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ON MONITORING THE APPLICATION OF COMMUNITY LAW
(2006)**

SITUATION IN THE DIFFERENT SECTORS

[COM(2007) 398 final]
[SEC(2007) 976]

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.

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1. INTRODUCTION – STATISTICS

1.1. Transposition of directives

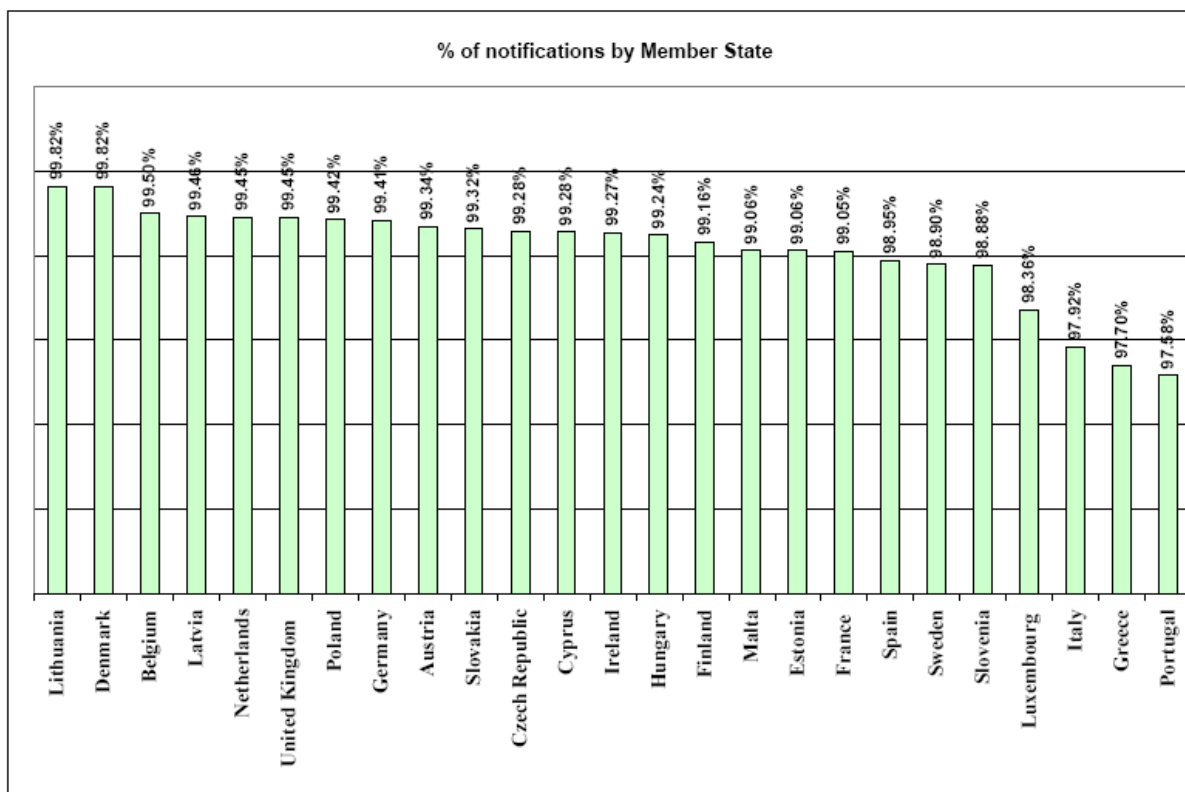
The percentages of the tables hereunder reflect the effort of communication made by Member States notifying national execution measures for the transposition of all adopted directives (NEMs) to the Commission.

The following table shows a general overview of directives whose deadline for implementation had passed by 31st December 2006 and for which measures of implementation had been notified by Member States:

EUROPEAN COMMISSION. Secretariat General.
Progress in notification of national measures implementing directives
Reference date 10/01/2007 Source: ASMODEE II

Ranking	Member States	Directives whose deadline for implementation has passed by the reference date	Directives for which measures of implementation have been notified	Percentages of notifications
1	Lithuania	2786	2781	99.82%
2	Denmark	2731	2726	99.82%
3	Belgium	2788	2774	99.50%
4	Latvia	2787	2772	99.46%
5	Netherlands	2733	2718	99.45%
6	United Kingdom	2728	2713	99.45%
7	Poland	2772	2756	99.42%
8	Germany	2734	2718	99.41%
9	Austria	2737	2719	99.34%
10	Slovakia	2783	2764	99.32%
11	Czech Republic	2784	2764	99.28%
12	Cyprus	2775	2755	99.28%
13	Ireland	2746	2726	99.27%
14	Hungary	2775	2754	99.24%
15	Finland	2729	2706	99.16%
16	Malta	2775	2749	99.06%
17	Estonia	2763	2737	99.06%
18	France	2735	2709	99.05%
19	Spain	2751	2722	98.95%
20	Sweden	2717	2687	98.90%
21	Slovenia	2779	2748	98.88%
22	Luxembourg	2738	2693	98.36%
23	Italy	2742	2685	97.92%
24	Greece	2737	2674	97.70%
25	Portugal	2773	2706	97.58%
	average EC	2756	2730	99.07%

So as to facilitate comparison, here are the abovementioned data presented in column format:



The percentages reflect the effort of communication of Member States notifying NEMs to the Commission. These tables include all communications officially received by the Secretariat general. They equally include all directives (repealed and in force) covered for control purposes by the "INFRINGEMENTS"¹ database. Due to the regular update of this database these data are bound to change at every release. Data on official communication of NEMs is published every two months (six times a year) for information purposes on EUROPA² webpage of the Commission. Data shown reflect the last update for 2006.

As from 2007, and coinciding with the enlargement of the European union to Bulgaria and Romania on 01/01/2007, the Commission will add to these tables, data on effort of communication of Member States notifying NEMs specifically for directives in force.

It is worth noticing that as from March 2006, and thanks to the addition of the last outstanding Member State, France, all 25 Member States, as well as Romania and Bulgaria, are communicating NEMs voluntarily through the "Electronic Notification application" developed by the Secretariat general of the Commission since 2004 in electronic format; thus contributing to improve notification of national measures for the transposition of directives as requested by the "Communication of the Commission on better monitoring Community law"³.

¹ The "INFRINGEMENTS" database is an internal management tool for infringement cases as well as for controlling the communications Member states are proactively called to do so as to transpose EU directives into their legal systems.

² http://ec.europa.eu/community_law/eulaw/index_fr.htm#transpositions

³ COM(2002)725 final

1.2. Cases referred to the Court of Justice under Article 228 of the Treaty establishing the European Community – Developments in 2006 – Table

New cases tried in 2006 are in bold.

C = Closed D = withdrawn Blank = before the Court

Cases referred to the Court of Justice under art.228 EC (situation on 31/12/2006)									
MS	Infringement number	Infringement title	Date of Court judgment Art. 226	Proposed Penalty (€ / day)	Proposed Lump sum (€ / day)	Date of Commission decision	Case number under Art. 228	Date of Court judgment Art. 228	State of play
BE	1990/0291	Oiseaux sauvages	8/07/1987	7.750		10/12/1997			C
	1989/0457	Financement des étudiants (nationalité)	3/05/1994	43.400		22/12/1999			C
	2000/0038	Non communication des mesures de transposition de la Directive 98/76/CE	6/06/2002	31.000		16/12/2003			C
DE	1987/0372	Eaux superficielles	17/10/1991	158.400		29/01/1997	C-122/97		D
	1986/0222	Oiseaux sauvages	3/07/1990	26.400		29/01/1997	C-121/97		D
	1986/0121	Eaux souterraines	28/02/1991	264.000		29/01/1997			C
	1990/4710	Directive impact	22/10/1998	237.600		21/12/2000	C-41/01		D
	1997/4540	Marché de services - Enlèvement d'ordures de la ville de Braunschweig	10/04/2003	126.720		13/10/2004	C-503/04		
	1998/4905	Marchés publics de services - Abwasser bockhorn	10/04/2003	31.680		13/10/2004	C-503/04		

ES	1989/0418 1996/2104 1996/2105	Dir. 76/160/CE – Quality of bathing water TRANSP. DE LA DIRECT. PORTANT COORDIN. DES PROCED. DE PASS. DES MARCHES PUBLICS DE FOURNITURES TRANSP. DE LA DIRECT. PORT. COORDIN. DES PROCED. DE PASS. DES MARCHES PUBLICS DE TRAVAUX	12/02/1998 13/01/2005 13/01/2005	45.600 97.482 97.482	 14.770 14.770	23/05/2001 12/12/2006 12/12/2006	C-278/01	25/11/2003	C
EL	1989/0165 1991/0668 1993/0711 1989/0138 1991/0583 2005/2202 1997/4319	Ecoles privées (nationalité) Diplômes enseignement supérieur Marchés publics de services Décharge de Kouroupitos Accès aux emplois publics Récupération des aides illégales NON RECONNAISSANCE D'UN DIPLOME D'ARCHITECTE	15/03/1988 23/03/1995 2/05/1996 7/04/1992 2/07/1996 12/05/2005 9/09/2004	61.500 41.000 39.975 24.600 arrêt 04/07/2000 = 20000 57.400 53.611 42.573,60	 10.512 5.256	10/12/1997 10/12/1997 24/06/1998 26/06/1997 1/07/1999 18/10/2006 12/12/2006	C-197/98 C-387/97	4/07/2000	C D C C C

FR	1984/0445	Pêche – mauvais contrôle du respect des mesures techniques de conservation	11/06/1991	316.500		20/12/2001	C-304/02	12/07/2005	C
	1989/0146	Produits défectueux	13/01/1993	158.250		31/03/1998			C
	1984/0121	Oiseaux sauvages	27/04/1988	105.500		24/06/1998	C-373/98		D
	1990/2109	Travail de nuit des femmes	13/03/1997	142.425		21/04/1999	C-224/99		D
	1992/2248	GMO's - DIR 90/219, contained use of genetically modified micro-organisms, non conformity	27/11/2003	168.800		12/12/2005	C-79/06		D
	1995/2046	Transposition non conforme des troisièmes directives assurances (mutuelle)	16/12/1999	242.650		22/05/2002	C-261/02		D
	1999/2247	Non respect des décisions communautaires relatives au boeuf britannique	13/12/2001	158.250		18/07/2002	C-274/02		D
	1998/2245	Responsabilité des produits défectueux	25/04/2002	astreinte modifiée 13.715		16/12/2003			
	1993/2067	EMPLOI DE SUBSTANCES D'ADDITION DANS LA FABRICATION D'ALIMENTS DESTINES A UNE ALIMENTAT. PARTICUL.	5/02/2004	353.646	39.294	12/10/2006	C-177/04	14/03/2006	C
	2002/0586	GMOs - DISSÉMINATION VOLONTAIRE D'OGM	15/07/2004	366.744	43.660	12/12/2006			

IT	1990/0240	Protection radiologique	9/06/1993	159.300		29/01/1997			C
	1988/0239	Plan de gestion des déchets	13/12/1991	123.900		29/01/1997			C
	1993/0786	Eaux urbaines résiduelles	12/12/1996	185.850		2/12/1998			C
	1996/0997	Sécurité maritime ; prévention de la pollution et conditions de vie et de travail à bord des navires	11/11/1999	88.500		21/12/2000			C
	1996/2208	Discrimination des lecteurs de langue étrangère	26/06/2001	309.750		3/02/2004	C-119/04	18/07/2006	
	1997/0095	Aménagement du temps de travail	9/03/2000	289.950		17/12/2002	C-57/03		D
	1998/2055	Entraves à la prestation de services d'agents en brevets étrangers	13/02/2003	172.575		14/12/2004			C
	1998/4802	WASTE - DIR 75/442, 91/156, WASTE, HAZARDOUS WASTE, DECHARGE A MANFREDONIA	25/11/2004	85.708,80	11.904	12/12/2006			
	1999/4797	WASTE - DIR 75/442 AND 91/156, WASTE, DISCHARGE IN RODANO	9/09/2004	192.844,80	23.808	12/12/2006			
IE	1989/0425	Impact – Dir 85/337 Art. 4(2) et 7	21/09/1999	astreinte modifiée 2,880		1/09/2005	C-294/03		D
	1997/2047	Non ratification de l'acte de Paris (1971) de la convention de Berne	19/03/2002	3.600		16/12/2003	C-165/04		D

LU	1991/0222	Accès aux emplois publics	2/07/1996	14.000		2/12/1998			C
	1995/0142	Assistance médicale à bord des navires	29/10/1998	6.000		22/12/1999			C
	1997/0107	Enquêtes sur les accidents et incidents dans l'aviation civile	16/12/1999	9.000		20/12/2001	C-121/02		D
	1997/4533	Obligation de résidence pour les agents en brevet	6/03/2003	9.100		14/12/2004	C-136/05		D
	2001/2126	Mise sur le marché et contrôle des explosifs à usage civil	2/10/2003	9.000		12/10/2005	C-416/05		D
	1995/2138	TRANSPOSITION DE LA DIRECTIVE 89/391/CEE	22/05/2003			12/10/2005			C
	2003/0460	MODIFIANT LA DIRECTIVE 91/440/CEE DU CONSEIL RELATIVE AU DÉVELOPPEMENT DE CHEMINS DE FER COMMUNAUTAI	30/09/2004	9.000		12/10/2005	C-219/06		D
	2003/0461	MODIFIANT LA DIRECTIVE 95/18/CE DU CONSEIL CONCERNANT LES LICENCES DES ENTREPRISES FERROVIAIRES	30/09/2004	9.000		12/10/2005	C-219/06		D
PT	1994/2236	Mauvaise transposition de la Directive 89/665/CEE	14/10/2004	21.450		12/10/2005	C-70/06		
UK	1986/0214	Qualité des eaux de baignade (Blackpool & Southport)	14/07/1993	106.800		21/12/2000	C-85/01		D

Following the adoption, in December 2005, of the Commission Communication on the application of Article 228 of the EC Treaty (SEC(2005)1658), on the possibility of imposing financial sanctions on Member States which have failed to implement a judgment establishing an infringement, the column signalling "lump sum payments" has been added to the table above.

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. In total, the Commission decided in 10 cases on a second referral and proposed periodic penalty and lump sum payments.

Two Court applications were withdrawn after the Member State had notified the relevant national implementation measures of the first railway package, provided in the transitional rule set out in the Communication.

Two cases brought before the Court concern violations of the waste directive by allowing illegal landfills, two cases on insufficient transposition of the public procurement directives on supplies and public works, one case for the non-compliance of a Court judgment ordering the recovery of unlawful state aid, one case on failing to ensure proper recognition of foreign architects' diploma, one case on allowing certain chemical substances in food and one case for non transposition of Directive 2001/18/EC on the deliberate release into the environment of GMOs in violation of the relevant directive.

1.3. Implementation of the Commission communication on better monitoring of the application of Community law (COM(2002)725) by sector

Enterprise and Industry. In the internal market for goods, the Commission is making use of a battery of instruments to ensure the effective implementation of the Community law. In accordance with the Communication on better monitoring of the application of Community law, the Commission selects the instrument to use according to the seriousness of the problem.

In 2006, the Commission used infringement proceedings pursuant to Articles 226 and 228 EC where necessary. Priority was given to the non-communication of national measures transposing directives, failures to implement the Court's judgments (Article 228 EC) and complaints denouncing structural problems in MS.

In the non-harmonised area (Articles 28-30 EC), complaints continued to be the most important source of information for monitoring the application of Community law. The Commission dealt with each complaint with a view to finding a solution in the shortest possible time (one year in accordance with the Communication on relationship with the Complainants) before resorting to formal infringement proceedings. Thus, the SOLVIT problem-solving network and the "Article 28-30 EC" package meetings were used to deal with cases of misapplication of Community law. Cases with an important social impact were often the subject of political intervention.

Package meetings were organised in 2006 with Hungary and the Czech Republic. 10 cases were discussed, 7 were solved or are in the process of being solved. Each Package meeting

was an opportunity to remind Member States of the current situation on transposition and the communication of national measures.

In the harmonised area, the Commission attached much importance to helping Member States to implement existing legislation better and so prevent infringements. The Commission continued to offer advice and assistance to Member States in implementing directives. Implementation issues were on the agenda of meetings of experts groups, Committees and informal networks, for instance in the cosmetic and chemical sectors. Furthermore, package meetings, bilateral contacts, workshops and seminars were used to insist on the importance of good implementation.

In the pharmaceutical sector, the Commission continued to provide assistance with the “Review 2001” legislative package, in preparation for its transposition and implementation by the Member States. In this context, the Commission met the Member States on several occasions (e.g. the *Pharmaceutical Committee* met in April and December 2006, the *Committee for Veterinary Medicinal Products* in March 2006 and the “*Notice to applicants*” group met six times in 2006 and examined different chapters of the guidelines for notices to applicants, interpreting the requirements of the legislation as regards requests for marketing authorisation).

Furthermore, the Commission worked intensively with Member States to ensure the coherent implementation of Community rules on clinical trials⁴. This cooperation was most visible in the ‘*Ad hoc group for the development of implementing guidelines for Directive 2001/20/EC relating to good clinical practice in the conduct of clinical trials on medicinal products for human use*’, which is composed of representatives of the Member States and the European Medicines Agency and chaired by the Commission (DG Enterprise and Industry). The tasks of the group are to develop the common implementing guidance necessary for uniform implementation of the legislation in the Member States.

The Commission also took part in various forums, such as those organised by the European Medicines Agency or the Member States, to present guidelines for the transposition and implementation of legislation. The most important meeting was the regular meeting of the heads of the national medicines agencies.

Another example of interpretation and guidance documents was the Guide to the Application of Directive 2000/9/EC relating to cableway installations designed to carry persons. This guide was prepared in close cooperation with national authorities. In addition, the Commission chaired two Standing Committee meetings dealing with issues relating to the application of this directive

In the chemical sector, the Commission arranged a study of the transposition of Directive 1999/45/EC on the classification and labelling of dangerous preparations. In 2006 the study focused on the Czech Republic, Finland, Hungary, Italy, and Slovakia. It will help identify implementation problems in these Member States.

In 2006, the Standards and Technical Regulations Committee of Directive 98/34/EC on draft technical rules met three times. Seminars on the notification procedure were organized in the Czech Republic, Hungary, Sweden and the Slovak Republic. At the seminar in Bratislava in

⁴ Directive 2001/20/EC, complemented by Commission Directives 2003/94/EC and 2005/28/EC.

December, Bulgaria and Romania were invited to participate. The involvement of these two countries in the 98/34/EC procedure was based on bilateral agreements establishing a simplified procedure.

Finally, the Commission made an effort to review the “Community acquis” in the framework of the Commission simplification strategy. This is aimed at improving the quality of EU legislation and ensuring that new legislative proposals impose the minimum economic burden consistent with achieving their objective.

Employment, Social affairs and equal opportunities. Through the combined use of existing expert groups in the different areas, cooperation at a more technical level, bilateral meetings and contacts, ad hoc missions, sectoral package meetings, participation in training, information and transparency campaigns (such as the 'TRESS' network), as well as continuing the pre-accession monitoring contacts, a number of potential non conformity problems could also be tackled efficiently or effectively solved.

In this context also, the Administrative Commission on Social Security for Migrant Workers, a network of intergovernmental experts and representatives established under Regulation 1408/71, has proven to be a very useful and successful network both by effectively trying to solve existing individual and general problems and by intervening in the upstream, fact-finding phase, thus preventing and pre-empting problems. Furthermore, it regularly addresses a considerable number of questions and issues concerning the interpretation of the existing Community legislation applicable and presumed wrong application, as well as the technical implications and possible solutions for administrative, more technical problems in relation to the existing legal framework.

