connection Articles 43 and 44 of its draft Treaty establishing the European Union;
25. Intends to start discussions with the Commission, on the basis of the overall assessment which it is to submit, on the actual state of application of Community law in order to assess the danger to the Community patrimony and to adopt measures to protect and strengthen it;
26. Instructs its President to forward this resolution and the corresponding report to the Commission, the Court of Justice and the Council and to the parliaments, governments and in particular the Ministers of Justice of the Member States.

EXPLANATORY STATEMENTI. The origins

1. On 9 February 1983 the European Parliament adopted a resolution on the responsibility of the Member States for the application of and compliance with Community law¹. Paragraphs 17 and 18 of that resolution are the starting-point of this report. They read as follows:
 'The European Parliament,
 ... 17. Requests the Commission in addition to submit annually a written report on all instances of failure by Member States to fulfil obligations under the Treaties which must state which national authorities have infringed Community law and what stage the procedure has reached;
 18. Hopes, if applicable, to adopt an opinion on this annual report in a report of its own to be submitted by the Legal Affairs Committee and to forward both reports in particular to the parliaments of the Member States for information and for use as seems appropriate'.
2. These paragraphs of the resolution of 9 February 1983 are taken from the motion for a resolution contained in the report drawn up by Mr Sieglerschmidt² on the responsibility of the Member States for the application of Community law. In order better to understand them, reference should be made to points 52 to 54 of the explanatory statement to the Sieglerschmidt report.
3. This report was by no means the starting-point of systematic monitoring of the application of Community law, which was, on the contrary, in 1977 when the Jenkins Commission decided to concentrate particularly on this aspect in addition to continuing to exercise its right of initiative in respect of legislation³.

It should be emphasized here that the following study of aspects of the monitoring of the application of Community law does not underestimate the importance of the exercise by the Commission of its right of initiative. On the contrary, in view of the many still incomplete areas of Community law, it is important to maintain legislative impetus as well as to ensure the monitoring of the application of the legislation in force.

1 OJ No. C 68, 14.3.1983, p. 32

2 Doc. 1-1052/82

3 See Ehlermann, Festschrift Kutscher, p. 139 et seq.

Mr Sieglerschmidt's report can take the credit for the following:

- (1) inducing the Commission further to systematize its monitoring activities;
- (2) requesting from it a regular account of those activities and
- (3) bringing about democratic supervision of those activities by the European Parliament.

This report aims to evaluate the work done by the Commission in this connection and to develop further the criteria to be applied by it in future.

II. The annual reports

(a) The first annual report on the monitoring of the application of Community law - 1983¹ - formal aspects

4. The President of the Commission at that time, Mr Gaston Thorn, promised at the meeting of the Legal Affairs Committee of 16 June 1983 to forward to the European Parliament the first annual report on this subject by the beginning of 1984. Contrary to the expectations aroused by the Commission that the report would be forwarded early in the year, it was not sent, accompanied by a letter from President Thorn, until 13 April 1984.

In view of the fact that the second direct elections to the European Parliament were imminent, the Legal Affairs Committee felt unable to draw up a proper report immediately and postponed dealing with the matter until after the European Parliament had re-assembled.

At its meeting of 15/16 October 1984, the Committee on Legal Affairs and Citizens' Rights was assured by the Commission that the next annual report - 1984 - would be forwarded by February 1985 at the latest. The committee decided as a result that it would draw up a single joint report on both annual reports.

5. The first annual report was forwarded by the Commission without a clear classification. The Committee on Legal Affairs and Citizens' Rights gathered from this that Parliament would not be requested to deliver a formal opinion, and asked the enlarged Bureau, pursuant to Rule 102 of the Rules of Procedure, for authorization to draw up an own initiative report. The enlarged Bureau granted this request on 14 January 1985.

¹ COM(84) 181 final

(b) The second annual report on the monitoring of the application of Community law - 1984¹ - formal aspects

6. Contrary to the Commission's promise, the President of the Commission, Mr Jacques Delors, did not forward the second annual report with an accompanying letter until 7 May 1985. Although the Legal Affairs Committee, later the Committee on Legal Affairs and Citizens' Rights, had shown understanding for the delay which had occurred in drawing up the first report, it was astonished by this delay, prolonged by a further month, and considered that there was cause for criticism. The Commission had, on its own admissions, rationalized the procedure to such an extent that the data could be recalled at virtually any time. To explain the delay merely by the fact that the new Commission took office in January 1985, would cast considerable doubt on the continuity of the Commission's administrative activities.

