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**24th ANNUAL REPORT FROM THE COMMISSION
ON MONITORING THE APPLICATION OF COMMUNITY LAW
(2006)**

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Each year the European Commission draws up a report on the monitoring of application of Community law, in response to requests made by the European Parliament (resolution of 9 February 1983) and the Member States (point 2 of Declaration No 19 annexed to the Treaty signed at Maastricht on 7 February 1992). The report also responds to the requests expressed by the European Council or the Council in relation to specific areas of activity.

1. INTRODUCTION

In exercising its function as guardian of the Treaties, the Commission ensures and monitors the uniform application of Community law by the Member States pursuant to Article 211 of the EC Treaty. Article 226 EC provides that the Commission can take action against a Member State which has failed to fulfil an obligation under the Treaty, for example adopts or maintains legislation or rules which are contrary to Community law.

The White Paper on European Governance¹ published by the Commission in 2001 emphasises that the primary responsibility for applying Community law lies with national administrations and courts in the Member States. The primary objective of infringement proceedings is to encourage the Member States to comply voluntarily with Community law as quickly as possible. Furthermore, the Commission has aimed to improve cooperation with the Member States by means of complementary or alternative methods to resolve problems.

The 24th annual report, including the staff papers annexed to it - contributions from the Commission's departments (SEC(2007) 975) and statistical annexes (SEC(2007) 976) - gives an account of the Commission's activities in connection with monitoring the application of Community law in 2006.

2. ENLARGEMENT OF THE UNION AND NOTIFICATION OF MEASURES FOR TRANSPOSITION OF DIRECTIVES

2006 saw the final preparations for the enlargement of the Union to Bulgaria and Romania. Both countries used the integrated system for electronic notification of national measures for transposition of directives to meet their pre-notification obligations regarding the "acquis communautaire".

At present, all 27 Member States voluntarily notify national measures for transposition of directives through the Electronic Notification database.

In terms of notification of national transposition measures, in January 2006 an average of 98.93% directives had received notifications by the 25 Member States. This average rose to 99.06% end 2006².

3. INFRINGEMENT PROCEEDINGS

The total number of infringement proceedings initiated by the Commission fell slightly from 2653 in 2005 to 2518 in 2006. By 31 December 2006, 1642 cases out of the 2518 registered were still ongoing. There was also a slight decrease in the number of complaints registered, from 1154 in 2005 to 1049. Complaints accounted for 41.7% of the total infringements detected in 2006. The number of infringement proceedings initiated by the Commission on the basis of its own investigations rose from 433 in 2005 to 565 in 2006 (24%) for EU 25.

¹ European Governance – a White Paper (COM (2001)428).

² See the details for each Member State on the Secretariat-General's EUROPA website: http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_fr.htm#transpositions

For EU 25, the number of proceedings for failure to notify transposition measures decreased by 16% with respect to 2005, from 1079 to 904 cases. This is partly explained by two factors, (1) a reduction in the number of directives with a deadline for the year from 123 in 2005 to 108, and (2) improvement in timely notifications by Member States.

The average time taken to process all the infringements in the period 1999-2005, from registration of the case within the specified time limit to the sending of the letter of referral to the Court of Justice under Article 226 of the EC Treaty was 20.5 months compared with 24 months for the period 1999-2002. The average time taken to process cases originating in complaints and those detected by the Commission's own investigations was 28 months compared with 35 months for the period 1999-2002. For infringements originating in failure to notify national measures to transpose directives, the average time was around 14.5 months compared with 15 months for the period 1999-2002.

Further to the adoption of the Commission re-cast Communication SEC(2005)1658 of 12 December 2005 on the application of Article 228 of the EC Treaty, a more frequent review of infringement cases with continued failure to comply with the Court's judgment is now taking place. A certain upward trend in referring cases to the Court on the basis of Article 228 could be observed towards the end of 2006. A second referral to the Court was decided in ten cases, with two later withdrawn upon receipt of the required transposition measures.