In the agricultural and rural, development sector, the Commission makes use of a wide range of instruments and initiatives aimed at promoting better implementation and at identifying and addressing potential problems as early as possible. In this regard, 322 meetings of 27 management and regulatory committees offered the possibility to discuss the difficulties in the implementation of the rules of the CAP with the representatives of the Member States concerned and to remind them of their duty to comply with Community law. Moreover, in 2006 the services of DG Agriculture were assisted by a number of advisory, permanent and temporary groups of experts. These contacts helped to clarify facts and rule out misunderstandings. Such preventive practices proved to be highly effective and will continue to be applied in order to avoid infringements in the future.

In addition, to prevent divergent interpretations of the Community rules, in 2006 the Commission adopted 2 interpretative notes on specific provisions in the field of agriculture.

DG Agriculture keeps complainants informed systematically of the progress of the infringement procedure which concerns them. However, if an infringement procedure can not be initiated as a result of a complaint, the complainant is informed and, if appropriate, is advised to use the legal remedies available at national level.

Particular attention has been paid to the treatment of repetitive infringements and instances of non-compliance with the Court judgments. This resulted in proceedings against Luxembourg for non-communication of annual state aid reports in the agricultural sector and against France for maintaining trade barriers against shallots.

In the field of prevention the Commission continues to be active. Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations requires Member States and Members of the European Free Trade Association who have signed the Agreement on the European Economic Area plus Switzerland to give each other and the Commission prior notification of all draft rules containing technical standards or rules in order to avoid raising new barriers to trade in the internal market. In this context, in 2006 the Commission examined 122 notifications relating to the agricultural sector.

The examination of these draft texts in the above area led the Commission to issue one detailed opinion and three comments calling for the notifications to be brought into line with Community law.

In the transport and energy sector, with a view to implementing its 2002 Communication on better monitoring of the application of Community law, the Commission endeavoured to improve its prevention of infringements by reminding Member States of the deadlines for transposing directives (2006 saw a marked improvement in transposition rates in Transport Directives).

In the field of nuclear energy, the submission of draft texts on the basis of Article 33 of the Euratom Treaty has emerged as the instrument of choice, allowing appropriate recommendations or remarks to be made, depending on the circumstances, before the finalisation of the national procedure for the adoption of transposition measures, so that any instances of non-conformity can be identified even before the texts are adopted. During 2006 most notifications related to national provisions on controls of high activity sealed radioactive sources.

Cooperation with the Member States has been strengthened as a result of the exchange of information and best practice at meetings of committees and networks of experts in the fields of both transport and energy. Through the combined use of existing expert groups in the different areas, cooperation at a more technical level, bilateral meetings and contacts as well as in one occasion a "Package meeting", a number of potential non conformity problems could also be tackled efficiently or effectively solved.

Similarly, the systematic inclusion of an item on the transposition of directives and infringements in the briefings given to the Members of the Commission in preparation for high-level meetings with their opposite numbers in the Member States has helped to consolidate this cooperation.

Conformity checks with Community law of implementing measures have also been stepped up and have led to a large number of letters of formal notice and reasoned opinions sent out in non-compliance cases.

In addition, to improve compliance with Community law regular use has been made of the information contained in the reports on inspections carried out in the Member States, and, more especially, in nuclear safety, aviation security and maritime safety.

Finally, information on monitoring the application of Community law has been made available to the public on DG Transport and Energy's Europa website in the form of press releases and data collection on on-going infringement procedures.

Environment. Despite being a very powerful tool to address implementation problems, infringement proceedings pursuant to Articles 226 and 228 of the Treaty are not the only way to improve Member States' compliance with EC environmental law. In order to ensure an effective implementation, the Commission is making use of a wide range of non-legal instruments and initiatives aimed at promoting better implementation and at identifying and addressing potential problems as early as possible. This is in line with the 2002 Communication of the Commission on better monitoring of the application of Community law⁵.

These non-legal instruments include the production of interpretation and guidance documents for many pieces of legislation. The guidance document on the Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment was subject to discussions with the Member States and subsequently adopted in a meeting in December 2006. A guidance document on Clarification of the application of article 2(3) of the EIA Directive⁶ was also published in 2006 on the Commission's EIA/SEA homepage⁷.

Better implementation is also promoted through contacts with Member States in expert groups and committees to discuss implementation issues. In 2006, eleven package meetings were organised between the Commission and Member States; in addition, numerous ad-hoc meetings, workshops and seminars with the participation of national, regional and local authorities took place with a common aim of improving better implementation. The Commission also gave technical advice to Member States prior to transposition of some directives in order to address implementation problems at an early stage. The cooperation on the implementation of the Directive on the Environmental liability⁸, where an informal network of national liability experts was set up, may serve as an example here.

Information exchange between implementing authorities through the establishment of informal implementation networks is also a tool for improving implementation. Since its inception in 1992, the informal EU network for the Implementation of Environmental Law (IMPEL), consisting of European regulators and inspectors concerned with the implementation and enforcement of environmental law, has been a key instrument in discussing the practical application and enforcement of existing legislation. In accordance with the Sixth Environmental Action Programme, the core of IMPEL's activities concerns the exchange of information and experience on implementation and enforcement of existing EU environmental legislation and the development of common views on the coherence and practicality of this legislation.

In 2006 the third IMPEL Conference was organised, where 200 participants discussed the aspects and tasks of the implementation and enforcement of environmental law. It was clear that IMPEL fulfils an important role. The European Commission invited the network to build

⁵ COM(2002) 725 final, 13.12.2002

⁶ Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40–48); Directive amended by Directive 97/11/EC (OJ L 73, 14.3.1997, p. 5–15), and by Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ L 156, 25.6.2003, p. 17–25).

⁷ <http://ec.europa.eu/environment/eia/home.htm>

⁸ Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56–75)

on its current activities on permitting, inspections and in the field of waste shipment, by feeding back experience on practicability and enforceability to policy makers. In particular, the European Commission invited IMPEL to contribute to the review of the Recommendation on Minimum Criteria for Environmental Inspections and to continue its work on the review on the Integrated Pollution Prevention and Control Directive. At the Plenary meeting in December 2006 IMPEL adopted its Multi Annual Work Programme 2007-2010.

Green Enforce Network is a new voluntary informal European Union network of practitioners focused on the implementation of EU provisions in the field of nature and forestry. The Network has been established as an informal forum where representatives can share information and experience, discuss problems and offer each other practical advice. The Network's main objective is to create the necessary impetus in the European Union to make progress on ensuring a more effective application of environmental legislation. It promotes the exchange of information and experience and the development of environmental legislation, with special emphasis on Community environmental *acquis*. It provides the competent authorities (such as environmental inspectors and enforcement officers) with a framework within which to exchange ideas and encourages the development of enforcement structures and best practices and aims to support better co-operation between "nature" and "forestry" part of inspections. The creation of this Network builds on the idea that the implementation in the field of nature and forestry has not achieved the same level of harmonisation in the EU Member States as environmental inspection in the other fields. Two workshops were held in 2006 with participants from sixteen EU Member States and one candidate country which formulated a basis for the development of activities of GreenEnforce Network for the next period.

Created in 2003, the European Forum of Judges for the Environment aims to promote the implementation and enforcement of national, European and international environmental law. The objectives of the Forum are to share experience on judicial training and on environmental case law and to contribute to the better implementation and enforcement of international, European and national environmental law. In 2006, the Forum of Judges held its conference on the implementation of Natura 2000 in the Member States.

The Commission has also launched a comprehensive strategy on better regulation aiming at simplifying and improving existing regulation, to better design new regulation and to reinforce the respect and the effectiveness of the rules, all this in line with the proportionality principle. In that context, it is to be noted that, in 2006, the Commission proposed a Directive to protect surface water from pollution⁹ which will set limits on concentrations of 41 pesticides, heavy metals and other dangerous substances. The proposal provides for significant simplification by repealing five Directives and removing certain reporting requirements.

⁹ Proposal for a Directive of the European Parliament and of the Council on environmental quality standards in the field of water policy and amending Directive 2000/60/EC [COM(2006) 397 final of 17.7.2006]

In 2006, the Commission started or continued reviewing legislation such as the WEEE¹⁰, RoHS¹¹ and IPPC¹² Directives, as part on the Simplification Rolling Programme¹³. It also started detailed reviews to improve the EMAS (EU eco-management and auditing system)¹⁴ and Eco-label schemes¹⁵. Part of the programme, updated and expanded in November 2006¹⁶, is the proposal for revision of the Waste Framework Directive¹⁷ to modernise and simplify waste legislation. The adoption of the Commission's proposal would lead to the merging of three existing Directives and the repeal of a fourth one.

Information Society and Media has put great efforts from the very beginning to avoid the need for recourse to formal infringement proceedings.

In the field of *electronic communications*, the Commission services have continued to provide general guidance on transposition requirements via the Communications Committee (COCOM) and the Radio Spectrum Committee (RSC), and by making use of intensive bilateral contacts with the relevant national authorities. Following discussion in COCOM, measures on the harmonised application of the regulatory framework for electronic communications were adopted, namely a new List of standards¹⁸ and a Decision requiring Member States to reserve the six-digit number range starting with the digits 116 for services of social value in Europe¹⁹. Market reviews by the national regulatory authorities and dispute settlement mechanisms for consumers at national level played a major role to consolidate the single market and to prevent formal infringement proceedings. In addition, DG INFSO continued to monitor the general state of implementation of the regulatory framework, in close contact with the national authorities and other stakeholders, when preparing for the

¹⁰ Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE) (OJ L 37, 13.2.2003, p. 24); Directive amended by Directive 2003/108/EC of 8 December 2003 (OJ L 345, 31.12.2003, p. 106).

¹¹ Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ L 37, 13.2.2003, p. 19); Directive as last amended by Commission Decision 2006/692/EC of 12 October 2006 (OJ L 283, 14.10.2006, p. 50).

¹² Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ L 257, 10.10.1996, p. 26); Directive as last amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (OJ L 33, 4.2.2006, p. 1).

¹³ COM(2005)535

¹⁴ Regulation (EC) No 761/2001 of the European parliament and of the council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (OJ L 114, 24.4.2001, p. 1); Regulation as last amended by Council Regulation (EC) No 1791/2006 of 20 November 2006 adapting certain Regulations and Decisions in the fields of free movement of goods, freedom of movement of persons, company law, competition policy, agriculture (including veterinary and phytosanitary legislation), transport policy, taxation, statistics, energy, environment, cooperation in the fields of justice and home affairs, customs union, external relations, common foreign and security policy and institutions, by reason of the accession of Bulgaria and Romania (OJ L 363, 20.12.2006, p. 1).

¹⁵ Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme (OJ L 237, 21.9.2000, p. 1).

¹⁶ COM(2006)690

¹⁷ COM(2005)667

¹⁸ Commission Decision 2007/176/EC of 11 December 2006 establishing a list of standards and/or specifications for electronic communications networks, services and associated facilities and services and replacing all previous versions.

¹⁹ Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with '116' for harmonised numbers for harmonised services of social value.

Commission's sector specific annual Implementation Report addressed to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions²⁰.

Concerning the **Television without Frontiers Directive**, the Commission adopted two important reports in 2006: the Fifth report on the application of the Television without Frontiers directive²¹ and the Seventh communication on the application of Articles 4 and 5 of the Television without Frontiers Directive²². Apart from this reporting exercise, the Commission convened the Contact Committee - set up under Article 23a of the Television without Frontiers Directive - in order to hold meetings where issues of interpretation or application of certain rules could be discussed with Member States. An *ad hoc* group of representatives of Member States' regulatory authorities meets on average twice a year, also with a view to ensuring consistent application of the provisions of the Directive and good cooperation between regulatory authorities. In March 2006, the Member of the Commission responsible for audiovisual policy, Mrs Reding, held a meeting of the chairmen of these authorities in Brussels.

Regarding the **Directive on Public Sector Information (PSI)**, the Commission organises and chairs the PSI Group, where experts from Member States meet regularly, in order to provide assistance regarding transposition and implementation issues and to facilitate the exchange of good practices. Secondly, the Commission provides expert assistance to Member States through bilateral contacts and contributes to awareness raising activities by participating in seminars and workshops organised in Member States. Thirdly, the Commission concluded in 2006 a baseline study on exploitation of PSI – Measuring European Public Sector Information Resources (MEPSIR). Finally, the Commission undertakes stimulation and communication actions (e.g. the Commission's PSI website contains the transposition status of each Member State, as well as examples of good practices and links to national portals), networking across Europe and co-funds an awareness network for promoting PSI reuse (ePSIplus) through the eContentplus Programme.

Fisheries and maritime affairs. In the field of improving cooperation between the Commission and the Member States in the field of prevention (point 2.1. of the Communication), the Directorate-General for Fisheries analyses, on a regular basis, the technical rules of the fishing sector, within the framework of the application of Directive 98/34/EC (notification of technical regulations in the context of the internal market).

In the field of providing more information on Community law (point 2.3. of the Communication), in order to increase transparency in the way Member States fulfil their obligations under Community law, they are invited to inform the Commission, on an annual basis, of the measures adopted in order to pursue infringements. In this context, the Commission published, on 14 July , a Communication to the Council and the European

²⁰ “European Electronic Communications Regulation and Markets 2006 (12th Report)”, COM(2007) 155 of 29 March 2007.

²¹ Fifth application report to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the application of the Directive 89/552/EEC “Television without Frontiers”, COM(2006) 49 of 10 February 2006.

²² Seventh communication on the application of Articles 4 and 5 of the Television without Frontiers Directive, COM(2006) 459 of 14 August 2006.

Parliament on the reports from Member States on behaviours which seriously infringed the rules of the Common Fisheries Policy in 2004²³.

Also, aiming at information on the application of Community law by Member States, the Commission publishes on a regular basis a "Scoreboard"²⁴ in which is described the situation in all Member States. This scoreboard contains all information relating to Community rules, namely concerning serious infringements and the proceedings (cases initiated by the Commission and judgments of the Court of Justice of the European Communities).

Regarding the effective use of the available instruments in accordance with the seriousness of the infringements (point 3.1. of the Communication), and more specifically the infringements that undermine the smooth functioning of the Community legal system (littera (b) of this point), the Commission proceeded to a very strict follow-up of the infringement procedures owing to deficiencies verified in the national systems of control of fishing activities (Portugal, Spain, Sweden, United Kingdom).

The Commission also made the follow-up in a case of non compliance with a judgment of the Court²⁵ which led, on the basis of Article 228 EC, to the payment by the Member State concerned of a penalty of EUR 57.761.250.

Finally, regarding complaints and their importance for monitoring the application of Community law (point 3.2. of the Communication), the Commission decided to close a complaint relating to Greek legislation prohibiting, from October till January, the fishing, marketing and selling, throughout Greek territory, of swordfish caught in international waters as well as the landing in Greek ports of swordfish designed to be sold in foreign markets.

Internal Market and Services. Directorate general internal market attaches great importance to the permanent dialogue and cooperation with Member States. Its objective is to ensure complete and timely transposition of Directives under its responsibility. Services of Directorate general internal market provide technical assistance and daily guidance to national authorities charged with the transposition. Specific meetings are organised with all Member States both at informal *ad hoc* level and in the context of existing Committees. These meetings are intended to identify difficulties experienced by national authorities in the preparation of transposition measures and tackle them as soon as possible. In 2006 they took place in a number of sectors: regulated professions, insurance, banking, securities, accounting, auditing. Directorate general internal market also continues to organise package transposition meetings. In 2006 Directorate general internal market visited Greece, Portugal and Italy. The discussions with national authorities allowed to address several problems of general or specific nature before the deadline for transposition expired. They also served to constantly draw the attention of Member States on the need to start their transposition works early and highlight the advantages of a good planning and coordination. Directorate general internal market supported a more intensive use of complementary mechanisms, in particular of SOLVIT. During 2006 SOLVIT treated 467 dossiers and found a solution in 80 % of the cases. These positive results show the efficiency of this network and the benefits for citizens and business as they obtain a concrete answer to their difficulties in a very short time.

²³ Document COM (2006)387 of 14.7.2006

²⁴ The text is available on the website of the Directorate-General for Fisheries and Maritime Affairs. The last edition, published in 2005, relates to the information concerning the year 2004.

²⁵ Judgment of 12 July 2005, Case C-304/02, Commission v France

Regional Policy. On the question of improving cooperation between the Commission and the Member States in the field of prevention (point 2.1. of the Communication), the partnership between the Commission and the national authorities responsible for implementing structural assistance allows an exchange of views on any problems associated with the application of Community law.

In addition, in the case of major projects financed by the ERDF and individual Cohesion Fund projects the Commission has greater scope for intervening in a preventive capacity since it examines the various aspects of the project prior to adoption and can therefore identify the risks of infringement of Community law more easily than in the case of current ERDF operations.

Finally, it should be mentioned that in the context of the management of the Funds transparency plays a role, albeit indirectly, in preventing infringements of Community law. For this reason, DG Regional policy encourages initiatives in this area.

Under the heading of providing more information on Community law (point 2.3. of the Communication), the public information provided by DG Regional Policy is concerned with the various aspects of the implementation of Community legislation relating to the Structural Funds and the Cohesion Fund. It does not provide information relating specifically to compliance with Community law.

As regards the effective use of the available instruments in accordance with the seriousness of the infringements (point 3.1. of the Communication), the infringements of Community law uncovered in connection with the Funds are serious, since they may have grave implications for the Community budget.

For reasons which are explained below in the following paragraph, the number of infringements affecting the actual legislation relating to the Funds is small. However, when an infringement of Community law does occur, the “financial correction” procedure, i.e. the procedure which can lead to the suspension, reduction or termination of aid, is often a more appropriate measure than the initiation of an infringement procedure. Moreover, as the implementation of regional policy is based on the partnership principle, the provisions on financial correction require the Member States to take action themselves in the first instance to rectify any infringement, while at the same time notifying the Commission. This approach has two advantages, it not only allows the Member States to avoid losing Community aid but it creates a culture of respect for Community law within the national authorities.

Complaints and their importance for monitoring the application of Community law (point 3.2. of the Communication). There are very few complaints, and hence infringements, relating to the management of the Funds and this is due to the fact that the legislation is based on the principle of subsidiarity. The most common complaint is that the complainant’s proposal has not been chosen by the managing authority during the project selection process. However, provided that the selection is made in accordance with the programming documents the Commission is not competent to examine the complaint, since the selection has been carried out according to national law. It is unlikely that the Commission can take any action on such complaints within the framework of the Article 226 EC procedure.

This being said, the Commission has had to examine cases where the project chosen did allegedly not correspond to the programming documents.

On the other hand, a large number of complaints and infringements concern the compatibility of projects cofinanced by the Fund with Community legislation on the environment and public procurement. Such cases are examined in the light of the relevant provisions in force (i.e. the environment directives or the “public procurement” directives, depending on the case). However, as conformity with Community legislation is a condition of payment of assistance from the Funds, the Commission must take appropriate financial measures. Thus, an infringement of Community law on the environment, for example, which relates to a project cofinanced by the ERDF or the Cohesion Fund can lead to the suspension, reduction or termination of the aid, provided that there is a direct link between the infringement and the project.

Taxation and Customs Union. Considering the unanimity requirement in Council, harmonisation of legislation in the area of direct taxation is not very developed and the main source of conflict remains infringements of the freedoms provided for in the Treaty.

Although the legislation has already evolved towards a more harmonised system within the area of indirect taxation, the rule of unanimity also constitutes an obstacle to go forward towards harmonisation and therefore, the best instrument to provide a correct application of Community law, remains mainly the use of an infringement-procedure.

The increasing case law of the European Court of justice, also triggered by an increasing number of requests for preliminary rulings by national tribunals, has given further guidance for an enhanced control of infringement cases and a large number of ex officio cases have been initiated.