If it is true that the drafting of the introduction was to blame for the delay in completing the document, there is good reason to examine that introduction closely (see points 22 and 23).

After that experience, the Commission promised at the meeting of the Committee on Legal Affairs and Citizens' Rights of 23 May 1985 that it would in future submit each annual report by the end of March of the following year.

7. The accompanying letter of 7 May 1985 describes the second annual report as an annex to the Commission's annual general report. The document is therefore automatically referred to the Committee on Legal Affairs and Citizens' Rights pursuant to Rule 29(2) of the Rules of Procedure of the European Parliament. The committee may, but is not obliged to, submit a report (see paragraph (3)).

This solution has the advantages of clarity and of the link with the chapters on judicial review and fulfilment by the Member States of their obligations in general reports in the past.

8. The delays which have occurred and the related decision to draw up only one European Parliament report on both the Commission's annual reports raise the question, as does the wording of Rule 29(3) of the Rules of Procedure, whether a report should in principle be drawn up on each annual report. Point 54 of the explanatory statement to Mr Sieglerschmidt's report seems to support this view. On the other hand, paragraph 18 of the resolution of 9 February 1983 contains the words 'if applicable', thus reserving the decision. Finally, the parallel with the annual report on competition policy suggests that a report should be drawn up annually.

¹ Doc. C 2-40/85 - COM(85) 149 final

Two arguments against drawing up a report annually are the indifference likely to develop towards what will quickly become a routine and the experience with the first two annual reports that the Commission has changed its treatment in the interval between the first and second report. It has endeavoured to take into account the suggestions made during the first exchanges of views in parliamentary committee. This shows that a formal report need not necessarily be drawn up in order to exert an influence. In addition, the rapporteur and committee are now in the satisfactory position of being able to make a comparison. The assessment of the substance of the reports will show that it is only when both reports and the proposals made in the meantime are viewed as a whole (see for example the working document on the first annual report, PE 91.883) that a fruitful assessment of those developments can be made.

As matters stand at present it would therefore seem reasonable to draw up reports on the Commission's documents not more than two or three times in each electoral term. This would also emphasize the importance of those reports. The Committee on Legal Affairs and Citizens' Rights is still of course free to decide each time it receives the Commission's document whether or not it will draw up a report.

(c) The substance of the two annual reports

9. As stated above, it seems advantageous to evaluate the substance of both annual reports together and in comparison with one another.
10. The European Communities are based on the rule of law¹. The transposition and application of Community law is essential in order for that law to be effective and for the Community to continue to exist as one governed by the rule of law². Community law applies uniformly throughout the Community, subject to the exceptions which it has itself laid down. To a very great extent, however, it is for the authorities and institutions of the Member States to implement and apply that law. The effectiveness of Community law depends therefore in essence on its application by the national administration, judiciary and legislature. The very different way in which the three powers are organized in the various Member States and the practices which they have developed can result in such wide differences in the application and validity of Community law that ultimately a Community governed by the rule of law no longer exists.

¹ See Walter Hallstein, *Die Europäische Gemeinschaft*, Fifth Edition 1979, p. 53 et seq.

² See Gudrun Schmidt, *Die Durchführung des Europäischen Gemeinschaftsrechts in der Bundesrepublik Deutschland und anderen EG-Mitgliedstaaten*, Integration 1984, p. 205 et seq.

A conscious decision to monitor the application of Community law is therefore essential to the existence of the European Communities.

The annual reports before us are indispensable for the assessment of the state of the application of Community law. They are valuable for the appraisal of the degree of integration which has been achieved and a necessary prerequisite for political and legislative action at Community level and in the Member States for the preservation and improvement of the European Communities and their policy.

11. The annual reports before us must therefore in principle be regarded positively. This does not preclude criticisms being made about them upon closer inspection. Such criticism should always give an incentive to produce an even better report in the future, enabling the state of integration to be more precisely evaluated.

(aa) The statistics

12. The statistics form the basis of the annual reports and their assessment.

The Commission has greatly formalized the steps laid down in Article 169 of the EEC Treaty and stored large sections of the perfectly rational system thereby created in the Asmodée data base. It is therefore possible to recall the latest statistics at any time.