4. IMPLEMENTATION OF THE COMMISSION COMMUNICATION “BETTER MONITORING OF THE APPLICATION OF COMMUNITY LAW” COM(2002)725

The Commission has continued to implement this Communication, pursuing further acceleration of the analysis and processing of infringements and full compliance with the code of good administrative conduct in its dealings with complainants. The Commission has followed-up on potential infringements in Member States, continuing to focus on the accelerated pursuit of late transposition of directives and paying particular attention to enforcement of Court decisions. The combined use of expert groups, bilateral meetings and contacts, sectoral package meetings, participation in training events, information and transparency campaigns, as well as continuing the pre-accession monitoring contacts have continued to take place. At the same time, the Commission has followed its policy review in this area, taking account of the resolution of Parliament on the 21st and 22nd reports, adopted in May 2006 in the Better Regulation package. The main areas of this review were identified in the Commission's 'Strategic Review of Better Regulation in the European Union' in November 2006³ which also announced a new communication in 2007. This communication will confirm the Commission's evaluation of the current position and set out its policy for the future.

5. INFRINGEMENTS RELATING TO PETITIONS PRESENTED TO THE EUROPEAN PARLIAMENT

Petitions to Parliament represent a valuable source of information for detecting breaches of Community law. In many cases petitions are presented at the same time as a complaint to the

³ COM(2006)689.

Commission and the facts denounced by the petitioner are already under examination by the Commission's services in the framework of an infringement proceeding.

The highest number of petitions relate to the area of the environment and the single market.

In the sector of the environment, petitions are of particular importance since the Commission does not have any "inspection" powers in order to check practical implementation of EC law on the ground.

Regarding the internal market, two specific areas continued to occupy a particularly important place in terms of petitions. The recognition of diplomas saw a further confirmation of the application of the rules on professional, rather than academic, recognition rules for qualified professionals. In the field of public procurement, the question of urban laws in the region of Valencia continued to raise important questions.

Fewer petitions were received in other sectors such as problems faced by citizens at EU external borders and VAT refunds.

6. MAIN DEVELOPMENTS IN EACH OF THE AREAS OF COMMISSION ACTIVITY

The following are the main developments by area of activity.

In **agriculture**, two main objectives were pursued: removing barriers to the free movement of agricultural produce and ensuring that the agricultural regulations are applied effectively and correctly. Action was taken to remove traditional barriers to free movement of agricultural produce.

The Commission also reminded Member States of their obligation to send annual reports, on all existing state aid arrangements in agriculture and action was taken to ensure compliance with the Court's judgment in this matter.

In **competition policy**, the priorities in 2006 were monitoring the transposition of the Directive on competition in the markets for electronic communications and the transparency Directive. The Commission examined a number of suspected infringements relating to Article 86 combined with Article 82 EC, as well as Article 31, and investigated the failure to comply with a Commission decision under Article 21 of the Merger Regulation.

In **education and culture**, many obstacles still exist which impede students from moving freely within the EU. Due to limited EU competence, these obstacles to mobility often do not constitute infringements of Community law. In the field of academic recognition of qualifications, the EU can only intervene in cases of discrimination on grounds of nationality. In many cases, the obstacles are of an administrative nature, such as the length or the cost of recognition procedures. These cases are closely followed because of their impact on the free movement of students. In 2006, two infringement procedures were launched. In the first, following the reasoned opinion, the Member State concerned (Greece) has amended its legislation. In the second, concerning Portugal, a reasoned opinion was sent early 2007.

In the field of access to education, where the principle of non-discrimination on grounds of nationality applies, 2006 revealed another difficulty stemming from differences in the organisation of the education systems in Member States. In Austria and Belgium the application of the principle of equal treatment led to important increases in the numbers of EU

students in higher education systems, as these Member States apply a policy of free access to higher education for their nationals, whereas neighbouring Member States (Germany and France) apply strict *numerus clausus* in certain study fields. This led the former countries to adopt discriminatory quota systems for the enrolment of non-nationals in their universities. This differential treatment could be accepted only if based on objective considerations independent of the nationality of the persons concerned and proportionate to the legitimate aim of the national provisions and this has not been demonstrated so far. These cases are of legal and political importance for ensuring freedom of movement and equality of treatment in higher education.