The increase of human resources in Directorate general taxation and customs union and a clear definition of political action are important applications of the 2002 Communication.

As regards value added networks for problem solving, the SOLVIT system has proven useful to conclude conflicts arising from factual disputes whereas this system seems less efficient when it comes to bring together different legal appreciations and for solving national internal problems.

Education and culture. Directorate general Education and culture launches infringement procedures following the reception of complaints of EU citizens. When complaints concern individual cases, Directorate general Education and culture recommends to the citizens the use of the SOLVIT network. The complainants are kept informed systematically regarding the different stages of the infringement procedure. In the case of politically sensitive files, Directorate general Education and culture organises meetings with the national authorities to discuss and clarify the position of the Commission and assist the Member States in their efforts to comply with the requirements of EU law. Directorate general Education and culture pursues all cases of infringements of the principle of equality of treatment and free movement in the area of access to education, given that they concern the application fundamental principle of the Treaty.

In the field of health and consumer protection, the Commission started the examination of the transposition measures of a number of directives, particularly in the area of consumer protection.

Ensuring compliance with Community provisions on food safety remains one of the Commission’s priorities. To this end, the Food and Veterinary Office (FVO) conducts

inspection visits in all the Member States to ensure that Community legislation is being properly implemented and that the Member States are organising official inspections in an efficient manner. The FVO makes recommendations to the competent authority of the country concerned asking it to rectify any irregularities found in the course of the inspections. It asks the competent authority to present it with an action plan showing how it intends to remedy these irregularities. By cooperating closely with the Member States the FVO is successfully achieving a high degree of food safety. If the Commission finds that insufficient progress is being made on implementing the action plan it initiates infringement procedures.

In a number of fields, particularly those dealing with plant protection products, blood products and tobacco products, informal working parties and pilot projects have been set up to discuss the application of the legislation concerned or to encourage administrative cooperation in order to reduce the workload of the national authorities involved.

In the field of prevention, too, the Commission continues to be active. Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations requires Member States and Members of the European Free Trade Association who have signed the Agreement on the European Economic Area plus Switzerland to give each other and the Commission prior notification of all draft rules containing technical standards or rules in order to avoid raising new barriers to trade in the internal market. In this context, in 2006 the Commission examined 135 notifications from Member States relating to draft regulations affecting public health or consumer protection.

For the same purpose the Commission has set up the Better Training for Safer Food programme. This program aims to keep national control staff up to date with new Community rules and to guarantee that national controls are carried out in a more uniform and objective manner in all Member States. In the framework of this programme, which has been implemented for the first time in 2006, the Commission organised 34 training events and sustained 7 training missions attended by 1400 participants.

In the field of **justice, freedom and security**, six contact committees meetings between the Commission services and Member States experts were convened during 2006 in order to offer assistance to Member States in the process of transposition and application of Directives in the field of asylum and immigration as well as to efficiently monitor their application. Furthermore, following a call for tender, a contract with view of conducting a study examining both legal and practical implementation of these Directives at the national level was awarded.

Another meeting was held with Member States concerning progress achieved in the transposition of Directive 2004/38/EC on free movement of EU citizens and their family members. The Commission finalised a "Guide on how to make the best out of Directive 2004/38/EC", which explains the provisions of this Directive to citizens in a simple and accessible manner. The online publication of this guide will help reduce complaints to the Commission advising citizens to make use of the problem solving network SOLVIT before lodging a complaint before the Commission and also to seek redress before the competent national authorities.

In the field of protection of personal data, the Commission will continue to monitor the implementation of the Directive 95/46/EC, work with Member States' authorities to further reduce national divergences and study the need for sector-specific legislation to apply data

protection principles to new technologies and to satisfy public security needs. A Communication on the follow-up of the Work Programme for a better implementation of the Data Protection Directive has been recently adopted. This Communication examines the work carried out since the publication of the First Report on the implementation of the Directive, assesses the present situation and outlines the prospects for the future.

Eurostat. In the statistics area, in line with the Commission Communication on better monitoring of the application of Community law, Eurostat has continued to promote dialogue and cooperation with the Member States in order to ensure the respect of the statistical legislation.

"The rigorous monitoring of the application of the Community law" was a priority included in Eurostat's 2006 Annual Management Plan related to the objectives of ensuring the coherent and systematic monitoring of compliance with statistical legislation, helping to develop the European Statistical System and improving the quality of products and services.

In fact, the objective of having statistics of quality is both an operational and a legal requirement insofar as Community statistics production must respect the principles set out in Article 285 of the EC Treaty and in Regulation (EC) No 322/97²⁶, and in the various sectoral legislative instruments. Eurostat has also pursued its policy based on a comprehensive and coherent strategy to ensure follow-up and effective control of the application of statistical legislation.

This policy, which implies a twice-yearly review of compliance at the level of the Directors' meeting, has led to clear improvements. The administrative letters sent in the pre-infringement phase have indeed had a positive effect and in fact only one formal infringement case is currently open. The encouraging results show how useful and effective this strategy is.

Eurostat's collaboration with the Member States – each acting in their respective institutional roles - remains a source of added value in Eurostat's daily work and is the preferred means for speeding up voluntary compliance with Community law.

Along these lines, better information is also promoted through cooperation with Member States at different levels in Statistical Committees and expert Working Groups discussing compliance issues of sectoral statistical legislation.

In addition, technical advice, information exchange between statistical authorities and Eurostat's services through the establishment of informal contacts were also a tool for improving the correct application of legislation and for avoiding non compliance situations at an earlier stage.

This compliance monitoring policy in place in Eurostat is based on a comprehensive and coherent strategy built around the following principles:

a realistic approach to legislative policy²⁷: the new legislative proposals are properly negotiated with national experts at all levels and in line with the Commission's

²⁶ Council Regulation (EC) No 322/97 of 17 February 1997 on Community statistics (OJ L 52, 22.2.1997, p.1).
Even if, at first sight, the issue of legislative policy sits oddly with a debate on compliance, in reality practices and perceptions are such that the two cannot be separated.

objectives of better legislation, simplification and reduction of the burden on respondents as referred to in the Communications of 14 November 2006 on "a strategic review of Better Regulation in the European Union"²⁸ and on "reduction of the response burden, simplification and priority-setting in the field of Community statistics"²⁹.

a strategy for monitoring consistent, transparent and systematic compliance: the selected instruments include: identifying in advance and in a timely manner the potential sources of error and the practices which can influence the quality of data, maintaining a permanent dialogue at operational level with data suppliers, and establishing appropriate quality control measures by field.

the message will continue to be passed on to Member States at the level of Working Parties, Committees, and especially the Statistical Programme Committee, that *legislation adopted is legislation applied*.

Eurostat will continue this "structured dialogue" with the national authorities with a view to preventing infringement proceedings and ensuring correct application of the statistical legislation.

Budget. The principle of sound financial management is applied (as expressed in article 73 of the Financial Regulation applicable to the general budget of the European Communities). This means in practice that infringements are evaluated under the aspects of their gravity and their impact on the budget and treated correspondingly. In 2006, in a view of preventing possible operational problems, DG BUDG organised seminars for Bulgarian and Romanian officials on the procedure applicable to making available of own resources. Moreover, DG BUDG detected errors in Regulation No 2028/2004 and the corrigenda could finally be published in 2006 – this would secure correct and uniform application of EC own resources law in all Member States. Legal actions were only taken if preliminary correspondence and/or discussions with Member States in the Advisory Committee for Own Resources (four meetings in 2006) did not solve the controversy.

1.4. Infringement proceedings arising from petitions presented to the European Parliament

Enterprise and industry. In the area of the internal market for goods, the Commission received five new petitions in 2006 related to possible breaches of Community law. Moreover, the Commission continued to deal with other petitions presented in preceding years

The topics raised by these petitions were an alleged defective transposition of Directive 2000/35/EC on combating late payment in commercial transactions by Spain; Greece's ban on the use of electronic games in Internet cafés; obstacles for registration of a second-hand car in Slovakia, restrictions on the import of antiques to Poland and some obstacles related to the importation of alcohol in the Czech Republic. Consequently, the matters related to the

²⁸ Communication from the Commission to the Council, to the European Parliament, European Economic and Social Committee and the Committee of the Regions COM(2006) 689 final : "A strategic review of Better Regulation in the European Union".

²⁹ Communication from the Commission to the European Parliament and the Council "on reduction of the response burden, simplification and priority-setting in the field of Community statistics" (COM(2006) 693 final).

application of articles 28-30 EC on the free movement of goods. This underlines the past experience that a high percentage of petitions is related to the application of Articles 28-30 EC.

In three of the petitions, the facts denounced by the petitioner were already under examination by the Commission's services in the framework of an infringement proceeding.

Environment. Petitions to the European Parliament continue to represent a valuable source of information for the Commission in detecting violations of Community law. This is of particular importance since the Commission does not have any “inspection” powers in order to check the situation concerning practical implementation of EC law on the ground in the sector of the environment.

At the end of 2006, the number of open petitions in the environment sector was 161 (environment is the leading sector). About one third of those petitions revealed a potential breach of community law. Petitions concern varied issues such as spring hunting of birds in Malta, the construction of a port in Granadilla (Tenerife), the quality of water in the Thames after heavy rainfalls, a plan for construction of mobile barriers in the Venice Lagoon etc.

Facts brought to the attention of the Commission through petitions allow it to verify compliance “on the ground”. After examination of those facts and, in most cases, after checking with the authorities concerned, the Commission verifies whether the Member States have correctly applied EC Law. Sometimes, the Commission's intervention helps to resolve potential infringements before they occur. However, some of these petitions lead to the opening of an infringement procedure.

This “preventive role”, in terms of the Commission's handling of petitions, provides fruitful results and helps to ensure better implementation on the ground. However, in the field of the environment it is particularly important that the petitioners provide a clear identification of potential breaches of community law, with supporting data, in order to facilitate the handling of files.

In many cases a citizen simultaneously lodges a petition with Parliament and a complaint with the Commission concerning the same grievance leading to a parallel treatment. The treatment of complaints and parliamentary procedures linked to implementation results for DG ENV in a significant workload, in terms of communications to the European Parliament and correspondence with the national authorities and with complainants to obtain information, as well as for their assessment (from a legal and technical point of view) in order to decide whether to open an infringement procedure or close the file.

Information Society and Media. In the area of electronic communications, the Commission's monitoring of the implementation of the Single European Emergency Number 112 had been the subject of a petition to the European Parliament³⁰, launched on behalf of the “European Emergency Number Association (EENA)” in 2005. On 13 September 2006, the EP Petitions Committee decided to close the file, following the explanations given by the Commission, but invited both the Council and the Commission to take actions in order to increase awareness of 112.

³⁰

Petition 688/2005; the Commission replied to this petition on 2 February 2006.

Internal Market. Directorate general internal market answered in 2006 to more than 120 requests of the European Parliament falling within its competence. Approximately a quarter of these requests are linked to infringement procedures. Two fields always occupy an important place. The field of the recognition of diplomas saw a certain development, with the application of the professional recognition rules by a Member State which applied the academic recognition rules to the qualified professionals. In addition, in the field of the public procurement, the question of the urban laws in the region of Valencia continues raising important questions. An infringement procedure was initiated in this area concerning the public procurement exclusively. Numerous questions raised which fall within the competence of the authorities and of the national courts exclusively. Lastly, a number of cases started to be submitted to SOLVIT by the Commission, in order to find a rapid solution to individual cases.

Regional Policy. In the area of regional policy, only 2 petitions handled by DG REGIO were related to infringement proceedings in progress. They both concern management of Community funds and one of the two also concern compliance with environmental legislation.

Taxation and Customs Union. Having regard to the different procedural aspects and the distinct roles of the Institutions, the petitions linked to infringement procedures have been dealt with in a fully distinct manner. In the area of taxation and customs, a very small number of complainants have lodged a petition procedure to the European Parliament in parallel with their complaint to the Commission.

In the area of EC customs legislation, those petitions concern the different problems citizens had to face when crossing the frontiers at the external borders of the Community. Within the area of indirect taxation, the issue on taxation of cars in all its aspects is a permanent returning phenomenon. The encountered problems related to the refund of VAT is also a repetitive issue.

Education and Culture. The petition of a European citizen (jointly with a complaint coming from another European citizen) gave place to the opening of an infringement procedure; it is the case “Portugal - Sum required for the recognition of foreign diplomas”, which is currently at the stage of the reasoned opinion.

Health and Consumer Protection. In the area of Health and Consumer Protection, the complaint 2004/4263 linked to a petition concerning some establishments treating animal by-products in Spain has been closed. In addition a petition to the European Parliament linked to infringement proceeding 2006/2214 relating the issue of the compulsory re-registration, in France, of horses already registered in another Member State will also be closed.

Justice, Freedom and Security. One petition to the European Parliament has been submitted concerning the petitioner's request for the Commission to investigate the alleged failures of the Law Society of Ireland, the Solicitor's Disciplinary Tribunal and the Data Protection Commissioner to comply with or enforce the data protection Directive. The Commission concluded that the facts presented by the petitioner do not justify further action by the Commission.

2. SITUATION IN THE DIFFERENT SECTORS

2.1. Enterprise and Industry

In the field of internal market for goods, the Commission (DG Enterprise and industry) deals with an increasing number of Directives (more than 500), Regulations (around 200) and Decisions (around 150). It is essential that this legislation, which is fundamental to the efficient working of the internal market, is properly transposed into national law. Accordingly, the Commission continued to try to improve the quality of EU legislation to be transposed and to coordinate efforts in the Member States with a view to achieving correct implementation.

Concerning the monitoring of the application of Community law, the Commission gave priority to guaranteeing the efficiency of the internal market, notably by encouraging the rapid transposition of legislation, by monitoring of national technical regulations and by managing complaints with a view to ensuring that infringements are rectified as soon as possible. In 2006, priority was given to removing obstacles caused by the non transposition of Directives and to tackling structural problems in MS by bringing about changes in laws or practices.

As regards the transposition of directives, 186 infringement procedures for non-communication were launched, mainly in relation to the automotive, pharmaceutical and cosmetic sectors. 234 infringement proceedings were closed in 2006.

Concerning the other cases (non-conformity, incorrect application and contraventions of Articles 28-30 EC), complaints made by citizens and economic operators continued to be the most important source of information for monitoring the application of Community law.

In accordance with its obligations, the Commission tried find a solution to each complaint made in the shortest possible time. However, due to deadlines and available resources, the Commission had often to deal with the complaints in order of their date of registration.

More than 50% of the complaints registered in 2006 alleged contravention by the Member States of Articles 28-30 EC on the free movements of goods. The others related to non-conformity of national transposition measures with directives (16) and to incorrect application (20). In 2006, 105 complaint cases were closed after the Member States removed the obstacle in question.

Cooperation with the Member States was improved in the early stages of investigations in order to try to solve the alleged problem without launching article 226 EC proceedings. The Commission often sent administrative letters to the Member States asking for clarification and information. In general, the Member States cooperated with the Commission and respected the deadlines set.

Moreover, the Commission uses other instruments (e.g. the SOLVIT network, package meetings, political intervention) to dealt with complaints alleging incorrect application of Community law

2.1.1. Automotive industry

In this sector, the Commission monitored in particular the transposition of directives whose deadlines for transposition were due in 2006.

The directives in the automotive sector contain a multitude of detailed technical specifications for different vehicle systems and components and they are frequently modified to adapt them to technical progress. They are highly prescriptive and confer minimal discretion on the Member States. Accordingly many Member States implemented them in national law by reference or simply by repeating the text of the directive in national law.

During the year, 113 infringement proceedings were launched. All stemmed from *non-communication* of measures transposing EC Directives into national legislation. Of these, 81 cases were closed after national implementation measures were notified by the Member States. Almost 70% were closed after the letter of formal notice stage while reasoned opinions had to be issued before the remaining 30% could be closed.

It is interesting to note that the split between the EU-15 and the EU-10 Member States was 59 and 54 cases respectively.

At the end of 2006, 100 proceedings for *non-communication* of directives were closed and only one case against Greece for *non-communication* of transposition measures of Directive 2004/104/EC was referred to the European Court of Justice.

2.1.2. Pharmaceutical products

The Commission decided to bring actions before the Court of Justice against the Czech Republic, Spain, France, Ireland and the Netherlands for *failure to notify* measures implementing Directive 2004/24/EC amending, as regards herbal medicinal products, Directive 2001/83/EC. 14 procedures for *non-communication* of transposition measures for that Directive were closed after the Commission received the relevant transposition measures.

In relation to Directive 2004/27/EC amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, the Commission decided to bring actions before the Court of Justice against the Czech Republic, Spain, Ireland and the Netherlands for *non-communication* of national measures. 13 procedures for *non-communication* of transposition measures were closed in 2006 after the Commission received the relevant transposition measures.

In the case of Directive 2004/28/EC amending Directive 2001/82/EC on the Community code relating to veterinary medicinal products, the Commission brought actions before the Court of Justice against the Czech Republic, France and Portugal for *non-communication* of transposition measures. 17 procedures for *non-communication* of transposition measures for that Directive were closed in 2006.

In relation to Directive 2005/28/EC laying down principles and detailed guidelines for good clinical practice as regards investigational medicinal products for human use, as well as the requirements for authorisation of the manufacturing or importation of such products, 24 infringement proceedings were opened in 2006 for *non communication*. The Commission

brought actions before the Court of Justice against the Czech Republic, Italy and Portugal. 15 procedures for *non-communication* were closed in 2006.

For Directive 2003/94/EC laying down the principles and guidelines of good manufacturing practice in respect of medicinal products for human use and investigational medicinal products for human use, infringement proceedings for *non-communication* against France and The Netherlands were closed after having been referred to the Court of Justice.

In 2006, the Commission continued to use preventive techniques in securing the implementation of the legislative package “Review 2001” which includes Regulation (EC) No 726/2004 and Directives 2004/27/EC, 2004/28/EC and 2004/24/EC and reviews in depth the regulatory framework applicable to pharmaceutical products.

The work of the following working parties mainly concerned interpreting “Review 2001” in preparation for its transposition and implementation by the Member States:

- the Pharmaceutical Committee in its meetings of April and December 2006,
- the Committee for Veterinary Medicinal Products in its meeting of March 2006, and
- the “Notice to applicants” group, which met six times in 2006 and examined different chapters of the guidelines for notices to applicants by interpreting the requirements of the legislation as regards requests for marketing authorisation.

Furthermore, the Commission worked intensively with Member States in the course of 2006 to ensure coherent implementation of the Community rules on clinical trials as set out in Directive 2001/20/EC, complemented by Commission Directives 2003/94/EC and 2005/28/EC. Co-operation was mainly channelled into the ‘*Ad hoc group for the development of implementing guidelines for Directive 2001/20/EC relating to good clinical practice in the conduct of clinical trials on medicinal products for human use.*’

This ‘Ad hoc group’ is composed of representatives of the Member States’ Competent Authorities and the European Medicines Agency and is chaired by the Commission (DG Enterprise and Industry). The task of the group is to develop the common implementing guidance necessary for uniform implementation of the legislation in the Member States.

The Commission also took part in various forums, such as those organised by the European Medicines Agency or the Member States, to present guidelines for the transposition and implementation of legislation. The most important meeting was the regular meeting of the heads of the medicines agencies.

Concerning the prices and reimbursement of medicinal products, the Commission pursued its efforts to ensure the correct implementation of Directive 89/105/EEC relating to the transparency of pharmaceutical pricing and reimbursement measures adopted by the Member States.

Several complaints were received from economic operators and compliance with the procedural requirements of the directive was investigated. The Commission sent reasoned opinions to four Member States which, in the Commission's view, had not complied (*non-*

conformity) with the transparency rules of the directive (Austria, Czech Republic, Italy and Spain). The article 228 EC proceedings against Finland for *non-compliance with the Court's decision* of 12 June 2003(C-2000/229) were closed.