13. The European Parliament had already called on the Commission in paragraph 15 of the resolution of 9 February 1983 to 'give the European Parliament direct access to the data which it has stored in connection with its check on the application of Community law in the Member States, unless these data are of a confidential nature'.

To date, the European Parliament does not have such access, which would provide individual Members and the European Parliament as a whole with information on particular cases and also enable them to make an independent assessment of the overall situation. The reasons for the delay which has occurred are said to be technical difficulties and the problem of which data are of a confidential nature. On 23 May 1985 the Commission announced that the Asmodée data were to be transposed by the end of the year to Sector 7 of the Celex data system to which Parliament has access.

14. The statistics form the major part of the annual reports: pages 24 to 78 in the 1983 annual report and pages 22 to 96 in the 1984 annual report.
15. The increase in the number of statistics is due partially to the addition of new tables not contained in the first annual report:
 - table 5 of the second annual report on judgments of the Court of Justice which have not been complied with, classified by Member State, had already been requested in point 53 of the explanatory statement to the report drawn up by Mr Sieglerschmidt;
 - this table contains additional information on the execution by the Member States of the judgments delivered by the Court of Justice;
 - a new table 4 on complaints and infringements detected by the Commission's own inquiries has been added.

16. The statistics in the first annual report are included in tables covering the period from 1978 to 1983. In the second annual report, not only has 1984 been added to those tables but 1978 has at the same time been left out. The period covered thus spans 6 years in each case. It is unfortunate that the Commission has missed the opportunity of extending the survey in a single document. It is suggested that in future - at least in subsectors - longer periods should also be included in order to show the development trends more clearly.

(bb) The sector-by-sector analysis

17. The first annual report contains an analysis by economic activity (pages 8 - 23). The equivalent of this in the second annual report is a sector-by-sector analysis (pages 5 - 22) which at the same time contains a number of improvements over the first report.
18. The second annual report on the whole gives the names of the Member States concerned, thus complying with a request made in the Committee on Legal Affairs and Citizens' Rights¹ that names should be mentioned. Since the Member State concerned could in any case be discovered by using the tables and consulting the Commission's own press releases as well as those of other bodies, the alleged 'discretion' of the first annual report was an unnecessary game of hide-and-seek.

The cases in which secrecy is still employed in the second annual report (for example in point 48) are surprising. The Commission is requested in these instances to give an express statement of the reasons why it feels the need to be so discreet.
19. The analysis by economic activity corresponds logically in the second annual report to the sectors listed in the tables.
20. The sector-by-sector analysis now also contains a chapter on competition and another chapter on development cooperation policy. The chapter on external relations, which is also new, covers the chapter on commercial policy contained in the first annual report.
21. The analysis by economic activity or sector describes briefly in each case the proceedings initiated or pursued and the measures taken or still to be taken. In addition there is in each case a passage evaluating the sector which is perfectly adequate in relation to the restricted field which it covers. The reader in any case expects a more comprehensive assessment elsewhere.

¹ PE 91.883, point VIII

(cc) The assessment of the state of application of Community Law

22. The tables in conjunction with the sector-by-sector analyses are a mine of information for anyone who is following up an individual case or merely wishes to take a look at one economic sector. The reader is referred to the introduction for an overall view of the state of application of Community law in the Member States. He will not, however, find there the overall assessment which he expects. The introduction to the first annual report contained a few indications which were criticized by the Committee on Legal Affairs and Citizens' Rights for being factual, not to say peremptory and sketchy (see PE 91.883), but the introduction to the second annual report is astounding because it says even less. Not only has the introduction become shorter (4 pages instead of 6) but it refrains from making any overall assessment of the legal situation or any political judgment and serves chiefly to explain the tables.
23. If it is correct that it was essentially the drafting of the introduction which delayed the submission of the second annual report, the conclusion must be drawn from this that the Commission was chiefly employed in depoliticizing and watering down the document. To explain this by the change-over from an outgoing Commission which has, after all, nothing more to lose to a Commission which has recently taken office and wants to act with extreme political reticence towards the Member States is unacceptable: the Community will not have any validity as a Community governed by the rule of law if we dare not to point out its lapse, analyse the reasons for it and develop strategies for combating the process of erosion. Nor can it be said that a discussion of this nature should not be held publicly, since this problem can and must be tackled precisely by discussions between the Commission and the European Parliament. The basic problem is, moreover, of much greater interest to the European Parliament than each individual set of proceedings, however important.
24. An attempt will be made below to specify some factors and criteria in relation to the assessments which have hitherto been missing from the annual reports. In so doing, some indications, particularly from the introduction to the first annual report and the discussions already held in the Committee on Legal Affairs and Citizens' Rights, can be used.
25. The objective must be to obtain an overall view of the state of implementation of Community law in the Member States. Both negative and positive features which have been observed must be indicated. The information on the rates of increase in cases of infringement, the division into infringements against Community law which is in principle directly applicable and infringements against directives and the way in which a distinction is made between cases according to the various stages in the procedure from the letter of formal notice pursuant to Article 169 of the EEC Treaty to the initiation of proceedings and beyond are steps in the right direction. We also welcome the fact that the Commission will in future make a distinction between infringements according to their degree of importance and elaborate criteria for this. The comment that of some 700 directives approximately 500 posed no problems is also a good starting-point.