In **employment**, infringements cover the panoply of the priority criteria set out in the 2002 Communication.

On the one hand, a number of cases concern the presumed wrong application of Treaty articles and/or secondary legislation rules (i.e. provisions in regulations) in the area of social security and the free movement of workers. On the other hand, infringements in the area of labour law, health and safety at the work place, as well as in the area of non-discrimination (directives ex Article 13 EC, for which the deadline of transposition expired in 2003), mostly concern a lack of communication of the necessary national transposition measures or incorrect transposition. Infringements in the area of equal treatment between men and women mainly deal with non conformity issues (usually originating in individual complaints, written questions or petitions). In all areas concerned, systematic follow-up has been ensured, as necessary, in cases where a Member State has failed to comply with a judgment of the European Court of Justice.

In respect of the use by the 'EU-15' and 'EU-25' Member States of the safeguard clauses provided for in the transitional provisions of the Accession Treaties for the free movement of migrant workers, and related similar issues, the relevant national legislation has been examined.

In **enterprise and industry** the main objective is to guarantee the internal market for goods.

As well as enforcing existing legislation by means of infringement proceedings under Article 226 and 228 EC, the Commission continued to reinforce preventive action through Directive 98/34/EC, by providing interpretation and guidance for many pieces of draft legislation. Other new action was taken to enhance co-operation with Member States in transposing directives.

In conducting infringement proceedings, priority was given to cases concerning non-communication of national measures transposing directives, failures to implement the Court's judgments (Article 228 EC) and complaints denouncing structural problems in Member States. The Commission opened 186 infringement proceedings for *non-communication* and 4 proceedings for *non-compliance with the Court's decisions*.

In 'EU-25', the implementation of rules relating to the internal market for goods has improved according to the volume of complaints. Partly as a result of proactive action (contacts with the Member States, package meetings, the SOLVIT network, committees, etc.) a total of 339 cases were settled in 2006. In only 8 cases did the Commission need to bring the Member State before the Court of Justice. However, the number of complaints relating to the implementation of directives increased by comparison to 2005.

In the area of **environment**, in 2006, the correct implementation of EU environmental law remained an important priority for the Commission. The environment sector accounted for about one fifth of the total number of open cases concerning non-compliance with Community law under investigation by the Commission and remains the sector with the highest number of open cases. A positive message is that, after the accession of 10 new Member States in 2004, the number of open cases did not grow disproportionately.

In the handling of complaints and infringements, a certain priority was given to cases concerning bad transposition of environmental directives, as well as to cases relating to lack of compliance with fundamental secondary obligations under Community environmental legislation, systemic problems of bad implementation and major infrastructure projects. Bad transposition cases represent now a sizeable portion of open cases (17,81 %) and infringements (22,61%). The highest number of open cases was in the sector of nature (250 cases), followed by waste (119 cases), water (103), impact assessment (98) and air (89), with 26 cases from the remaining sectors.

In the **fisheries** sector, the sustainable management of maritime living resources aims at social and economic long-term interests.

Within the application of the rules of conservation of resources, particular attention was paid to the upholding of the standards relating to the functioning of the national systems of control; to the control of the application of technical conservation measures; to the communication of data on catches and fishing effort; to fleet capacity; and to the use of driftnets.

The Commission continued work on setting up the Community Fisheries Control Agency.

In the area of **Information Society and Media**, the focus of enforcement concerning the regulatory framework for electronic communication has now shifted from transposition issues to ensuring full compliance and effective application in all 25 Member States, in particular, the examination of the major concerns expressed in the annex to the 2005 Implementation Report. New proceedings accordingly focused on the non-availability of caller location information to emergency authorities for calls to 112 made from fixed and/or mobile phones, the failure to ensure timely completion of the market reviews and national must-carry provisions. Other issues addressed concerned the independence and the powers of the NRA, the right of appeal against decisions of the NRA, rights of way, the lack of a Reference unbundling offer, cost accounting, number portability and universal service financing. To increase transparency for all stakeholders, the Commission has continued to issue press releases at each stage of the proceedings that have been opened.