The Transparency Committee convened in November 2006 to discuss the application and interpretation of the directive.

2.1.3. *Cosmetic products*

Pursuant to Directive 76/768/CE, the Commission adopted two Directives designed to adapt the Cosmetics Directive to technical progress, two recommendations (one concerning the efficacy of sunscreen products and the claims made relating thereto and one establishing guidelines on the use of claims referring to the absence of tests on animals pursuant to Council Directive 76/768/EEC) and one decision amending a previous decision establishing an inventory and a common nomenclature of ingredients employed in cosmetic products.

11 infringement proceedings were opened in 2006 against Member States for *failure to notify* national measures implementing two Directives, 4 relating to Directive 2005/52 adapting Annex III to technical progress and 7 relating to Directive 2005/80 adapting Annexes II and III to technical progress. Except for one case concerning Greece for *non-communication* of Directive 2005/80/EC, those proceedings were all closed within the same year.

Because some MS transpose directives on cosmetics products “by reference” (where the text of the directive is not reproduced in the national law), the Commission informed the Member States at the December meeting of the standing committee on cosmetic products about the requirements for using this technique.

2.1.4. *Medical devices*

In 2006, three cases for *non-communication* of national measures transposing medical devices directives were closed by the Commission. Two were against Latvia, for failure to transpose Directive 2003/12/EC on the reclassification of breast implants and Directive 2003/32/EC introducing detailed specifications as regards the requirements laid down in Council Directive 93/42/EEC with respect to medical devices manufactured utilising tissues of animal origin. The third case was against Estonia for failure to transpose Directive 84/539/EEC on the approximation of the laws of the Member States relating to electro-medical equipment used in human or veterinary medicine.

In addition, several complaints received in 2006, alleging breach of Directive 93/42/EEC on medical devices were declared unfounded after analysis by the competent service.

2.1.5. *Chemical products*

Directive 2005/59/EC³¹ on Toluene and Trichlorobenzene, Directive 2005/69/EC³² on Polycyclic Aromatic Hydrocarbons in extender oils and tyres and Directive 2005/84/EC³³ on phthalates in toys and in childcare articles had to be transposed in 2006.

³¹ OJ L 309, 25.11.2005 p. 13

³² OJ L 323, 9.12.2005 p. 51

³³ OJ L344, 27.12.2005 p. 40

The Commission launched infringement procedures for *non-communication* of national measures transposing Directive 2005/84/EC against France, Ireland, Italy, Luxembourg, The Netherlands, Austria, Portugal, Slovenia, Sweden and United Kingdom. By the end of 2006, 8 of those Member States had communicated the national measures. The deadlines for transposition of the other directives passed in December 2006. Luxembourg, Austria, Slovenia and Finland had not communicated the relevant measures by the end of 2006.

The efforts of the competent services were targeted at Regulation EC No 2003/2003 on Fertilisers and Regulation EC No 648/2004 on Detergents, which came into force in 2005. Member States were reminded of their obligations to communicate the measures that they had adopted for the implementation of these regulations. Following this exercise, the Commission launched infringement procedures for *non-communication* of national measures concerning

- control measures and sanctions required by Regulation EC No 2003/2003 against Italy, The Netherlands, the Czech Republic, Slovenia, and Luxembourg; and
- the designation of a competent authority and sanctions required by Regulation EC No 648/2004 against Denmark, France, Italy, Luxembourg, Slovenia and Sweden.

By the end of 2006 only Luxembourg and France, The Netherlands and Italy had still not communicated the measures needed for the proper implementation of these Regulations.

The Commission continued to check the conformity of national measures transposing Directives 2004/10/EC and Directive 2004/9/EC on Good Laboratory Practice (GLP). In this context, the Commission sent letters to four Member States concerning the setting up of an authority for the verification of GLP. At the end of the year, 2 Member States had made progress toward setting up an authority.

In 2005, the Commission contracted out a study concerning the transposition of Directive 1999/45/EC on the classification and labelling of dangerous preparations. In 2006 the study focused on the following Member States: the Czech Republic, Finland, Hungary, Italy, and Slovakia. In the majority of cases no important problems were found. However, this study will be an opportunity for the Commission to contact Member States with a view to resolving problems brought to light by the study.

Working group meetings for the various legislation are organised on a regular basis. At these meetings the competent authorities of Member States discuss problems in the implementation of the directives and regulations. As a result possible incorrect implementation of directives and regulations can be avoided.

2.1.6. Payment delays

Late payment and long payment periods impede the development, competitiveness and profitability of SMEs, and even endanger their survival, so tackling these problems is a priority for the European Commission.

In 2006, the Court of Justice stated in its judgement of 26/10/2006 (C-2005/302, Commission/Italy) that the Directive does not harmonise all the rules relating to late payments in commercial transactions since it governs only certain specific rules intended to combat such

delays, namely, rules on interest for late payments (Article 3), retention of title (Article 4) and procedures for recovery of unchallenged claims (Article 5). Therefore, the rest of the rules which appear in the Directive were still governed exclusively by the national legal orders of the Member States.

During 2006, the Commission dealt with two complaints for *non-conformity* of national measures transposing Directive 2000/35/EC. Letters asking for further information were sent to the Member States concerned.

Two proceedings for *non-conformity* were still pending before the Court of Justice: one against Spain (C-2006/380), the other against Italy (C- 2005/302).

2.1.7. Defective products

During the first quarter of 2006, the Court of Justice gave three judgments (C-402/03, C-127/04 and C-177/04, regarding Denmark, United Kingdom and France) effectively putting to an end the long standing debate on the harmonizing effects of Directive 85/374/EEC on product liability and also giving some interpretation of the concept of ‘putting a product into circulation’. The Court of Justice held that a product must be considered as having been put into circulation, within the meaning of Article 11 of the Directive, when it leaves the production process operated by the producer and enters a marketing process in the form in which it is offered to the public to be used or consumed.

At the end of the year, case C-327/05, Commission v. Denmark, on the *non-conformity* of Danish legislation with Directive 85/374/EEC was still pending before the Court.

In accordance with Article 21 of the Directive, on 14 September 2006 the Commission published the third report on the application of the Directive³⁴. The overall conclusions were that the Directive works satisfactorily and that there is no need for amendment at present.

2.1.8. Cultural goods

The Commission followed the monitoring of the application of Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State and closed the infringement procedure for *non- communication* against Poland.

In 2006, the lead service assessed the national measures transposing Directive 93/7/EEC as modified by Directives 1996/100/EC and 2001/38/CE which had been communicated by Romania and Bulgaria.

2.1.9. Mechanical and electromechanical equipment

The Commission brought Ireland, Greece and Italy before the Court for *non communication* of the national measures transposing Directive 2004/26/EC amending Directive 97/68/EC on the approximation of the laws of the Member States relating to measures against the emissions of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery. The Commission also brought Ireland and Greece before the court for *non communication* of the national measures transposing Directive 2002/88/EC, also amending Directive 97/68/EC.

³⁴

COM (2006) 496 final: http://ec.europa.eu/enterprise/regulation/goods/liability_en.htm

Infringement procedures for *non communication* against Latvia, Malta, Portugal, Slovenia, Slovakia, Sweden and the United Kingdom were closed, following notification of national implementing measures.

Discussions with France about the infringement proceedings for *incorrect transposition* of Directive 98/37/EC on machinery continued. The problem relates to obstacles to the free movement of industrial dry-cleaning machinery.

A workshop on the transposition of Directive 2005/32/EC establishing a framework for the setting of eco-design requirements for energy-using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC was organized in 2006. This Directive must be transposed by 11/8/2007.

2.1.10. Cableway installations

An Application Guide to Directive 2000/9 on cableway, prepared in close cooperation with national authorities, was published. In addition during 2006, the Commission paid special attention to the risks of incorrect application and organised two Standing Committee meetings on the deficient application of the directive detected in some Member States. Bilateral contact with these Member States will be strengthened.

2.1.11. Pressure equipment, gas appliances, legal metrology

Reasoned opinions were sent to Sweden and Italy for *incorrect implementation* of Directive 97/23/EC on pressure equipment. The Commission also dealt with complaints relating to additional requirements for pressure equipment and some obstacles to the putting into service of gas appliances.

In the sector of measuring instruments, the Commission sent reasoned opinions for *non-communication* of Directive 2004/22/EC to Germany, Greece, Italy, Luxembourg, Austria, Poland and Portugal. Proceedings launched against Belgium, Denmark, Spain, France, Cyprus, Latvia, Hungary, Malta, The Netherlands, Slovenia, Sweden and United Kingdom were closed without the need to issue reasoned opinions

2.1.12. Construction products

Reasoned opinions were sent to Spain and the United Kingdom for *incorrect implementation* of Directive 89/106/EEC on construction products. The Commission also dealt with cases on additional requirements for the use of some construction products in some Member States.

2.1.13. Preventive rules provided for by Directive 98/34/EC³⁵

Directive 98/34/EC (as amended by Directive 98/48/EC) lays down an information procedure enabling the Member States and the Commission to exercise prior checks on draft technical regulations relating to products and draft rules relating to information society services.

In 2006, the Commission received in total 723 notifications, 678 from the Member States and 36 from the EFTA countries. Turkey considerably stepped up its participation in the

³⁵ Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations.

simplified procedure and sent 19 notifications pursuant to the rules implementing the final phase of the Customs Union between the EC and Turkey. The new Member States also played an active part in the process, notifying 131 draft texts.

723 notified drafts in 2006					
Germany:	77	Denmark:	24	Portugal:	7
Netherlands:	71	Czech Republic:	21	Malta:	7
Spain:	70	Italy:	20	Ireland:	6
United Kingdom:	59	Finland:	18	Greece:	5
France:	57	Hungary:	15	Luxembourg:	2
Sweden:	50	Slovenia:	11	Latvia:	2
Poland:	48	Lithuania:	10	Cyprus:	1
Austria:	42	Slovakia:	9	EFTA:	36
Belgium	28	Estonia:	8	Turkey:	19

The sectors with most notifications were construction products, food and agricultural products, machinery, telecommunication and transport. Particularly sensitive were notifications in the gaming industry sector, concerning the ban on certain chemical substances (e.g. Deca-BDE, mercury), regarding animal welfare (e.g. housings for fur animals, ban on seal products), the establishment of environmental zones as well as measures regarding the coexistence of GMOs with conventional and organic crops.

Construction:	106	Information Society services:	34
Food products and agriculture:	101	Pharmaceutical products:	22
Machinery:	89	Domestic appliances and leisure:	19
Telecommunications:	88	Chemicals:	17
Transport:	85	Health, medical devices:	14
Energy, minerals, wood:	54	GMOs:	11
Environment, packaging:	52	Various:	31

During 2006, a large number of notifications concerned national measures transposing Community directives which also contained provisions which are not harmonised (e.g. packaging waste, legal metrology, energy efficiency, food supplements, radio spectrum). This allowed the Commission services to verify *ex ante* whether a Community act would be correctly transposed and to begin a productive dialogue within a non-contentious framework.

The Commission issued 59 detailed opinions and 172 observations in response to drafts notified in 2006, while the Member States issued 46 detailed opinions and 201 observations. The Commission also blocked the adoption of 1 notified text for 12 months because it concerned a field covered by a proposal for harmonisation at Community level.

The Member States have already replied to a very large number of detailed opinions and comments, proving that a real dialogue has been established between the Commission and the Member States as well as among the Member States. Several replies received were

satisfactory which means that the creation of new obstacles in various sectors was prevented (e.g. electronic commerce, laser pointers, measurement instruments, veterinary requirements of milk and eggs, bottling of wine, pressure equipment, GMO co-existence measures etc.).

The Commission did not only examine the compatibility of the notified texts with Community law but also formulated comments, when necessary, regarding their quality in terms of clarity, accessibility, effectiveness and avoidance of unnecessary burdens for economic operators. Directive 98/34/EC thus also continued to contribute to the implementation of the 'better regulation' strategy³⁶.

At the end of 2006, 9 complaints for *incorrect application* were under scrutiny, while 7 were closed after the Member States concerned remedied their failures to fulfil their obligations.

Transparency is one of the key objectives of the notification procedure. On the TRIS-website³⁷ where all notified texts are publicly available, around 123,000 searches were carried out. The number of interested parties who have subscribed to a mailing list in order to be alerted to new notifications has increased to 1769. In many cases, professional organisations and individual enterprises, including several SMEs, submitted comments on notified texts and thus helped the Commission formulate its position.

Economic operators drew the attention of the Commission to several cases of Member States' failure to notify in accordance with Directive 98/34/EC, particularly in the gaming industry sector (gaming machines, internet betting). Discussions were held with the Member States concerned to remedy the procedural error. In one case, however, concerning a law on online gaming, infringement proceedings were opened.

The information procedure is facilitating an open dialogue among the Member States, and between them and the Commission. In 2006, the Standards and Technical Regulations Committee met three times and four Member States (Czech Republic, Hungary, Sweden and Slovak Republic) organized seminars on the functioning of the notification procedure with the participation of their national administrations, the Commission services and, at the seminar in Bratislava, Bulgaria and Romania. The involvement of these two new Member States in the 98/34 procedure has been prepared through steady dialogue and the signature of bilateral agreements establishing a simplified procedure and should therefore take place smoothly.

2.1.14. Non-harmonised areas (Articles 28 to 30 of the EC Treaty)

In 2006 the Commission continued handling complaints and infringements cases in various non-harmonised fields of goods, ranging from the registration of second-hand cars to the parallel importation of medicinal products and pesticides. By the end of the year, 78 active cases had been closed and some 95 complaints and infringement proceedings were ongoing.

In contrast with 2005, the volume of new complaints registered declined in 2006. The amount of closures in 2006 was higher than in 2005. The number of open infringement proceedings on alleged breaches of Articles 28-30 EC has therefore decreased.

³⁶ COM(2005) 97 Communication from the Commission to the Council and the European Parliament - Better Regulation for Growth and Jobs in the European Union

³⁷ <http://ec.europa.eu/enterprise/tris/>

This development seems to be mainly due to successful negotiations with Member States in a number of cases. Some cases were closed because no infringement of EC law was established or because the apparent restriction to free movement of goods was considered justified for reasons of general interest, such as the protection of public health, environment or public policy. In addition, referrals of incorrect application cases to the SOLVIT problem-solving network, Member States' obligation under Directive 98/34/EC to notify to the Commission draft technical rules, as well as 'package meetings' organised with Member States to discuss a 'package' of cases contributed to the practical resolution of trade barrier problems.

Some problems required co-ordinated action against more than one Member State. For instance, obstacles to the importation of gaming machines where the Commission pursued infringement proceedings against Sweden and Greece as well as investigating a case against Italy. To facilitate the authorisation procedure for parallel imports of medicinal products and plant protection products, the Commission brought infringement proceedings against Austria, Denmark, France, Hungary, Italy, Poland, Portugal, Spain and the United Kingdom. Obstacles to the registration of imported second-hand motor vehicles in Austria, Czech Republic, Finland, Luxembourg, Netherlands, Poland, Slovakia and Spain also attracted the Commission's attention.

Following the issue of reasoned opinions, Member States amended their legislation in a number of cases, including the following:

- On the parallel importation of plant protection products, three infringement cases against the United Kingdom were closed after changes were made to the Guidance Document issued by the national competent authority.
- On licensing procedures for the supply of approved waste bags in Brussels, an infringement case against Belgium was closed after the procedure was made more accessible to companies interested in selling these products.
- In Hungary a general prohibition on the registration of imported vehicles manufactured prior to 1996 was removed.

Examples of infringement proceedings resulting in referrals to the Court of Justice were:

- France, for requiring that a parallel imported plant protection product and a reference product have a common origin in the context of granting a simplified import authorisation³⁸;
- Spain, for legislation imposing the compliance with the provisions and procedures of nationals tests to solar collectors manufactured in another Member State in order to grant public subsidies³⁹;
- Spain, over systematically withdrawing from the Spanish market plant-based products legally manufactured or marketed as food supplements in other Member States⁴⁰; and

³⁸ Case C-201/06 Commission v France, pending.

³⁹ Case C-172/06 Commission v Spain, pending.

⁴⁰ Case C-88/07 Commission v Spain, pending.

- Portugal, for prohibiting the affixing of coloured films on the windows of motor vehicles⁴¹.

In addition, some judgments of the Court of Justice in infringement proceedings further clarified the scope of Articles 28 to 30 of the EC Treaty:

- In judgment C-82/2005, the Court clarified that treating the process of final baking or reheating of bake-off products in the same way as the complete production of bread and making it subject to the conditions of relevant national laws on bakeries breaches Article 28 of the EC Treaty⁴².
- In judgment C-65/05 the Court held that a total ban on the installation and operation of all electrical, electromechanical and electronic games, including all computer games, on all public and private premises apart from casinos is disproportionate and violates the general principles of free movement of goods, freedom of establishment and freedom to provide services⁴³.

The Commission also reminded certain Member States of their obligation to comply with the Court's jurisprudence.

- A reasoned opinion under Article 228 EC was sent to Portugal to ensure compliance with the judgment in C-432/03 that Portugal had failed to comply with Article 28 of the EC Treaty by not accepting approval certificates issued by other Member States concerning polyethylene pipes⁴⁴.
- Following a reasoned opinion under Article 228 EC, France amended its legislation concerning personal imports, not effected by personal transport, of certain medicinal products to comply with the judgment in C-212/03⁴⁵.
- Germany modified its approach towards parallel imports of plant protection products by establishing a new authorisation procedure for such imports. In doing so, the German authorities also took the Court's judgment in case C-114/04 into account⁴⁶.

During 2006, the Commission also continued to screen the national legislation of the accession and candidate countries in the non-harmonised field of the free movement of goods.

2.2. Competition

In competition policy, the priorities in 2006 were monitoring the transposal of the Directive on competition in the markets for electronic communications and the transparency Directive (both of which are based on Article 86 EC). As regards individual cases, the Commission handled several complaints relating to Article 86 combined with Article 82 EC, complaints relating to Article 31 and investigated infringements of Article 21 of the Merger Regulation.

⁴¹ Case C-265/06 Commission v Portugal, pending.

⁴² Judgment of 14 September 2006, Case C-82/205 Commission v Greece, not published yet.

⁴³ Judgment of 26 October 2006, Case C-65/05 Commission v Greece, not published yet.

⁴⁴ Judgment of 10 November 2005, Case C-432/03 Commission v Portugal (2005) ECR I-9665.

⁴⁵ Judgment of 26 May 2005, Case C-212/03 Commission v France (2005) ECR I-4213.

⁴⁶ Judgment of 14 July 2005, Case C-114/04 Commission v Germany, not published yet

2.2.1. Transparency Directive and other state aid cases

As regards the transposition of the Transparency Directive, in 2006 Austria was referred to Court for failure to fully implement Directive 2000/52/EC and a reasoned opinion was sent to Poland for its failure to notify the implementing measures of Commission Directive 80/723/EEC as amended.

On 18 October 2004 the Commission sent a letter of formal notice under Article 228(2) EC to Spain for failing to comply with a judgment⁴⁷ confirming the Commission's recovery decision⁴⁸ regarding aid granted to publicly-owned shipyards. Since then, there have been significant developments in the case. On 1 April 2005 IZAR entered into liquidation. In November 2006, three of the four yards were transferred through an open and transparent procedure. In the light of the measures adopted by Spain, further action under Article 228(2) EC was suspended and the liquidation of the pending yard is being monitored closely so as to ensure the correct implementation of the recovery decision.