26. In practice, problems arise in assessing whether a directive has been correctly transposed by a Member State. First of all, Member States are under a duty to inform the Commission that the directive has been incorporated into national law within the prescribed period and to submit the corresponding implementing measures. If no notification is received within the prescribed period, there has been an infringement which must set in motion the procedure laid down in Article 169 of the EEC Treaty. Although this kind of infringement is of a formal nature, it is unacceptable in the interests of the general validity of Community law. When a Member State notifies the Commission that it has transposed the directive and submits the corresponding implementing measures, the arduous task of checking that the national measures are in accordance with the Community directive begins. The work is also complicated because it requires close cooperation between the departments concerned within the Commission.
27. As the task of systematic monitoring has since 1977, been added to the Commission's role of initiating legislation, and the latter task should not in any way be neglected, this is an additional burden on the existing staff. It is somewhat surprising that the Commission has not so far submitted to the budgetary authority a request for additional staff on these grounds.
28. The inherent difficulties in assessment are caused partially by the differences between the national legislation which has to be brought in line with Community law. In cases where there are many provisions governing a field which is to be harmonized by a directive, it is often necessary to make many separate amendments. The governments proposing the legislation and the parliaments voting on it cannot resist the temptation to make additional amendments during the legislative procedure over and above the requirements of Community law. Amendments made in parliament are more likely than draft legislation proposed by the government to jeopardize conformity with Community law. Governments and national parliaments would be well advised to make contact with the departments of the Commission which are responsible during the transposition stage. The Commission, for its part, should consider whether it ought to reach an agreement with the Member States on a prohibition on making additions to the legislation in order to make national transposition measures clear enough to check them.
29. The differences in appraisal which can arise are best explained by the following example:

The European Parliament followed and assessed the procedure for the transposition of Directive No. 78/319¹ in the context of the proceedings of its Committee of Inquiry into the treatment of toxic and dangerous substances by the European Community and its Member States. In so doing it was assisted by the Commission and Member States. The findings show that there was widespread agreement as to the implementation of transposition measures by the Member States but considerable differences in the way in which these measures were evaluated from the point of view of their substance: the Commission's assessment in the first annual report (page 67) is positive with the exception of a gap in the case of France and a letter of formal notice pursuant to Article 169 of the EEC Treaty in the case of Greece. On the other hand, the Committee of Inquiry finds defects of substance in the case of the majority of the Member States².

1 Council Directive of 20 March 1978 on toxic and dangerous waste, OJ No. L 84, 31.3.1978, p. 43

2 See the Pruvot report, Doc. 1-109/84, p. 20 et seq. and the resolution of 11 April 1984, OJ No. C 127, 14.5.1984, p. 67 et seq., para. 3

The Committee of Inquiry at the same time gives an explanation for this discrepancy: the Commission does not have the necessary sufficiently qualified staff to supervise and assess the national transposition measures. The second annual report (page 84) reaches a rather different appraisal (influenced by Parliament's findings?): it reports the fact that a reasoned opinion pursuant to Article 169 of the EEC Treaty has been delivered in three cases: Belgium, France and Greece. The Commission seems still to consider that the national transposition measures in all the other Member States are compatible with Community law.