Concerning media policy, the main development concerns the revision of the *Television without Frontiers Directive* with the amending proposal now in discussion in Council and Parliament. The *Directive 2003/98 on the re-use of public sector information* (PSI Directive) seeks to facilitate the creation of Community wide services based on PSI, to enhance an effective cross-border re-use of PSI for added-value services, and to limit distortions of competition on the Community market. The Commission has been closely monitoring the transposition process and providing technical assistance in order to enhance re-use and to facilitate the exchange of good practices in Member States.

A report was adopted on the application of the *Directive on electronic signatures* which was not the subject of any infringement proceedings.

Legal service: in the case of the Sellafield nuclear fuel reprocessing plant, the Court based its judgment partly on Article 292 of the EC Treaty; this was the first time that article had been invoked and applied. The Court said that it had exclusive jurisdiction to decide any dispute regarding the interpretation and application of Community law, and held that Ireland had failed to fulfil its obligations when it brought a dispute between itself and the United Kingdom on questions that were essentially questions of Community law before an arbitral tribunal provided for in the Law of the Sea Convention.

In the area of **justice, freedom and security**, the deadlines for implementation of two important Directives granting rights to third-country nationals in the field of asylum and immigration expired in 2006 (Directives 2003/109 and 2004/83). Similarly, a key Directive 2004/38, which consolidates and updates the free movement rights of the EU citizens and their family members, was also due for implementation in 2006. The Commission adopted a report on the application of Directives 93/96, 90/364, 90/365 on the right of residence for students, economically inactive and retired Union citizens.

Another important issue arising from the Hague Programme was the adoption of the first ever drafted Scoreboard Plus. In addition to the monitoring of the adoption process, for the first time, as part of such exercise for Justice, Freedom and Security policies, this communication examines national implementation of these policies.

In the **internal market**, in 2006, the Commission intensified its activity in the area of the application of Community law. The objective was to further develop our enforcement policy and turn it into a policy instrument for the promotion of the overall policy priorities of the Directorate General. Actions have been focussed in the following areas:

Follow-up to the 2002 Communication - An active policy of application of the principles enshrined in the Communication was maintained. It organised package meetings and transposition workshops in different sectors. These initiatives ensured a preventive dialogue with Member States and contributed to better prepare national transposition measures. Directorate General Internal Market also strengthened its promotion of SOLVIT as a complementary problem solving mechanism.

Follow-up to the Recommendation of 12 July 2004 on the good practices concerning transposition - Information on the implementation of this recommendation continued to be exchanged with Member States. The inquiry confirmed that several of the recommendations formulated by the Commission were taken on board and reflected in concrete national initiatives. The Internal Market Scoreboard of July 2006⁴ analysed the results and concluded that the recommendation played a fundamental role in the reduction of the transposition deficit in most Member States.

"Prioritisation" of infringement proceedings - A reflection was started on how to improve the efficiency and effectiveness of infringement proceedings with reference to market and legal criteria. The proceedings need to become more effective (involving hierarchy, accelerating the treatment, choosing the most appropriate approach for each single problem detected) in order to deliver more tangible results for citizens and business. The reflection resulted in the development and implementation of a better strategy in the treatment of complaints and infringements. This new approach introduced a benchmarking system in order to seek

⁴ See http://europa.eu.int/comm/internal_market/score/index_en.htm.

solutions more rapidly for important files. It also takes better into account the impact of the identified problems on the key objectives of internal market policy. Priority treatment is also given to those problems undermining the exercise of fundamental freedoms or the good functioning of secondary legislation.

Freedom of establishment and free movement of services: the main relevant sectors of action as in previous years were the posting of workers, the mobility of patients and reimbursement of medical costs, the establishment of pharmacies, gambling, authorisation of vehicle inspection organisations, setting up of shops, certification services, private security services.