On 12 December 2006 the Commission sent a letter of formal notice to Italy for failing to comply with a judgment of the ECJ⁴⁹ condemning Italy for the non execution of the Commission's recovery decision⁵⁰. The Commission considered that Italy had not taken the necessary measures to recover the incompatible aid, and moreover it had not been informed of the measures adopted nor of the amounts recovered. The reply to the letter of formal notice is due by February 2007.

2.2.2. Digital Broadcasting

In the area of digital broadcasting, following a complaint by the Italian consumer association *Altroconsumo*, the Commission is currently investigating whether the Italian legislation regulating digital switchover could introduce restrictions on broadcasters and grant competitive advantages to existing analogue operators, contrary to the Competition Directive.

2.2.3. Electronic communications

The Directives relating to competition policy are based on Article 86(3) EC. In the field of electronic communications, the Competition Directive⁵¹ of 2002 lays down the fundamental obligations arising from the Treaty which Member States must comply with as regards sectoral law. Under its obligation to ensure compliance with Community law, the Commission pursued in 2006 the proceedings opened against Member States that had not yet transposed or inadequately transposed the Directive, or that did not implement it correctly.

Following the judgments delivered on 14 April and 16 June 2006 against Greece and Luxembourg for failing to transpose the Competition Directive, a complementary letter of formal notice and a reasoned opinion were addressed to Greece⁵² and a complementary

⁴⁷ Judgment of the Court of Justice of 26.6.2003 in Case C-404/00, Commission/Spain, Failure to execute a recovery decision.

⁴⁸ Commission decision of 26.10.1999 in case C-03/1999, OJ L 37, 12.2.2000.

⁴⁹ Judgment of the Court of Justice of 1.6.2006, Case C-207/05, Commission/Italy, Failure to execute a recovery decision

⁵⁰ Commission decision of 5.6.2002, case C-27/99, OJ L 77, 24.3.2003

⁵¹ Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services.

⁵² Case 2003/0911, see IP/06/1041.

reasoned opinion was addressed to Luxembourg⁵³ with a view to referring them to the Court of Justice a second time (under Article 228 CE).

The Commission also decided to refer Sweden⁵⁴ and Hungary⁵⁵ to the Court of Justice (under Article 226 CE). Under the Directive on competition in the markets for electronic communications networks and services (Directive 2002/77/EC), Sweden was obliged to abolish all exclusive rights for broadcasting transmission services by July 2003 at the latest. Despite this obligation a state-owned company benefits from exclusive rights for providing access control services in the Swedish market for digital terrestrial broadcasting transmission services. Under the same Directive Hungary had to abolish all restrictions for providing broadcasting transmission services by 1 May 2004. However, Hungary has not yet abolished the Media Act provisions limiting the rights of cable operators to provide broadcasting transmission services.

2.3. Employment, Social Affairs and Equal Opportunities

In the field of free movement of workers, the Commission deals with problems linked to an incorrect application of the relevant provisions of the EC Treaty and of regulations existing in that area. These problems are brought to the attention of the Commission through individual complaints from citizens, petitions and written Parliamentary questions. The Commission also verifies application of the preliminary rulings of the Court in this field. In other areas of activity, such as labour law, health and safety at the workplace, anti-discrimination and equal treatment the Commission mostly deals with problems related to the non-conformity and non-communication of national measures transposing the directives applicable.

2.3.1 Free movement of workers and coordination of social security schemes

In the area of free movement of persons and coordination of social security schemes, problems remain due to an incorrect application of the relevant Articles of the EC Treaty (Articles 39 and 42) and of the Regulations (CEE) No 1408/71⁵⁶ and No 1612/68⁵⁷. An important number of previously opened procedures have been continued.

In the field of social security, one example concerns a number of benefits for disabled persons. After the adoption of Regulation (CE) 647/2005⁵⁸ amending Regulation 1408/71, the Commission started infringement procedures against Finland, the UK and Sweden as it takes the view these benefits have been unjustified qualified as "special non-contributory benefits" by the co-legislators and that these benefits are normal security benefits and therefore are exportable. These procedures are still on-going.

⁵³ Case 1999/4784, see IP/07/10.

⁵⁴ Case 2004/2197, see IP/06/1411.

⁵⁵ Case 2005/2323, see IP/06/1811.

⁵⁶ Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, OJ L 323, 13.12.1996

⁵⁷ Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement of workers within the Community, OJ L 257, 19.10.1968

⁵⁸ Regulation (EC) 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council regulations (EEC) No 1408/71 on the application of social security schemes to employed persons, to self employed persons and to members of their families moving within the Community and (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, OJ L 117, 4.5.2005

As regards free movement of workers, the majority of the ongoing procedures concerns issues linked to the public sector. In the past, the Commission proceeded with numerous infringements concerning the existence of nationality clauses in access to posts in the public sector. Currently this problem seems to be reduced and only a few procedures are still open on this point. In 2006 the Commission focused on the issue of the recognition of previous professional experience acquired in one Member State for the purpose of access to the public sector as well as for determining the professional advantages in another Member State. Considerable progress was achieved in the framework of these procedures. Two judgements of the Court of Justice were delivered in 2006 in the framework of infringement procedures against Spain⁵⁹ and Italy⁶⁰ on this issue.

The Commission carried out also a systematic review of the legislations of all Member States following two preliminary judgments of the ECJ⁶¹ regarding the nationality condition for posts of master and chief mate of merchant ships where the prerogatives of public authority are exercised by private sector workers. In this respect, 14 infringement procedures were ongoing in 2006. The Commission decided to refer the case against France to the Court of Justice⁶².

Furthermore, the Commission ensures a follow-up of preliminary rulings in cases *Gattoussi*⁶³ and *Burbaud*⁶⁴. The Commission controls also the execution of the two judgments⁶⁵ concerning the car registration tax in Denmark and in Finland imposed on company cars used by frontier workers resident in these two respective countries and working in another Member States. The case against Denmark could be finally closed in 2006.

On 18 July 2006, the Court held its judgment in case C-119/04⁶⁶, regarding the recognition of acquired rights of former *lettori* in several Italian universities. The ECJ decided that Italy failed to fulfil its obligations under Article 228 EC by not taking all the measures necessary to comply with the judgment of 26 June 2001 in Case C-212/99. The Court decided however that the imposition of a penalty payment requested by the Commission was not justified because it considered that the Court did not have sufficient information to permit it to find that, on the date of the Court's examination of the facts, the breach of obligations persisted.

Other open procedures concern cases of direct or indirect discriminations of migrant workers and the issue of the application of free movement rules to the sport's activities.

⁵⁹ Judgement of 23.02.2006, case C-205/04

⁶⁰ Judgement of 26.10.2006, case C-371/04

⁶¹ Judgments of 30 September 2003 in cases: C-405/01 *Colegio de Oficiales de la Marina Mercante Española* (Rec.2003,p.I-10391) and C-47/02 *Anker and others* (Rec.2003,p.I-10447)

⁶² Case C-89/2007

⁶³ Judgment of 14 December 2006 in case C-97/05 *Gattoussi* (not yet published)

⁶⁴ Judgment of 9 September 2003 in case C- 285/01 *Burbaud*, Rec.2003, p.I-8219

⁶⁵ Judgment of 15 September 2005 in case C-464/02 *Commission v Denmark*, REC 2005, p. I-7929;

⁶⁶ Judgment of the ECJ of 23 February 2006 in case C-232/03 *Commission v Finland*, REC 2006, p. I-27 Rec.2006,p. I-6885

2.3.2 Labour law

With regard to the *non communication cases*, the infringement proceedings against Member States which had *failed to notify* the national measures transposing Directives 2000/34⁶⁷, 2000/79/EC⁶⁸, 2001/86/EC⁶⁹ and 2002/14/EC⁷⁰ continued. With regard to Directive 2000/34/EC, the proceeding against France continues and a letter of formal notice has been sent under Article 228 EC following the judgment from the Court of Justice⁷¹. Following a judgment by the Court of Justice⁷², the proceedings against Ireland for failure to transpose Directive 2000/79/EC could be closed further to notification of the necessary national transposition measures. The proceedings against Spain⁷³ and Luxembourg⁷⁴ for failure to transpose Directive 2001/86/EC were referred to the Court of Justice, but have been withdrawn as the necessary transposition measures have been adopted and notified. The pending case against Ireland⁷⁵ will be closed subsequently in 2007 further to communication of the necessary national transposition measures. As far as Directive 2002/14/EC is concerned, for lack of notification of the necessary transposition measures a reasoned opinion was sent to Ireland, Malta and Poland; having adopted the necessary measures transposing the directive, these proceedings could however be closed. The proceedings against Belgium⁷⁶, Greece⁷⁷, Spain⁷⁸, Italy⁷⁹ and Luxembourg⁸⁰ were referred to the European Court of Justice. The case against Estonia⁸¹ will subsequently be withdrawn in 2007 as the necessary transposition measures were adopted and notified in the mean time.

As regards the *(non) transposition* of Directive 02/74/EC⁸², due for transposition by 8 October 2005, infringement proceedings were initiated against Member States that had *failed to notify* the national transposition measures within the time limit. Having adopted the necessary national transposition measures following the notification of a reasoned opinion, the case against Finland could already be closed, whereas the case against Greece will be closed in due

⁶⁷ Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 amending Council Directive 93/104/EC concerning certain aspects of organisation of working time to cover sectors and activities excluded from that Directive, OJ L 195, 1.8.2000, p. 41

⁶⁸ Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation, OJ L 302, 1.12.2000, p. 57

⁶⁹ Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, OJ L 294, 10.11.2001, p. 22

⁷⁰ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community. OJ L 80, 23.3.2002, p. 29.

⁷¹ Judgment 17.11.2005, case C-73/05.

⁷² Judgment 23.2.2006, case C-46/05

⁷³ Case C-326/06

⁷⁴ Case C-318/06

⁷⁵ Pending case C-330/06

⁷⁶ Pending case C-320/06

⁷⁷ Pending case C-381/06

⁷⁸ Pending case C-317/06

⁷⁹ Judgement of 1.03.2007, case C-327/06

⁸⁰ Pending case C-321/06

⁸¹ Pending case C-397/06

⁸² Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of Member States relating to the protection of employees in the event of insolvency of their employer . OJ L 270, 8.10.2002, p. 10.

course. The cases against Spain⁸³, France⁸⁴ and Luxemburg⁸⁵ were referred to the Court of Justice.

The Commission sent 16 letters of formal notice for failure to notify in time measures to transpose Directive 2003/72/CE⁸⁶ due for transposition by 18 August 2006.

As regards problems of *non-conformity* of the national transposition measures of Directives in the area of labour law a number of proceedings already in progress continued. Thus, for example, the case against Luxembourg for incorrect transposition of Directive 96/71/EC ('posting of workers')⁸⁷ was referred to the Court of Justice⁸⁸ which will give it the opportunity to pronounce itself on the contents of the notion 'public policy provisions' laid down in Article 3 paragraph 10 of the Directive. The proceeding for wrong application initiated against Germany⁸⁹, which continued under Article 228 EC could however be closed, the necessary measures to conform to the judgment of the European Court of Justice (and thus transposing correctly the Directive) having been adopted in the mean time. The case against France for incorrect and insufficient transposition of Directive 80/987/EEC⁹⁰, and in particular Article 8, continues. Furthermore, regarding the incorrect transposition of Directive 93/104/EC ('working time'), the proceeding against United Kingdom⁹¹ continued under Article 228 EC, but will be closed in due course following the notification of national measures correctly transposing the Directive.

2.3.3 Health and safety at work

With regard to the protection of workers' health and safety at work, the infringement proceedings against Member States which had *failed to notify* the national measures transposing Directives 99/38/EC⁹², 99/92/EC⁹³ and 01/45/EC⁹⁴ continued. With regard to Directive 99/38, a letter of formal notice under Article 228 EC was sent to Austria but the case was subsequently terminated following the adoption of all necessary national transposition measures. The proceeding against Austria under Article 228 EC for failure to notify the national measures transposing Directive 99/92/EC continued following the Court of

⁸³ Pending case C-6/07.

⁸⁴ Pending case C-9/07

⁸⁵ Pending case C-10/07..

⁸⁶ Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees, OJ L 207/25, 18.8.2003.

⁸⁷ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ L18/1, 21.1.1997.

⁸⁸ Pending case C-319/06.

⁸⁹ Judgment of 14.4.2005, case C-341/02.

⁹⁰ Council Directive of 20 October 1980 on the approximation of the laws of Member States relating to the protection of employees in the event of insolvency of their employer, OJ L 283/23, 28.10.1980.

⁹¹ Judgment of 7.9.2006, case C-484/04.

⁹² Council Directive 1999/38/EC of 29 April 1999 amending for the second time Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work and extending it to mutagens. OJ L 138, 01/06/1999 p. 66.

⁹³ Directive 1999/92/EC of the European Parliament and of the Council of 16 December 1999 on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (15th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC). OJ L 023, 28.01.2000, p. 57.

⁹⁴ Directive 2001/45/EC of the European Parliament and of the Council of 27 June 2001 amending Council Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC). OJ L 195, 19.7.2001, p. 46.

Justice sentence⁹⁵ but could be closed further to the adoption of the necessary national measures. The proceedings against Austria and Ireland for failure to transpose Directive 01/45 were referred to the Court of justice⁹⁶ but the Commission decided to withdraw the case against Ireland as the necessary national transposition measures were notified, and the proceeding against the United Kingdom could be closed further to the adoption of the national measures.

As regards (*non*) *transposition* of Directive 2002/44/EC⁹⁷, due for transposition by 6 July 2005, infringement proceedings were brought against Member States that had *failed to notify* the national transposition measures within the time limit. A reasoned opinion was sent to Austria, Germany, Ireland, Luxembourg and United Kingdom (the case against Ireland and the United Kingdom were closed when they adopted the necessary national transposition measures). The cases against Austria⁹⁸ and Germany⁹⁹ were referred to the Court of Justice.

The Commission sent 11 letters of formal notice for failure to notify in time measures to transpose Directive 2003/10/CE due for transposition by 15 February 2006.

Similarly, the Commission sent 10 letters of formal notice for failure to notify in time measures to transpose Directive 2003/18/CE due for transposition by 15 April 2006.

As regards problems of non-conformity of the transposition of the framework directive 89/391/CEE¹⁰⁰ and of its individual directives, many proceedings already in progress continued. Thus, for example, regarding the transposition of Directive 89/391/EEC, the proceeding against Luxembourg¹⁰¹ under Article 228 EC continued, but the case was finally closed following the notification of national measures correctly transposing the Directive. In the case against Austria¹⁰², the Court of Justice delivered its judgment, and a proceeding under Article 228 EC was prepared. In the case against Spain¹⁰³, concerning the application of Directive 89/391/CEE to military personnel (Guardia Civil), the Court of Justice delivered its judgment, but the case was closed following the notification of national measures correctly transposing the Directive. In the case against Sweden¹⁰⁴, concerning the definition of capabilities and aptitudes of persons designated to carry out activities related to protection against and prevention of occupational hazards, the Court dismissed the action of the Commission. The proceeding initiated against the United Kingdom¹⁰⁵, concerning the "as far as reasonably practicable" (SFAIRP) clause, followed its course before the Court of Justice.

⁹⁵ Judgment of 27 October 2005 in Case C-377/04.

⁹⁶ Cases C-359/06 and C-88/06, respectively.

⁹⁷ Directive 2002/44/EC of the European Parliament and of the Council of 25 June 2002 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration) (sixteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC). OJ L 177, 6.7.2002, p. 13.

⁹⁸ Pending case C-63/07.

⁹⁹ Pending case C-70/07.

¹⁰⁰ Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989, p. 1.

¹⁰¹ Judgment of 22.5.2003, case C-335/02.

¹⁰² Judgment of 6.4.2006, case C-428/04.

¹⁰³ Judgment of 12.1.2006, case C-132/04.

¹⁰⁴ Judgment of 15.6.2006, case C-459/04.

¹⁰⁵ Pending case C-127/05.

The proceeding against France¹⁰⁶, concerning the application of the provisions of Directive 89/391/EEC to RATP and SNCF, continues.

With regard to individual directives, it should be mentioned that, as regards Directive 92/57/CEE¹⁰⁷, it was decided during 2006 to refer the infringement proceeding for non-conformity against Italy¹⁰⁸ to the Court of justice.

2.3.4 Anti-discrimination (article 13 EC)

With the coming into force of new legislation in Luxembourg in December 2006, all the Member States had transposed the anti-discrimination Directives (2000/43/EC¹⁰⁹ and 2000/78/EC¹¹⁰). The previous infringements against Germany, Finland and Austria for non-communication were therefore closed, as will be the one against Luxembourg.

As for infringements for non-conformity of national legislation with the Race Equality Directive (2000/43/EC), infringement procedures were launched against Belgium, Denmark, Greece, Spain, France, Ireland, Italy, Netherlands, Portugal, Sweden and the United Kingdom in February 2006, and against Czech Republic, Estonia, Cyprus, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia and Slovakia in July 2006.

The decision to launch infringements for non-conformity of national measures with the Employment Framework Directive (2000/78/EC) against Denmark, Greece, Spain, Ireland, Italy, Netherlands, Portugal, Czech Republic, Estonia, Cyprus, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, Slovakia and Finland was taken in December 2006. The UK, Sweden, France and Belgium took advantage of the extended deadline (December 2006) to transpose the Directive's provisions on age and disability discrimination.

2.3.5 Equality for women and men

Concerning infringement proceedings for non communication, two complementary reasoned opinions have been notified to the Czech Republic, for non communication of national measures implementing Directives 86/378/EEC¹¹¹ and 96/97/EC¹¹².

¹⁰⁶ Pending case C-226/06.

¹⁰⁷ Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ L 245, 26.8.1992, p. 6.

¹⁰⁸ Pending case C-504/06.

¹⁰⁹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000

¹¹⁰ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000

¹¹¹ Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes, OJ L 225, 12.8.1986, p. 40.

¹¹² Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes, OJ L 46, 17.2.1997, p. 20.

As regards Directive 2002/73/CE¹¹³, the Commission sent to Belgium, Spain, Luxembourg and the Netherlands reasoned opinions for non communication of the national measures transposing the Directive into national law.

Following the judgment of the Court against Luxembourg¹¹⁴, the infringement for non-conformity of national legislation with Directive 96/34/EC on parental leave continues under article 228 EC. A reasoned opinion was sent to Greece for incorrect transposition of the same Directive.

The Commission decided to refer Italy to the Court of Justice for a case concerning different pension ages for men (65) and women (60) in the public sector¹¹⁵. A reasoned opinion was sent to Greece on a similar case involving differences of treatment between men and women in public sector pension schemes.

2.4. Agriculture and Rural Development

In the area of agriculture, monitoring the application of Community law concentrates on two main objectives: removing barriers to the free movement of agricultural produce and ensuring that the more specific mechanisms of the agricultural regulations are applied effectively and correctly.

The objective of removing the traditional barriers to free movement of agricultural produce was further pursued: following the judgment of the Court¹¹⁶ the Commission addressed a reasoned opinion to France concerning the prohibition to market shallots grown from seeds under the denomination "shallots" although they are so produced and marketed under that name in other Member States. The French authorities reserve the trade designation "shallot" for vegetables produced by vegetative propagation and products not satisfying their criteria can circulate only under another denomination. Therefore, instead of dealing with the question of consumer protection by way of neutral and objective labelling as envisaged by the Court, the French authorities maintained a barrier to trade contrary to Article 28 of the EC Treaty.

In the framework of the practical application of specific aid schemes financed under the Guidance Section of the EAGGF, the Court¹¹⁷ declared that, by levying charges during the programming period 1994-99 which were neither voluntary nor optional and which did not constitute remuneration for services rendered, but rather served to finance tasks for which the Portuguese State is responsible, the Portuguese Republic failed to fulfil its obligations under Council Regulation (EEC) No 4253/88¹¹⁸, as amended by Council Regulation (EEC) No

¹¹³ Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ L 269, 5.10.2002, p. 15.