30. The Commission takes steps in the direction of an appraisal when it states in the first annual report with regard to the increasing number of infringements involving obstacles to free movement for both industrial and agricultural products that they are taking more sophisticated forms and that the infringements are often deliberate. The Commission also attempts to explain this in the first instance by a reference to 'the deepening of the recession' (point 20).

The Committee on Legal Affairs and Citizens' Rights did not complain about these indications but about the fact that they were not sufficiently developed: 'This explanation seems to be too superficial since it does not show convincingly the link with the very disparate economic data for the various sectors in different years and in different regions or Member States. A specific analysis is, however, necessary in order to be able not only to establish and bring proceedings against infringements but also to develop a strategy for preventing them or nipping them in the bud. This naturally presupposes that the Commission can bring itself to reach a uniform assessment of economic development'¹.

The fact that the second annual report omits to make any attempt at evaluation seems all the more striking after the criticism made in October 1984.

31. In addition, the Commission gives the impression, from the volume of statistics and the improvements in the monitoring system, that it has included virtually every instance of failure to apply Community law. This gives rise to the misleading idea that there has been great progress in Community penetration of the socio-economic processes in the Member States, an impression which needs to be qualified. A glance at various publications soon gives a very different impression; thus, in respect of France, the Josselin report² contains the following passage:

- 'Failure to fulfil obligations under Community law

In principle, the SGCI (Interministerial Committee Secretariat) has no legal status of its own: it tries above all to coordinate and, in order to do so, to disseminate information about Community law more effectively within the French administration. However, this information is so often incomplete, the cumbersomeness of the French system so great and the incompetence of the legal departments of the ministries sometimes so blatant that it is often forced to exert a greater influence than it would perhaps wish to do.

¹ PE 91.883, point VIII

² National Assembly, Delegation to the European Communities, Josselin report, France and Community Law, No. 26/84

The failure of the French administration to comply with Community law is disturbing. Several recent important draft laws seem to have been drawn up as though France had not signed the Treaty of Rome thirty years ago. Die-hard attitudes in some quarters will not 'change'.

Hjalte Rasmussen describes critical aspects of the attitude of Danish courts towards the application of Community law¹.

Even the Commission itself occasionally draws a gloomier picture of the application of Community law in other documents: in its communication to the Council on public supply contracts - conclusions and perspectives (Doc. C 2-9/85 - COM(84) 717 final) it reaches the finding on the whole that familiarity with the directive on public supply contracts and the degree to which it is complied with in the Member States are very limited. In addition, there is a lack of information about and confidence in the existing legal remedies.

32. With the important exception of Greece (second annual report, points 2 and 11) the Commission has not even attempted to explain the increasing number of infringements in each Member State in terms of its special characteristics. A Member State-by-Member State analysis would nevertheless have been appropriate. It is generally known that Member States with greater legislative decentralization in the form of Lander or regions have different problems in transposing legislation from those of centralized States. The difficulties arising in the case of Italy out of the length of the legislative procedure, partly because of the frequent dissolutions of parliament and the consequent lack of continuity in the legislative process, are well known to the courts.
33. In the search for explanations of the infringements and the number of them, it would also have been appropriate to differentiate between the various national authorities - legislature, executive and judiciary. A request for a distinction of this kind was also made, by the way, in point 53 of the explanatory statement to the above-mentioned report drawn up by Mr Sieglerschmidt.
34. In order to obtain the fullest possible picture of the state of application of Community law in the Member States, the Commission should include a survey of requests for preliminary rulings pursuant to Article 177 of the EEC Treaty. The Court of Justice regularly publishes statistics on the number and kind of such requests for preliminary rulings.

This information does not, however, contain any details as to the way in which these preliminary rulings are given effect by the national courts which have requested them or the instances in which national courts, despite the obligation to do so under the third paragraph of Article 177 of the EEC Treaty, have not asked the Court of Justice to give a ruling.

¹ The application of Community law in Denmark, *Europarecht* 1985, p. 66 et seq., particularly p. 70 et seq.
See in the near future Dieter H. Scheuning's article in *Europarecht* 1985 and also Gudrun Schmidt, loc. cit.

The Court of Justice obtains the great majority of all national decisions delivered following a preliminary ruling because it asks for them as a matter of routine. It is, however, unable to evaluate them itself. This situation will probably be remedied by a research project being carried out by the European Policy Unit of the European University Institute in Florence under the supervision of Professor Weiler in cooperation with the Court of Justice.