Regional policy: aid, from the European Regional Development Fund to programmes or individual Cohesion Fund projects, is based on the principle of partnership; i.e. close collaboration between the Commission and the national (and regional) authorities, the latter being legally responsible for the correctness of projects financed by the Funds, particularly by ensuring compliance with Community policies such as environment or internal market (public procurement Directive) and with the principles of sound financial management.

In **health and consumer protection** the timely and correct implementation of EU health and consumer law remained a priority.

The inspections carried out by the Food and Veterinary Office are the basis of a close cooperation with Member States in order to achieve a high level of food safety, animal health, animal welfare and plant health. The Commission did not hesitate to act against Member States which delay the implementation of action plans aimed to address deficiencies, which take inadequate action or in which major threats for human or animal health have been found.

The Commission has also swiftly taken measures in the field of legislation concerning the marketing of tobacco products.

In the consumer policy area, the Commission started a thorough examination of the transposition of several directives with the purpose to achieve a uniform application of a Community legislation that adequately defends consumer interests, health and safety in the single market.

The number of cases initiated on the Commission's own initiative increased considerably during 2006.

In 2006, in the **area of taxation and customs**, the situation was as follows. In the area of taxation, despite the good figures for notification of the transposition of directives and a more pro-active infringement policy regarding the control of the application of Community law, an important number of potential infringements still exists in domestic legislation.

The European Court of Justice case-law in *direct taxation* has again developed, with the increased need for follow-up by the Commission. The focus has been on cross-border dividend payments, in particular on withholding taxes on outbound dividends in cases, where dividends paid to residents are not taxed (discrimination and obstacle to investment).

Regarding *indirect taxation*, the pro-active infringement policy resulted in the setting up of a plan within the framework of car taxation in order to detect and start if necessary infringement procedures against the Member States. In addition, some infringement procedures were launched as regards the application of reduced VAT rates, tax treatment of postal services and

action was also taken against the Member States that impose minimum retail selling prices on cigarettes.

In **energy and transport**, the ratio of cases of failure to notify to other types of infringement (non-conformity, incorrect application) decreased to 35% of cases. This specific trend can be explained by the efforts made in checking the compliance of national measures transposing directives, which led to a large number of letters of formal notice (91) and reasoned opinions (53) sent out in non-compliance cases.

In the energy area, the correct application of the two 2003 directives on the internal electricity and gas market which are fundamental to the opening up of the electricity and gas markets in the EU was examined.

The Commission also stepped up efforts against failures relating to the Euratom Treaty by actions concerning not only radiation protection but also other obligations linked to nuclear safeguards, external relations and the role of the Euratom Supply Agency.

In the transport area, the correct application of the directive on road pricing and the transposition of the second railway package directives was examined. In air travel, the Commission decided to refer one Member State to the Court for the failure to respect the EU legislation on the establishment of a national supervisory authority in the context of the single European sky. In maritime safety, action continued to be taken against Member States which failed to comply with Community legislation on port State control and on improved availability and use of port reception facilities for ship-generated waste and cargo residues.

Member States which had not transposed the directives on working time in road transport and reporting of safety-related occurrences in air transport were referred to the Court of Justice.

In the **personnel and administration** field, the only two infringement proceedings opened against Member States were closed. They concerned the application of the Staff Regulations and in particular the possibility for staff to obtain the transfer of acquired retirement pension rights to the Community scheme.

In **the budgetary area**, the Commission has followed up all cases where infringements of EC legislation result in incorrect or late payment of own resources and other receipts, taking legal action where preliminary correspondence or discussions in the Advisory Committee for Own Resources could not solve the problem.

In **the area of Community statistics**, in 2006, the application of Community legislation can be considered satisfactory and no new infringement cases were opened.

In the area of **Enlargement**, a case concerning the incorrect application of the association agreement with Turkey was referred to the Court for discrimination against Turkish workers wishing to extend their residence permits.