¹¹⁴ Judgement of 14.04.2005, case C-519/03.

¹¹⁵ Case C-046/2007

¹¹⁶ Judgment of 10 January 2006, Case C-147/04.

¹¹⁷ Judgment of 5 October 2006, Case C-84/04.

¹¹⁸ Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ L 374, 31.12.1988, p. 1).

2082/93¹¹⁹. The Portuguese authorities have been invited by the Commission to take necessary measures to comply with this judgement.

In the area of monitoring existing aid, the Court¹²⁰ recognised Luxembourg's failure to submit annual reports on all the existing State aid schemes in the agricultural sector for years 2000 and 2001, which it is required to do under Article 88(1) of the EC Treaty and Council Regulation (EC) No 659/1999¹²¹, as implemented by point 23.2.4 of the Community guidelines for State aid in the agricultural sector (2000/C28/02)¹²². In view of Luxembourg's failure to comply with the above judgment in due time, the Commission launched proceedings under Article 228 of the EC Treaty and communicated a letter of formal notice to Luxembourg. A letter of formal notice regarding the failure to submit annual aid reports for the subsequent years (i.e. 2002, 2003 and 2004) was addressed to Luxembourg in parallel.

In the framework of the application of Directive 98/34/EC¹²³, which requires the Member States and EFTA countries to give notification, prior to adoption, of all draft legislation containing technical standards or regulations that risk creating barriers to inter-Community trade, 122 draft legislative texts relating to the agricultural sector notified by the Member States and EFTA countries were examined in 2006 with regard to Article 28 of the EC Treaty and secondary legislation.

2.5. Energy and Transport

In 2006, DG TREN (Energy and Transport) treated **714** infringement cases, **336** of which concerned the failure to notify national transposition measures of directives and **378** related to the incorrect transposition of directives or the incorrect application of Community law. There was a slight increase in the number of infringement cases (370 new infringement cases were opened, including 206 for failure to notify, 47 complaints were registered) despite the significant number of cases closed during the same period (303, of which 179 for failure to notify). The reason was mainly the slow transposition of directives as the Member States often fail to comply with the transposition deadlines. In December 2006, the **ratio** of cases of failure to notify to other types of infringement (non-compliance, incorrect application) decreased to 35% of cases. This specific trend can be explained by the efforts made by DG TREN departments in **checking the compliance** of national measures transposing directives, which led to large number of **letters of formal notice (91)** and **reasoned opinions (53)** sent out in **non-compliance** cases.

In 2006, the percentage of **Energy Directives** implemented remained stable at **97.6%**; the transposition of **Transport Directives** improved in more than 1 percentage point and reached **97.2%**, still slightly below the 98.5% target set by the European Councils.

¹¹⁹ Council Regulation (EEC) No 2082/93 of 20 July 1993 amending Regulation (EEC) No 4253/88 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ L 193, 31.7.1993, p. 20).

¹²⁰ Judgment of 12 January 2006, Case C-69/05.

¹²¹ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.03.1999 p. 1).

¹²² OJ C 28, 01.02.2000, p 2.

¹²³ Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 204, 21.7.1998, p. 37).

2.5.1. Energy

2.5.1.1. Internal market for electricity and natural gas

The activity focused in 2006 on the proper transposition of the gas and electricity directives implementing the internal market for gas and electricity. These directives are essential to develop a genuine and competitive energy market in Europe. The European legislation must therefore be properly transposed into national legislation to enable the markets to operate and to ensure that they are effectively opened up for all consumers on 1 July 2007.

The Commission has made the completion of the internal market in electricity and gas one of the six priority areas of the strategy for sustainable, competitive and secure energy adopted in March 2006. In the Commission's view, the sustainable, competitive and secure supply of energy will not be possible without open, competitive energy markets that enable European companies to compete Europe-wide rather than just being national champions. The Member States are currently opening up their markets in such different ways that the development of a genuinely competitive European market is being hampered.

The Commission is thereby pursuing its firm action to monitor the implementation of the legislation on the internal market in energy and to carry out a detailed examination of whether the basic legal frameworks set up by the Member States are in conformity with the gas and electricity directives.

The analysis of notified national legislation led to a "package of infringements" whereby 27 letters of formal notice were sent to 17 Member States in April 2006, followed by the 26 reasoned opinions to 16 Member States in December (Austria, Belgium, the Czech Republic, Germany, Estonia, Spain, Finland, France, Greece, Ireland, Italy, Lithuania, Latvia, Poland, Sweden, Slovakia and the United Kingdom).

In only two cases, Finland for electricity and Austria for gas, the arguments put forward by the Member States were satisfactory on all issues and enabled the Commission to close the case. For the remaining 26 procedures, 19 alleged grounds for infringement were dropped. The vast majority, 58, remains.

In addition, letters on formal notice were sent to Portugal and Slovenia in June 2006 and to Hungary in October for the wrong transposition of the electricity directive.

During its examination of the conformity of the national legislations, the Commission focused in particular on those aspects which form the principal elements of market regulation and guarantee competition. These are: the extent to which the markets are opened up, a real possibility of changing supplier, and the emergence of new market entrants with non-discriminatory access guaranteed by strong, independent regulators.

The main deficiencies observed in transposition of the new internal market directives are the following:

- € Regulated prices preventing entry from new market players
- € Insufficient unbundling of transmission and distribution system operators which cannot guarantee their independence
- € Discriminatory third party access to the network, in particular as regards preferential access being granted to incumbents for historical long term contracts
- € Insufficient competences of the regulators

- ∄ No information given to the Commission on public service obligations, especially as regards regulated supply tariffs
- ∄ Insufficient indication of the origin of electricity, which is essential in particular for the promotion of renewable energy.

In addition to the conformity checks, the procedures for non communication of transposition measures launched in 2005 led to the ECJ to state against:

- ∄ Luxembourg for a general failure to transpose both the gas and electricity directives on 19 May 2006.
- ∄ Spain for failure to transpose the gas directive on 16 November 2006 (the infringement for failure to transpose the electricity directive is also before the ECJ).

2.5.1.2. Hydrocarbons

In 2006, several infringement procedures were launched pursuant to Council Directive 2006/67/EC¹²⁴ imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products (Codified version) or the previous stocks legislation¹²⁵. Some Member States reported maintaining stocks levels below the compulsory minima. In addition to sending a number of letters of formal notice motivated by insufficient stocks levels, the Commission also decided to address reasoned opinions to Cyprus and Belgium for the same reason. In other cases, Member States did not submit statistical summaries on their level of stocks on a monthly basis within the delay stipulated under the legislation or submitted non compliant statistics, which notably caused the Commission to issue reasoned opinions to Greece and Netherlands.

Directive 94/22/EC¹²⁶ on the conditions for granting and using authorizations for the prospecting, exploration and production of hydrocarbons was also the basis of attention from Commission services. New breaches, related to lack of conformity problems, were spotted in the course of the year and led to dialogues with the concerned Member States. Several cases may result in the opening of new infringement procedures in 2007.

2.5.1.3. Electricity produced from renewable energy sources

The purpose of this Directive on the promotion of the electricity produced from renewable energy sources in the international electricity market is to promote an increase of the contribution of renewable energy sources to electricity production in the internal market for electricity and to create a basis for a future Community framework. Out of a total of 35 cases that were dealt with in 2006 (25 of which were opened in the same period), 21 cases could be closed by the end of the year. 17 cases were related to the incorrect transposition of the Directive or the incorrect application of Community law and 18 cases were due to failure to report.

¹²⁴ Council Directive 2006/67/EC of 24 July 2006 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products (OJ L 217, 8.8.2006, p. 8)

¹²⁵ Council Directive 68/414/EEC of 20 December 1968 imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products (OJ L 308, 23.12.1968, p. 14). Directive as last amended by Directive 98/93/EC (OJ L 358, 31.12.1998, p. 100).

¹²⁶ Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospecting, exploration and production of hydrocarbons (OJ L 164, 30.6.1994, p. 3).

Member States must report biannually (2003, 2005 etc) to the Commission on measures taken to promote the use of renewable energy sources. Infringement proceedings were initiated against all the Member States who had failed to report by 27 October 2005. All 17 cases which were opened in 2006 due to the non-communication of biannual reports were closed during the year, following submission of the reports.

The open infringement cases on incorrect application of Community law are mainly based on the breach or incomplete transposition of several Articles of the Directive, such as on guarantees of origin, on simplification of administrative procedures on access to grid.

2.5.1.4. Biofuels

Biofuels have an important role to play in European transport and energy policy because they are one of the few options available for replacing petrol and diesel as transport fuels. They tackle climate change by avoiding emissions of greenhouse gases; they diversify Europe's sources of energy and reduce dependence on oil imports; and they offer new markets for European agriculture.

Out of 44 open cases in 2006, 11 were opened during the year and by the end of the year, 28 had been closed and in three cases the Court application was withdrawn. 21 cases were related to the incorrect transposition of the Directive or the incorrect application of Community law; five of these 21 cases were new in 2006. Nine of these cases were opened due to the submission of incomplete reports.

Before 1st July each year, Member States must report to the Commission on measures taken to promote the use of biofuels or other renewable. Infringement proceedings were initiated against the Member States who failed to report by 1 July in 2004, 2005 and 2006. During 2006, 14 cases were closed, in three cases the Court application was withdrawn, two were referred to the Court of Justice, and in four cases a letter of formal notice was sent.

The infringement cases linked to the incorrect application of Community law are mainly based on breach of Article 3.1 on minimum proportion of biofuels and other renewable fuels.

2.5.1.5. Energy efficiency

€ Labelling Directives

The transposition is now achieved in all Member States, after the missing national transposing provisions were adopted by Luxembourg (Labelling Directives on refrigerators and freezers, air conditioning appliances and electric ovens) and Portugal (Labelling Directive on refrigerators and freezers). This will now allow also for Luxembourg and Portuguese consumers to be made aware in shops of the energy efficiency performance of the appliances they intend to purchase and help them to save energy while also contributing to mitigate climate change.

€ Energy Performance of Buildings

Before 4 January 2006, the Member States had to report to the Commission on measures for the transposition of Directive 2002/91/EC on the energy performance of buildings. The aim of the Directive is to reduce energy consumption in buildings by obliging Member States to lay down minimum energy performance standards and apply those for new buildings and for renovations of larger existing buildings. The Directive is an important part of EU legislation

aimed at improving overall energy efficiency. Infringement proceedings were initiated in February 2006 against the 21 Member States who had failed to notify full implementation of the Directive by this date. 3 additional cases were opened in September. Two cases were closed during the year, following the notification of legislation by Lithuania and Portugal.

In all 22 open cases the transposition of the Directive is still partially incomplete. Most of the Member States have implemented minimum energy performance requirements for new buildings and about half of the Member States have implemented inspections of boilers. The requirements for existing buildings in case of refurbishment, the certification of buildings and the inspection of air-conditioning systems are pending for almost all open cases.

2.5.1.6. Euratom Treaty

In 2006, the Commission dealt with a total of 51 infringement procedures within the scope of the Euratom Treaty. 33 new cases were opened during this year. The major part of the work was mainly concentrated on the following issues:

€ High activity sealed radioactive sources (HASS)

A number of 20 infringement cases were opened because of the failure to notify by 31 December 2005 the national legislation transposing Council Directive 2003/122/Euratom of 22 December 2003 on the control of high-activity sealed radioactive sources and orphan sources¹²⁷. Following notification of the measures, 13 cases could be closed by the end of the year.

€ Nuclear Safeguards:

Under Article 6 (2) of the Act of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the Treaties on which the European Union is founded¹²⁸, these Member States committed to accede to the Agreement between the European Atomic Energy Community, its non nuclear weapon Member States and the International Atomic Energy Agency in implementation of Article III (1) and (4) of the Treaty on the Non-Proliferation of Nuclear Weapons of 1977¹²⁹. In 2006, 7 infringement procedures were started for those Member States who had not fulfilled this obligation yet.

€ Radiation protection in relation with military activities:

The "Jason"¹³⁰ case-law was confirmed in March 2006 in the "Tireless" ruling¹³¹, where the Court stated that the use of nuclear energy for military purposes falls outside the scope of the Euratom Treaty and its secondary legislation. The Commission therefore decided to close all 4 cases dealing with the protection of workers and the population against the dangers arising from ionising radiation originating in military activities.

¹²⁷ OJ L 346 of 31.12.2003, p. 57

¹²⁸ OJ L 236 of 23 September 2003

¹²⁹ 78/164/Euratom, OJ L 51 of 22.2.1978, p.1

¹³⁰ Case C-61/03 Commission v United Kingdom [2005] ECR I-2477.

¹³¹ Court ruling on 9 March 2006

2.5.2. Transport

2.5.2.1. Road transport

€ Working time in road transport

The Commission decided to refer Spain, Italy, Luxembourg, the Netherlands and Portugal and the Czech Republic to Court as they had not yet notified the national implementing measures for working time in road transport. Five other Member States, which had received a reasoned opinion in 2005, notified their implementing measures in 2006. The rules on working time include time for driving, loading and unloading, vehicle maintenance and administrative tasks. The aim of this legislation is to improve and harmonize social conditions for road transport workers in the European transport market thus contributing to better health and safety for workers, fair competition and enhanced road safety.

Directive 2002/15/EC on working time is an important component of the social dimension of EU legislation on road transport, which has evolved together with the economic component aimed at liberalisation of services across the internal market. It is intended to ensure that professional drivers do not work excessively long hours and thus become a danger to themselves and other road users. It also seeks to counter unfair competition, where Member States might be tempted to give their national fleet an advantage by permitting longer working hours.

€ Road charging

In 2006, the Commission continued to examine the transposition and correct application by the Member States of the so-called "Eurovignette Directive"¹³² on road charging. Infringement proceedings are under way against 13 countries. In 2006, one letter of formal notice and two reasoned opinions were sent. The Commission decided to refer one Member State to the Court of Justice and two proceedings have been closed.

2.5.2.2. Railway transport

In 2006, the national implementation measures for the Directives of the second railway package¹³³ had to be notified to the Commission. Directive 2004/51/EC requires Member States to open the entire railway network to international freight transport from 1 January 2006 and to national transport from 1 January 2007. The second railway package also contains the Railway Safety Directive (Directive 2004/49/EC), which sets the framework

¹³² Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJ L 187, 20.7.1999, p. 42–50)

¹³³ The second railway package consists of Directive 2004/51/EC of 29 April 2004 of the European Parliament and the Council amending Directive 91/440/EEC on the development of the Community's Railways, OJ L 164 of 30 April 2004; Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive), OJ L 164 of 30 April 2004 and Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system, OJ L 164, 30 April 2004.

conditions for national railway safety provisions, including the creation of an independent railway safety authority and an independent accident investigation authority. Directive 2004/50/EC amends the existing Directives on High-Speed Interoperability (Directive 96/48/EC) and on Interoperability of the conventional trans-European railway network (Directive 2001/16/EC). Portugal¹³⁴ and Slovenia¹³⁵ were referred to the Court of Justice for non-notification of the national implementation measures for Directive 2004/51/EC. The Commission also initiated infringement procedures for lack of notification of the national implementation measures for Directives 2004/49/EC and 2004/50/EC against 13 Member States.

An infringement procedure was launched against Slovakia¹³⁶ for non-notification of the national implementation measures for Directive 96/48/EC on the interoperability of the trans-European high-speed rail system.

The Commission decided to withdraw the Court application lodged under Article 228 of the Treaty against Luxemburg for non execution of the Court's Ruling in Case C-2003/481¹³⁷ after Luxemburg notified the national implementation measures for the Directives 2001/12/EC and 2001/13/EC of the first railway package.

The examination of the national implementation measures for the first and second railway package started in 2006. The examination will be focussed around 4 themes to verify the compliance of the national measures with the Community's rail *acquis*. These 4 themes are:

- (1) Account separation and management independence of railway undertakings and infrastructure managers.
- (2) Independence of essential functions, such as capacity allocation and track access charging.
- (3) Track access charging principles, including the conditions under which performance regimes are enabled.
- (4) Administrative and institutional capacity and the effectiveness of the regulatory bodies.

Conclusions on the effective transpositions by Member States are expected to be drawn in the fall of 2007 following a detailed inquiry to be launched in March 2007.

A study was launched in November 2006 to evaluate the transposition within the Member States of Directives 2004/49/EC, 2004/50/EC, and the progress on the implementation of Directive 96/48/EC (on the interoperability of the trans-European high speed rail system) and Directive 2001/16/EC (on the interoperability of the conventional rail system).

2.5.2.3. Road safety

The major part of the infringement cases in the road safety sector concern the lack of communication of the national implementing measures. The number of new infringement procedures increased from ... to ... because the national implementing measures for three

¹³⁴ C-2006/146

¹³⁵ C-2006/166

¹³⁶ C-2004-1425. The Court gave its ruling on 8 February 2007 in case C-114/06, in which it condemned Slovakia for non-notification of the national implementation measures for Directive 96/48/EC. Meanwhile, Slovakia notified its national implementation measures.

¹³⁷ C-2003/481, ruling of 30 September 2004 – Commission vs Luxemburg, Recueil 2004, p.I-0000

directives (Directive on seat belts¹³⁸, Directive on professional drivers¹³⁹ and Directive on tunnel safety¹⁴⁰) had to be notified during the year 2006.

2.5.2.4. *Transport of dangerous goods*

Commission Directive 2004/112/EC¹⁴¹ on uniform procedures for checks on the transport of dangerous goods by road updated the enforcement authorities' check list and put in place a categorisation of infringements. A majority of Member States transposed the Directive timely, but in five cases, the lack of communication of the national measures led to sending reasoned opinions, one cases being referred to the Court of Justice.

2.5.2.5. *Air transport*

✖ Bilateral agreements

Following the “open skies” judgments of 5 November 2002¹⁴², the Commission asked the Member States to take two measures to remedy the situation: grant the Commission a mandate to open negotiations with the United States, and remove the legal problem identified by the Court by terminating existing bilateral agreements between them and the US. Infringement proceedings were initiated against all the Member States that have bilateral agreements with the United States (20 countries out of 25). These air agreements contain "nationality" clauses whereby only national companies in the signatory countries can benefit from the agreement, which is a flagrant breach of European law. The Commission is negotiating with the United States to conclude an overall agreement.

✖ Access to the airport services market

The Commission decided to send a reasoned opinion to Italy concerning the country's incorrect implementation of a 2004 judgment of the Court of Justice on transposing into Italian law EU rules on free access to the groundhandling services market at airports. The European Union has been gradually opening the market of groundhandling services such as passenger check-in, baggage handling and aircraft refuelling at airports by way of a Directive¹⁴³ adopted in 1996. This directive allows Member States to take measures to protect the rights of workers, but these must not prevent the effective application of the directive. In a 2004 judgement, the Court considered the Italian requirement that newcomers entering the market are obliged to take over staff inasmuch as they gain business from the incumbent

¹³⁸ Directive 2000/30/EC of the European Parliament and of the Council of 6 June 2000 on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community (*OJ L 203*, 10.8.2000, p. 1–8)

¹³⁹ Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC (*OJ L 226*, 10.9.2003, p. 4–17)

¹⁴⁰ Directive 2004/54/EC of the European Parliament and of the Council of 29 April 2004 on minimum safety requirements for tunnels in the Trans-European Road Network (*OJ L 167*, 30.4.2004, p. 39–91)

¹⁴¹ Commission Directive 2004/112/EC of 13 December 2004 adapting to technical progress Council Directive 95/50/EC on uniform procedures for checks on the transport of dangerous goods by roadText with EEA relevance (*OJ L 367*, 14.12.2004, p. 23–28)

¹⁴² Communication from the Commission on the consequences of the Court judgments of 5 November 2002 for European air transport policy (COM/2002/649 final).