At the committee meeting of 23 May 1985 the Commission reported that it initiated proceedings under Article 169 of the EEC Treaty in all cases in which it reached the view that a national decision delivered following a preliminary ruling was incompatible with Community law. Proceedings initiated under that article could shown separately for the sake of greater transparency.

Any proceedings for a declaration that a Member State has failed to fulfil its obligations under the Treaty on the basis of a court decision which is incompatible with Community law gives rise to a

problem for the Member State concerned stemming from the separation of powers: the Government cannot of course order the courts to alter their decisions. It can however take steps to amend the law on which those decisions are based.

Cases in which national courts fail to request a preliminary ruling although they are under an obligation to do so pursuant to the third paragraph of Article 177 of the EEC Treaty and the corresponding case law of the Court of Justice of the European Communities¹ are more difficult. Several decisions of national supreme courts have dominated the discussion for years and give a very unsatisfactory impression of the acceptance of Community law, to mention only a few, the well-known Cohn Bendit decision given by the French Conseil d'Etat², the case of the Danish Hojesteret, the supreme court of that country³, the decision of 16 July 1981⁴ and the related judgment of the German Bundesfinanzhof (Federal Finance Court) of 25 April 1985⁵ and a series of decisions given by the Bundesverfassungsgericht (Federal Constitutional Court)^{6,7,8}. Even though the procedure under Article 169 of the EEC Treaty does not always seem to be absolutely appropriate in such cases, reports on the application and monitoring of the application of Community law should contain information on the development of national case-law and any influence which has been exerted.

35. A report on the application of Community law supplemented by an analysis and assessment of the causes of infringements leads to the question of the improvement of the means of enforcement.

1 Case 283/81, C.I.L.F.I.T., [1982] ECR 3415
2 Reproduced in the annex to the report drawn up by Mr Sieglerschmidt on this subject, Doc. 1-414/81
3 Reference in Rasmussen, loc. cit., p. 71 footnote 11
4 Europarecht 1981, p. 442 with comment by Millarg
5 Europarecht 1985, p. 191: this case is remarkable in both denying the requirement to bring a matter before the Court of Justice pursuant to the third paragraph of Art. 177 EEC and rejecting the Court of Justice's case law on the direct applicability of directives; see also Written Question No. 880/85 by Mr Rothley to the Commission
6 Bundesverfassungsgericht 37, p. 271, Rivierez report thereon, Doc. 390/75
7 Bundesverfassungsgericht 58, p. 1 and Bundesverfassungsgericht 59, p. 63 see Reinhard Priebe, Alcohol in the case law of the Court of Justice of the European Communities, or: A contribution to the understanding of supranational case law, Das wahre Verfassungsrecht, Gedachtnisschrift für F. G. Nagelmann, p. 147, 159
8 Bundesverfassungsgericht 52, p. 187

The rather resigned statement made in the first annual report, that 'the Community, in contrast to States, does not have the customary means of ensuring compliance with its law' (point 22) will not do.

The second annual report mentions an anonymous case in which the Commission had reached a reasoned decision pursuant to Article 88 of the ECSC Treaty.¹ This should also prompt the Commission once more to reflect upon the means of imposing sanctions.

The problems connected with the restrictive wording of Article 88 of the ECSC Treaty are well known. However, the fact that the Community treaties contain a provision imposing penalties in the first place is an important starting-point. The proposal made by the Court of Justice of the European Communities in this connection² is still relevant. It is for that reason that it was also included in the report drawn up by Mr Sieglerschmidt (point 47 et seq.).

The reference made by Mr Delors, President of the Commission, at the committee meeting on 23 May 1985 to the fact that the report drawn up by the Ad Hoc Committee on Institutional Affairs (the Dooge report) contains no proposals for penalties is not persuasive: the Dooge report is a political document which does not answer many questions it would have to if it became a legal document. A legal text such as the European Parliament's draft Treaty establishing the European Union does contain machinery for imposing penalties (Articles 43 and 44).

In view of the realization that Community law is not being properly enforced and of the awareness that this law is of vital importance for the existence of the European Communities on the one hand and of the consciousness of the danger of over-taxing the Court of Justice of the European Communities on the other, the Commission should envisage making a proposal for the improvement of the machinery for imposing penalties for infringements.

¹ Second annual report, para. 48

² Bulletin of the European Communities, Supplement 9/75, p. 17