¹⁴³ Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (*OJ L 272*, 25.10.1996, p. 36–45)

discourages them from entering the market. This subsequently limits the benefits of the directive such as reduced prices and improved quality of service. Italy has since then not fully complied with this ruling of the Court. On the contrary, after Germany adopted new measures compatible with the Directive on groundhandling services, the infringement case was closed.

✖ Airport tax

The Commission sent a reasoned opinion to Malta for the airport tax levied at Malta International Airport. The airport tax differentiates between passengers in a discriminatory way as it is only levied on an air passenger beginning an international journey from Malta airport, but not levied if the passenger had started the journey outside Malta. The tax therefore puts an unfair burden on residents in Malta and makes it more difficult for them to receive and provide services in other Member States. Furthermore, domestic destinations are exempted from the airport tax. The Commission takes the view that the airport tax should not differentiate between domestic and other intra-Community flights.

✖ Single European sky

The Commission decided to refer Greece to the European Court of Justice for failure to respect EU legislation on the establishment of a national supervisory authority in the context of the single European sky. The single European sky framework regulation¹⁴⁴ entered into force in April 2004. It separates the provision of air navigation services on the one hand and the supervision and regulation of these services on the other hand. Member States are required to create or establish an independent national supervisory authority to assume the different tasks identified in EU-legislation including the certification of air navigation service providers. Greece having failed to fully establish an independent authority, the Commission sent a reasoned opinion to Greece in June 2006.

✖ Air Passengers' rights

The Commission has initiated infringement proceedings against the United Kingdom on the basis of Articles 16(1) and 16(2) of Regulation (EC)¹⁴⁵ No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights based on Article 12 of the Treaty. The Air Transport Users Council (AUC), the designated complaints handling body, prioritises complaints of UK citizens and/or flights contracted on UK territory.

✖ Occurrence reporting in civil aviation

The infringement procedures against Ireland, Luxembourg, the Netherlands and Sweden for lack of notification of the national implementation measures for Directive 2004/42/EC¹⁴⁶ were referred to the Court of Justice.

✖ Aircraft noise

¹⁴⁴ Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (OJ L 96, 31.03.2004, p. 1)

¹⁴⁵ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91.

¹⁴⁶ Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation (OJ L 167, 4.7.2003, p. 23–36)

In 2005 Luxembourg was referred to the Court for failure to notify measures transposing 2002 legislation which aims at a harmonised approach by Member States to phasing out of the noisiest aircraft in EU airports. In a 2006 judgement¹⁴⁷, the Court declared that the Grand-Duchy of Luxembourg had failed to transpose the Directive on aircraft noise, which requires the application of specific procedures prior to introducing noise restrictions in sensitive EU airports. Failure to implement a harmonised approach to noise would result in a patchwork of different solutions, provoking distortions between airports with similar noise problems as well as creating obstacles for an effective, EU-wide improvement.

✖ Civil aviation security

Regulation (EC) No 2320/2002 establishing common rules in the field of civil aviation security introduces Community measures aimed at enhancing the security of civil aviation by preventing acts of unlawful interference. In particular, the Commission is given the mandate to conduct, in cooperation with the national administrations, inspections, including a suitable sample of airports, to monitor the application by Member States of this Regulation. The ways of these inspections are laid down in Commission Regulation (EC) No 1486/2003. Since February 2004, the Commission has been conducting inspections on the level of national administrations and on airport level. In total 73 inspections were carried out, 24 inspections concerned national administrations, 49 concerned airports. In addition, whenever appropriate, follow-up inspections took place to verify corrective actions taken by Member States. Four infringement procedures had to be initiated, in particular due to the lack of a national quality control program or the lack of implementation of common basic standards of Regulation (EC) No 2320/2002. According to this Regulation the Commission shall also publish each year a report on the implementation of the Regulation and on the situation in the Community as far as aviation security is concerned, drawing conclusions from the inspection reports. The Commission has already published its first report¹⁴⁸, the second report will be published in the course of 2007.

✖ Commission decision on illegal subsidies granted before 2002 to Olympic Airways

The Commission decided to request the European Court of Justice to impose a lump sum penalty and a periodic penalty on Greece for its failure to implement its 2002 decision in relation to the recovery of a State aid granted by Greece to Olympic Airways between 1998 and 2002. In December 2002 the Commission found that Greece had granted illegal restructuring aid to Olympic Airways between 1998 and 2002 and ordered its recovery. On 12 May 2005 the EU Court of Justice confirmed that the Greek authorities had failed to recover from the airline a State aid estimated at least €161 million. This concerns € 41 million of illegal restructuring aid and another estimated €120 million of operational aid, i.e. non-payment of various sums the company owes to the Greek state such as VAT on fuel and airport charges.

¹⁴⁷ Case C-71/05

¹⁴⁸ First Report on the Implementation of Regulation (EC) 2320/2002 on civil aviation security, COM(2005) 428 final of 23 September 2005.

2.5.2.6. Maritime transport

€ Port reception facilities for ship-generated waste and cargo residues

The Commission sent reasoned opinions to Germany, Estonia and Spain and decided to refer the case to the Court of Justice against Greece, France, Italy, Finland and Portugal. These countries failed to respect the EU legislation on the improvement of the availability and use of port reception facilities for ship-generated waste and cargo residues. The Commission decided to act against these Member States for failure to adequately implement the 2000 Directive¹⁴⁹, that aims at reducing the discharges of ship-generated waste and cargo residues into the sea from ships using ports in the Community by improving the availability and use of the facilities designed to receive and treat such waste and residues, thereby enhancing the protection of the maritime environment. In all eight cases, Commission action was prompted by the insufficient implementation of the obligation to develop, approve and implement waste reception and handling plans relating to all national ports, including fishing ports and marinas. These plans are a key element in ensuring that port reception facilities made available meet the needs of the ships normally using the ports, that their operation does not cause undue delay to ships and that fair, transparent and non-discriminatory fees are applied.

€ Port State Control

The Commission sent a reasoned opinion to Portugal and brought Malta to the Court for failure to respect EU legislation on port State control of shipping¹⁵⁰ adopted in 1995, whose provisions were strengthened in the wake of the Erika accident. The Directive aims at reducing substandard shipping in the waters under the jurisdiction of Member States through increased compliance with international and relevant Community legislation on maritime safety, protection of the marine environment and living and working conditions on board ships of all flags. To this purpose, the directive establishes common criteria for control of ships by the port State and harmonises procedures on inspection and detention of substandard ships. Whilst Portugal notified the Commission of the national measures to transpose the directive, these contained several legal or technical inconsistencies. Malta breached the provisions of the directive by allowing that non qualified “inspectors” employed before 1st May 2004 continue to work as port State control inspectors, while the directive only allows inspection tasks to be performed by persons without the required qualifications if they were employed as such before June 1995.

€ Maritime cabotage

The Commission closed the infringement procedure against Portugal as it modified the arrangement of its public service obligations for the islands. The procedures against Greece and Denmark due to the incompatibility with Regulation (EEC) No 3577/92 of their national legislations on coastal traffic with the islands were continued by sending reasoned opinions.

¹⁴⁹ Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (OJ L 332, 28.12.2000, p. 81).

¹⁵⁰ Council Directive 1995/21/EC of 19 June 1995 on port State control of shipping (OJ L 157, 7.7.1995, p. 1) as last amended by Directive 2002/84/EC of the European Parliament and of the Council.

€ Ship and port facility security

The Regulation (EC) No 725/2004 enhances the security of ships used in international trade and domestic shipping and associated port facilities in the face of threats on intentional unlawful acts. This Regulation foresees that the Commission shall start a series of inspections, including inspections of a suitable sample of port facilities and relevant companies, to monitor the application by Member States. The ways of these inspections are laid down in Commission Regulation (EC) No 884/2005¹⁵¹. By 31 December 2006, 37 inspections have been conducted: 24 inspections concerned national administrations (including 1 follow-up inspection), 8 concerned port installations and 4 concerned ships. One maritime company and one recognized security organization were also inspected. Where necessary, the inspected entities were asked to take corrective actions. Due to the intense cooperation of the Member States and operators concerned, no infringement procedure has been initiated.

2.6. Environment

2.6.1. Non-conformity Cases

2.6.1.1. Environmental Impact Assessment Directive

The Environmental Impact Assessment Directive¹⁵² (EIA) requires Member States to carry out environmental impact assessments of certain public and private projects, before they are authorised, where it is believed that the projects are likely to have a significant impact on the environment. The objective is to identify the environmental impacts and assess whether prevention or mitigation is appropriate. The public must be consulted and its comments taken into account when a decision is taken on whether to authorise the project.

In 2006, the Commission launched several cases concerning bad transposition of the EIA Directive in Austria, Belgium, Cyprus, the Czech Republic, France, Germany, Italy, Hungary, Greece, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Slovenia and the United Kingdom.

Birds Directive

The Birds Directive¹⁵³ is the key piece of EU legislation setting out measures for the protection, management and control of all species of naturally occurring birds, as well as

¹⁵¹ Commission Regulation (EC) No 884/2005 of 10 June 2005 laying down procedures for conducting Commission inspections in the field of maritime security.

¹⁵² Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40–48); Directive amended by Directive 97/11/EC (OJ L 73, 14.3.1997, p. 5–15), and by Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ L 156, 25.6.2003, p. 17–25).

¹⁵³ Directive 79/409/EEC on the conservation of wild birds (OJ L 103, 25.4.1979, p. 1–18); Directive as last amended by Council Directive 2006/105/EC of 20 November 2006 adapting Directives 73/239/EEC, 74/557/EEC and 2002/83/EC in the field of environment, by reason of the accession of Bulgaria and Romania (OJ L 363, 20.12.2006, p. 368–408).

introducing rules to protect their habitats. The Directive requires Member States to establish a general system of protection for the bird species it covers.

On the basis of an assessment of the national legislation implementing the Birds Directive in each Member State, the Commission identified a number of areas where Member States fail to fully comply with the Directive giving rise to inadequate protection for birds. The Commission sent first warning letters to Cyprus, the Czech Republic, Denmark, Estonia, Greece, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Slovakia and the United Kingdom and a second warning letter to Luxembourg.

Different grounds for non-compliance were identified in each Member State, with issues raised concerning for example the scope of the national legislation, whereby the eggs or young of birds were not fully protected; circumstances where hunting is permitted, without respecting the conditions set out in the Directive; or where measures to ensure protection of habitats were insufficient.

Habitat Directive

Natural habitats and wild flora and fauna throughout the EU are protected under the Habitats Directive¹⁵⁴. The main aim of the Directive is to promote the maintenance of biodiversity and to create a Europe-wide network of special conservation areas to assist in this aim. Given the transboundary nature of the threats to the European Union's natural heritage, the Directive is intended to ensure a coordinated approach in all Member States.

On the basis of an assessment of national legislation implementing the Habitats Directive, the Commission identified a number of areas where Member States failed to comply with the Directive. As a result, first warning letters were sent to Cyprus, Denmark, Greece, Malta, Poland, Czech Republic, Slovakia and Slovenia.

The grounds for non-compliance vary for each Member State, some issues addressed include: where there is no requirement for compensatory measures to be undertaken, in the case that an activity or project will impact upon a special conservation area; where the legislation does not cover the taking of eggs from the wild; or where certain species are not afforded strict protection, as required under the Directive.

Drinking Water Directive

The Commission sent a first warning to Austria, France, Ireland, Luxembourg, Poland, Portugal, Spain and the United Kingdom for shortcomings in the national legislation they use to give effect to the Drinking Water Directive¹⁵⁵. The Directive obliges Member States to ensure that those who supply drinking water are made subject to strict requirements on the

¹⁵⁴ Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7–50); Directive as last amended by Council Directive 2006/105/EC of 20 November 2006 adapting Directives 73/239/EEC, 74/557/EEC and 2002/83/EC in the field of environment, by reason of the accession of Bulgaria and Romania (OJ L 363, 20.12.2006, p. 368–408).

¹⁵⁵ Council Directive 98/83/EC on the quality of water intended for human consumption (OJ L 330, 5.12.1998, p. 32–54); Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty (OJ L 284, 31.10.2003, p. 1–53).

quality and monitoring of drinking water as well as on remedial action and consumer information.

The Commission considers that national legislation that is fully in line with the Directive will act as a safeguard against the risk of sub-standard drinking water being supplied to the public. The warning letters sent are intended to draw attention to identified shortcomings. These vary according to Member State and range from failures to ensure that requirements are made directly binding on drinking water suppliers to incorrect details with regard to certain standards.

Landfill Directive

Compliance with the Landfill Directive¹⁵⁶ is a serious problem throughout the European Union. The Commission therefore launched a screening exercise to compare Member States' national legislation with the Directive to detect where the shortcomings are. The aim is to ensure that landfills operate in full accordance with the Directive, i.e. in a way which does not harm human health or the environment. In 2006 the European Commission has decided to start legal action against seven Member States (Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Portugal) for inadequately transposing the legislation on the landfill of waste into their national law. Further cases on conformity with the Landfill Directive will follow.

A variety of provisions have not been fully transposed into national or regional law. Common problems identified in the seven Member States include incomplete, incorrect or non-transposition of definitions (for instance definitions of different types of waste and storage methods); the scope of the Directive (including the types of waste that may be exempted from its requirements); the three categories of landfills laid down in the Directive (i.e. landfills for hazardous, non-hazardous or inert waste); the requirement of a national strategy to reduce the amount of biodegradable waste going to landfills; the requirement of national measures to ensure certain types of waste are not accepted in landfills (for instance liquid waste and explosive, corrosive or flammable waste); the requirement that the prices charged by the operator for use of a landfill must cover all its costs, including its after-care costs for at least 30 years after closure; and requirements for the continued operation of existing landfills.

2.6.2. Systemic Problems of Bad Implementation

2.6.2.1. Illegal Landfills

Horizontal cases on illegal landfills in France, Greece, Ireland and Italy are actively followed. These Member States were referred to the Court of Justice in 2005 and in some cases (Greece, Ireland) judgments were already delivered. In 2006, a certain progress was achieved and some landfills were closed and rehabilitated.

¹⁵⁶ Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182, 16.7.1999, p. 1–19); Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty (OJ L 284, 31.10.2003, p. 1–53).

In order to comply with rulings of the European Court of Justice, the Commission sent final written warnings to Italy in several cases violating the Waste Framework Directive¹⁵⁷ which stipulates definitions and basic requirements for waste management in order to protect human health and the environment. Case C-447/03 concerns waste landfills on a former site of the chemical company and two municipal solid waste landfills in Manfredonia, the Puglia region (judgment of 25 November 2004), Case C-516/03 concerns an illegal landfill in Campolungo, the Marche region (judgment of 16 December 2004), and Case C-375/02 a landfill of hazardous waste in Castelliri, Frosinone (judgment of 9 September 2004). Although some steps were taken by the Italian authorities to comply with the judgments, the Commission concluded that these were not sufficient.

The Commission decided to send Spain a first warning under Article 228 of the Treaty for not having executed a ruling of the European Court of Justice of 28 April 2005 (Case C-157/04). The European Court of Justice had condemned Spain for not complying with Community legislation on waste in the case of the Punta de Avalos landfill on La Gomera Island (Canary Islands). This landfill is close to the sea and located on a site which is part of the Natura 2000 network of protected areas. It has been designated as a site of Community importance in the context of the Habitats Directive.

2.6.2.2. Urban Waste-Water Treatment, Nitrates and Drinking Water

The Commission sent Greece a final written warning and, in Case C-440/06, it referred Greece to the Court of Justice for violations of the Urban Waste-Water Treatment Directive¹⁵⁸. This Directive requires larger towns and cities to collect and treat their waste water. Untreated waste water can be contaminated with harmful bacteria and viruses and thus present a risk to public health. It also contains nutrients such as nitrogen and phosphorous which can damage freshwater and the marine environment by promoting excessive growth of algae that chokes off other life, a process known as eutrophication. Under the same Directive, a first warning letter under Article 228 was sent to Belgium for not complying with the Court of Justice judgment of 8 July 2004 in Case C-27/03.

The Commission decided to take Finland, Sweden and Portugal to the European Court of Justice for failing to ensure proper treatment of urban waste water in a significant number of towns and cities. The failure of Finland and Sweden to systematically remove nitrogen when treating the waste water of their inland cities and towns is contributing to the environmental problems of the Baltic Sea. Portugal failed to respect a special decision¹⁵⁹ on urban waste water discharges from Estoril, near Lisbon, and the surrounding area.

¹⁵⁷ Council Directive 75/442/EEC of 15 July 1975 on waste (OJ L 194, 25.7.1975, p. 39–41); Directive codified by Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ L 114, 27.4.2006, p. 9–21).

¹⁵⁸ Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ L 135, 30.5.1991, p. 40–52); Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty (OJ L 284, 31.10.2003, p. 1–53).

¹⁵⁹ Commission Decision of 8 October 2001 granting Portugal a derogation regarding urban waste water treatment for the agglomeration of the Estoril coast (2001/720/EC) (Official Journal L 269 , 10/10/2001 P. 0014 - 0016)

The Commission sent a first written warning under Article 228 that Spain should comply with a judgment of the European Court of Justice of 8 September 2005 (Case C-416/02) which found Spain had not properly applied the directives on Nitrate Pollution of Water¹⁶⁰ and Urban Waste-Water Treatment in two specific cases. The Court ruled that an area in Andalucía, Rambla de Mojácar in Almería, should be designated as a zone vulnerable to nitrate pollution, and that the municipality of Vera should provide waste water treatment in line with Community law.

The European Commission sent Ireland a written warning for failing to comply fully with a European Court of Justice ruling requiring drinking water supplies to be kept free of E-coli bacteria. On 14 November 2002, Ireland was condemned in Case C-316/00 by the European Court of Justice over the microbiological contamination of hundreds of public and private water supplies. The Drinking Water Directive requires an absence of e-coli in drinking water supplies in order to protect human health.

A final warning letter was sent to the United Kingdom for its failure to ensure the adequacy of collecting systems for urban waste waters in a number of locations in the United Kingdom including in London due to an over reliance on storm water overflows which spill untreated urban waste waters even during times of moderate rainfall. A final warning letter was also sent to the United Kingdom for its failure to designate sufficient nitrate vulnerable zones and its failure to adopt action programmes for existing designated areas under the Nitrates Directive.

2.6.3. Secondary Obligations

2.6.3.1. Nature Designation

In a case against Austria, the Commission decided to send a final warning for not proposing sufficient national nature sites for the Natura 2000 network of protected sites. The Austrian network of proposed sites is still far from being complete eleven years after Member States were obliged to provide their national lists of proposed sites for the Natura 2000 network. Altogether, fifteen habitat types and ten species are at present not sufficiently covered in the proposed list put forward by Austria.

On the same issue of sites designation, the Commission notes that France has reacted to a final written warning from the Commission in December 2004 by designating 87 new sites and extended 119 others in the framework of the Habitats Directive. France has also put forward proposals for 177 new zones and to extend 32 others in the context of the Birds Directive, after the Court of Justice had ruled in November 2002 that France had not designated enough special birds protection zones. These proposals were completed in early 2007 with 56 additional areas and the cases are now closed.

The Commission sent Finland a first written warning under Article 228 of the Treaty for failing to comply fully with a European Court of Justice judgment of 6 March 2003 (Case C-

¹⁶⁰ Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 375, 31.12.1991, p. 1–8); Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty (OJ L 284, 31.10.2003, p. 1–53).

240/00) requiring it to designate special areas for the protection of birds under the Birds Directive. Finland has designated new special protection areas for birds since the ruling, but these do not include the Nyhamn-Båtskär islands in the Åland archipelago south-west of Finland. These islands are an important wintering area for Steller's Eider which is under threat worldwide. In the meantime, the authorities have given development consent for construction on the islands of a wind farm, which could pose a potential danger to birds in the area.

A supplementary final warning letter was sent to the United Kingdom for its failure, *inter alia* to designate a number of large estuaries as Natura 2000 sites under the Habitats Directive.

The Commission sent a final written warning to Poland because of its failure to designate a sufficient number of special protected areas (SPAs) under the Birds Directive and proposed Sites of Community Importance (pSCIs) under the Habitats Directive. The number and size of sites Poland had designated is insufficient compared to the list in the Important Bird Areas (IBA) inventory. This inventory has acknowledged scientific value and is used by the Commission and the Court as a reference for assessing the extent to which Member States have complied with their obligation.

The Commission decided to close an infringement procedure brought against Germany under Article 228 for failing to comply fully with a judgment of European Court of Justice requiring it to propose sufficient sites of Community interest under the Habitats Directive. In Case C-71/99 brought by the Commission, the Court ruled on 11 September 2001 that Germany had not submitted an exhaustive list of sites of Community interest as it should have done by 5 June 1995. Since the Court judgment the Commission and the German authorities have worked together to identify which further habitats and species should be proposed for designation under the Directive. The Commission sent Germany a final warning in December 2005 as it was still not satisfied that sufficient SCIs had been proposed. Since then, however, Germany has proposed further designations and the Commission considers that these now allow it to close the infringement procedure.

2.6.3.2. Climate Change

The aim of infringement procedures under climate change legislation is to ensure that the European Union and its Member States meet all their various obligations under the UN Climate Change Convention and the Kyoto Protocol, notably to ensure that the EU Emissions Trading Scheme is fully operational and that the monitoring of greenhouse gas emissions is effective within the EU. Infringements opened in 2006 relate to national allocation plans under the Emissions Trading Directive¹⁶¹, reporting under Article 3 (1) and (2) of Decision

¹⁶¹ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32–46); Directive as last amended by Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms (OJ L 338, 13.11.2004, p. 18–23).

280/2004¹⁶², failure to prepare for international emissions trading according to Decision 2005/166¹⁶³ and failure to link national registries with the EU-wide registry system¹⁶⁴.

National Allocation Plans

The Commission sent warning letters to several Member States for failing to submit national allocation plans for the second trading period of the EU Emissions Trading Scheme. The deadline for doing so was 30 June 2006 and is laid down in the Emissions Trading Directive. In national allocation plans governments fix the total number of emission allowances and state methodologies to allocate them to individual installations covered by the Emissions Trading Scheme. The national allocation plans for 2008-2012 are an important element in Member States' strategies for achieving their emission targets under the Kyoto Protocol, which have to be met during the same period. Once Member States submit national allocation plans, the Commission has three months to assess them. The Commission attaches a high priority to taking its decisions on all allocation plans so that conditions for trading in 2008-2012 are established and that no Member State will allocate more than needed.

Cases under Article 3 (1) and (2) of Decision 280/2004

The Commission also took action against Member States for failing to provide complete reports on their progress in limiting or cutting greenhouse gas emissions. They are needed by the Commission to prepare annual reports on Community actual and future emissions under the UN Framework Convention on Climate Change and the Kyoto Protocol. The deadline for Member States to submit the reports was 15 January 2006 under Article 3 (1) and 15 March 2005 under Article 3 (2).

Failure to prepare for international emissions trading under the Kyoto Protocol

Under Article 23 of Decision 2005/166/EC, Member States were required to submit to the Commission the information necessary to determine the total amount they will be permitted to emit in line with their Kyoto target during 2008-2012, i.e. the “assigned amount” by 15 January 2006, and by 15 June 2006 for EU-10 Member States. The fixing of the assigned amount is a condition for a Member State's eligibility to participate in the flexible mechanisms of the Kyoto Protocol such as Emissions Trading, the Clean Development Mechanism and Joint Implementation, which allow countries to invest in emission-saving projects in third countries that generate emission credits.

¹⁶² Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (OJ L 49, 19.2.2004, p. 1–8)

¹⁶³ Commission Decision 2005/166 of 10 February 2005 laying down rules implementing Decision No 280/2004/EC of the European Parliament and of the Council concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (OJ L 55, 1.3.2005, p. 57–91)

¹⁶⁴ Commission Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council (OJ L 386, 29.12.2004, p. 1–77)

Failure to link national registries with the EU-wide registry system

Over 10,000 installations that are participating in the EU emissions trading scheme are not given emission allowances in printed form, but these are held in accounts in electronic registries set up by Member States. These registries are linked up via the Community Independent Transaction Log so that companies can directly trade with each other. In order to link up to the registries system, each Member State must establish a national registry in the form of a standardised electronic database as well as a communication link. In 2006, the Commission initiated several infringement procedures for failure to do so.

2.6.3.3. Bathing Water

Several cases responding to *bad application* of Bathing Water Directive¹⁶⁵ were opened in 2006. The European Commission began an infringement procedure with Belgium, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Portugal, Spain and Sweden which had been removing bathing sites from their official lists and thereby avoiding application of rules aimed at protecting the health of bathers. It was established by the European Court of Justice in a judgment of 25 May 2000 (Case C-307/98) that removal of bathing sites from the official lists should be properly and individually explained and should not be a response to pollution problems.

2.6.4. Other cases

2.6.4.1. Infrastructure Projects

Urban Development and Road Projects

The Commission sent a first written warning to Poland after receiving complaints about at least eight road projects in North East Poland - new roads, bypasses or upgrades, which may be part of Via Baltica, the Helsinki-Warsaw road corridor. The road projects encroach upon Special Protection Areas (SPAs) designated under the Wild Birds Directive and sites proposed as Sites of Community Importance (pSCIs) under the Habitats Directive and sites intended to be proposed as pSCIs to the Commission. By going ahead with these individual road projects, the Polish authorities are influencing the final decision on the Via Baltica route, which has yet to be formally adopted. The authorisation process for these projects is in breach of certain articles of nature protection legislation on deterioration of sites, significant disturbance of species, lack of appropriate assessment in situations likely to have significant effects on sites, and not taking into account the cumulative effects of projects on nature protection sites, either individually or collectively. They also violate case law on projects which seriously risk undermining the ecological characteristics of sites.

The Commission sent Italy a final written warning over its failure to consider whether an environmental impact assessment is needed for two new sections of fast road being built in the north of Milan. Such assessments are intended to identify the environmental impacts of a project in advance so that authorities can take these into account when deciding whether to

¹⁶⁵ Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ L 31, 5.2.1976, p. 1–7); Directive as last amended by Council Regulation (EC) No 807/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (unanimity) (OJ L 122, 16.5.2003, p. 36–62).

authorise the project or whether specific measures are necessary to mitigate its environmental impact. The Commission considered that Italy violated the EIA Directive, because it did not screen the two sections of road for their cumulative effects. This screening needs to take account, among other things, of the cumulative effects of individual projects.

The Commission sent Spain a first written warning for having breached the Directive on the assessment of the effects of certain public and private projects on the environment. The requirements of this Directive had not been met as far as the M-30 ring-road project around Madrid was concerned. This project should have undergone a formal and global environmental impact procedure. Instead, it was split into 19 smaller projects which have not been subject to a complete impact assessment procedure. The Commission's view was confirmed by a judgment of the European Court of Justice in another case of 16 March 2006 (Case C-332/04), which stated that Spain had not correctly transposed the Environmental Impact Assessment Directive as far as urban development projects are concerned.

The Commission obtained partial judgement against the United Kingdom in case C-508/03 on 4 May 2006 for its failure to correctly apply the Environmental Impact Assessment Directive with regard to large urban development projects which given development consent in multiple stages. The European Court of Justice confirmed that the application of the Directive cannot be limited to the first stage of the decision making process alone.

Development in Nature Conservation Areas

The Commission sent a final written warning over urban resort and golf course “Quinta da Ombria” that is planned inside a nature conservation area of EU importance in the Algarve region in Portugal. An environmental impact assessment, though not exhaustive, had found that the project would have significant effects on at least three types of rare habitats covered by the Habitats Directive. The development would also have a significant effect on one species of plant which under the directive is considered as meriting extra strict protection. The Commission therefore considered that the Portuguese authorities have failed to take the necessary measures to safeguard the ecological interest of the site and thus have not complied with the Habitats Directive. Following the issuing of the final written warning, the Portuguese authorities suspended the authorisation proceeding of the project and ordered the revision of the environmental impact assessment.

This is supported by the case law. In a judgment of 26 October 2006 (Case C-239/04) the Court of Justice declared that Portugal failed to fulfil its obligations under the Habitats Directive by implementing a project for a motorway whose route crosses the Castro Verde special protection area, notwithstanding the negative environmental impact assessment and without having demonstrated the absence of alternative solutions for the route concerned.

2.6.4.2. Illegal bird hunting

The Commission sent a first warning letter to Finland, following a judgment of the Court of Justice of 15 December 2005 (Case C-344/03) condemning the practice of spring hunting of birds in Finland. The Court found that by allowing the hunting of certain bird species, including velvet scoter (*Melanitta fusca*), eider duck (*Somateria mollissima*) and golden-eye duck (*Bucephala clangula*) in spring, prior to their breeding season, Finland was in breach of its obligations under the directive. The Court declared that spring hunting should not be permitted, given that the alternative option of autumn hunting, after the close of the breeding

season, exists for the species concerned. In order to comply with the judgment, the Finnish authorities are required to change the periods for hunting.

The Commission decided to refer Italy to the Court of Justice over infringements of the Birds Directive in the Liguria region. Regional legislation for Liguria adopted in October 2006 authorises the hunting of the starling (*Sturnus sturnus*) without complying with the specific conditions for a derogation required under the Birds Directive. The Commission argues that such a general authorisation leads to too many birds being captured or killed. The Court of Justice issued (Case C-503/06 R) an order of 19 December 2006 according which Italy had to suspend application of this law.

The Commission also sent Spain a first and subsequently a second written warning in a case concerning the spring hunting of migrant birds, notably wood pigeon (*Columba palumbus*), in the province of Vizcaya as they return to their breeding grounds. The warning follows a Court of Justice judgment of 9 June 2005 (Case C-135/04) against Spain for spring hunting of birds in the neighbouring province of Guipúzcoa concerning the same hunting periods. In its judgment, the Court found that alternative solutions to spring hunting existed and as a result Spain was in breach of the Birds Directive. The Commission sent a first warning letter to Spain, following a December 2004 judgment of the Court of Justice (Case C-79/03) condemning the practice of the hunting of birds in the Community of Valencia. The Court found that by allowing hunting by means of a method known as “parany”, Spain was in breach of the Birds Directive. Legislation adopted by the Community of Valencia authorising the continued use of “parany” to hunt was annulled in 2005, but the Commission had reasons to believe that hunting using the method was tolerated and as such the Spanish authorities have not undertaken adequate measures to comply with the Court judgment.

The Commission sent a first warning letter to Malta over the spring hunting of two species of birds – Quails (*Coturnix coturnix*) and Turtle Doves (*Streptopelia turtur*). The hunting of these migratory birds begins in March, during their return from Africa to their breeding grounds in Europe. On the basis of information provided by the Maltese authorities, the Commission believes that alternative solutions to spring hunting exist, i.e. hunting in the autumn.

The Commission sent a first warning letter to Austria over legislation in the province of Lower Austria which authorises the hunting of two birds of prey, the goshawk (*Accipiter gentilis*) and the buzzard (*Buteo buteo*) in the period 1 November – 31 January. These bird species may not be hunted according to the Birds Directive. However, if hunting is considered necessary, then the specific conditions required by the Directive must be met. The Commission considers that Lower Austria has not given justified reasons for permitting the birds to be hunted.

In a ruling of 7 December 2000 in Case C-38/99 the European Court of Justice condemned France for setting wild bird hunting seasons during periods when birds migrate to their breeding grounds and reproduce. The problems with French hunting dates involved both opening the hunting season too early and/or closing it too late for certain species. France reformed its law in stages, first addressing the closing dates for hunting and, afterwards, the opening dates. The final French measures, adopted in March 2006, aligned the opening dates for several wild bird species with the available scientific information. The Commission therefore could close the case.

2.7. Information Society and Media

2.7.1. Electronic communications

The Commission's overarching initiative for information society and media policies, i2010¹⁶⁶, confronts the challenge of rapid convergence and technological change with a **regulatory framework for electronic communications** that promotes competition, investment, innovation, the single market and consumer benefits. Enforcing full and effective implementation of the regulatory framework in electronic communications is therefore essential for the sector's contribution to the overall Lisbon goals, and the Commission welcomes the continuing support from the European Parliament for its enforcement role¹⁶⁷.

The EU regulatory framework for electronic communications networks and services came into force in 2002. It consists of five Directives¹⁶⁸. The Framework Directive outlines the general principles, objectives and procedures. The Authorisation Directive creates a regime of general authorisations for providers of communications services. The Access and Interconnection Directive sets out rules for a multi-carrier marketplace, ensuring, in particular, access to networks and services and interoperability. The Universal Service Directive guarantees basic rights for consumers and minimum levels of availability and affordability. The e-Privacy or Data Protection Directive covers protection of privacy and personal data communicated over public networks.

Transposition of the regulatory framework into the national law of the 25 Member States was completed in 2006 with the adoption of primary legislation by Greece. The two new Member States have also notified primary legislation, which in the case of Romania relates to the entire framework and in the case of Bulgaria covers a part.

Improvements to national legislation have also been made, notably in Denmark (appeal procedures), the Netherlands (rights of way), and France and Spain (consumer protection). The Commission is concerned on the other hand that the amendment of the German Telecommunications Act will exempt new markets from regulation under conditions less onerous than those set out under Community law.

¹⁶⁶ COM(2005) 229

¹⁶⁷ See the European Parliament's Resolution on European electronic communications regulation and markets 2004 (2005/2052(INI) of 1 December 2005, based on the Toia Report of 14 October 2005 (A6-0305/2005).

¹⁶⁸ Directive 2002/21/EC (Framework Directive), Directive 2002/20/EC (Authorisation Directive), Directive 2002/19/EC (Access Directive), Directive 2002/22/EC (Universal Service Directive) and Directive 2002/58/EC on privacy and electronic communications (further referred to as the ePrivacy Directive).

Four Commission radio spectrum harmonisation decisions adopted in 2004 and 2005¹⁶⁹ should have been implemented by the end of the reporting year¹⁷⁰. However, the implementation of all four decisions is reported only in 12 Member States (Austria, Cyprus, the Czech Republic, Finland, Germany, Greece, Hungary, Latvia, Lithuania, Slovakia, Slovenia and Sweden). Three Member States were in the process of implementation, while ten Member States reported that three of the four decisions had been implemented.

In line with the Commission Communication on better monitoring of the application of Community law¹⁷¹, the Commission services have continued to avoid the need for recourse to infringement proceedings by providing general guidance on transposition requirements via the Communications Committee (COCOM) and the Radio Spectrum Committee (RSC), and by making use of intensive bilateral contacts with the relevant national authorities. Following discussion in COCOM, measures on the harmonised application of the regulatory framework for electronic communications were adopted, namely a new List of standards¹⁷² and a Decision requiring Member States to reserve the six-digit number range starting with the digits 116 for services of social value in Europe¹⁷³.

At the heart of the 2002 regulatory framework for electronic communications lies the principle that undertakings should not be subject to *ex ante* regulatory obligations unless they have been found to be dominant in a relevant market, on the basis of a thorough market review by their national regulatory authority (NRA). Following the launch of infringement proceedings, this market review process has made significant progress in 2006. Most NRAs have now substantially completed the first round of market analysis and notified their results to the Commission and other NRAs in accordance with Article 7 of the Framework Directive. This has created a genuine body of know-how and experience which can be shared by NRAs across the Community.

An increasing need for consumer protection goes hand in hand with the growth and diversification of electronic communication services and a growing number of service providers. A mechanism to settle disputes between consumers and service providers that offers a more flexible, cheaper and less formal alternative to court proceedings is therefore required under the Universal Service Directive. Although practical applications of the dispute resolution mechanism vary from one Member State to another, this has produced overall positive results, and a huge number of consumer complaints are dealt with at national level.

¹⁶⁹ These are Commission Decision 2005/928/EC of 20 December 2005 on the harmonisation of the 169,4-169,8125 MHz frequency band in the Community (frequency band originally designated for the ERMES paging system); Commission Decision 2005/513/EC of 11 July 2005 on the harmonised use of radio spectrum in the 5 GHz frequency band for implementation of Wireless Access Systems including Radio Local Area Networks (WAS/RLANs); Commission Decision 2005/50/EC of 17 January 2005 on the harmonisation of the 24 GHz range radio spectrum band for the time-limited use by automotive short-range radar equipment in the Community; and Commission Decision 2004/545/EC of 26 July 2004 on the harmonisation of radio spectrum in the 79 GHz range for the use of automotive short-range radar equipment in the Community.

¹⁷⁰ The legal basis for such Commission Decisions is Article 4 of the European Parliament and Council Radio Spectrum Decision 676/2002/EC.

¹⁷¹ COM(2002) 725, of 11 December 2002.

¹⁷² Commission Decision 2007/176/EC of 11 December 2006 establishing a list of standards and/or specifications for electronic communications networks, services and associated facilities and services and replacing all previous versions.

¹⁷³ Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with '116' for harmonised numbers for harmonised services of social value.

Finally, DG INFSO continued to monitor the general state of implementation of the regulatory framework, in close contact with the national authorities and other stakeholders, when preparing for the Commission's sector specific annual Implementation Report addressed to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions¹⁷⁴.

Nonetheless, ensuring full and effective implementation of the regulatory framework by formal infringement proceedings remained a priority also in 2006. By the end of the reporting year the Commission had opened more than 140 infringement proceedings under Article 226 of the Treaty since the date of application of the new regulatory framework; in some 90 cases this action is prompted by failure to implement the regulatory framework correctly. These proceedings concerned all EU 25 Member States.

During the reporting year, the Commission opened 31 new proceedings, while 17 pending cases were taken to the second phase with a reasoned opinion being sent to the Member States concerned. The Commission also decided to refer six cases to the Court of Justice in 2006. At the same time, the Commission decided to close 37 proceedings following action by the Member States. Finally, although all 25 Member States, including Greece, had completed formal transposition of the regulatory framework, there were still some 50 proceedings for incorrect implementation pending at the end of 2006.

The focus of enforcement has now shifted from transposition issues to ensuring full compliance and effective application in all 25 Member States. In particular, the Commission services undertook an 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.

The six cases which the Commission decided to refer to the Court of Justice in 2006 concerned the lack of powers of the NRA (Finland, Poland), the process for designating the universal service provider (France), the lack of comprehensive directories and/or directory inquiry services (Latvia, Poland) and the non-availability of mobile number portability (Malta). In the case of Malta and Latvia the problem was resolved before the application was sent to the Court, and the proceedings were subsequently closed.

Other proceedings that were closed in 2006 concerned the independence and powers of the NRA, the implementation of the market review procedures, the transitional regime, the suspensory effect of appeals against decisions of the NRA, the extension of the scope of SMP obligations to non-SMP operators and the mechanism for designating the universal service provider, and also important consumer issues such as directory services (seven cases), number portability (six cases), caller location information for 112 and protection against spam.

¹⁷⁴ "European Electronic Communications Regulation and Markets 2006 (12th Report)", COM(2007) 155 of 29 March 2007.

Finally, six proceedings were also closed in 2006 following the communication of relevant transposition measures for the regulatory framework from two Member States (five concerning Greece, and one concerning the United Kingdom with regard to Gibraltar).

The Commission services will now start scrutinising the implementation measures notified to it by Bulgaria and Romania following their accession on 1 January 2007.

To increase transparency for all stakeholders, the Commission has continued to issue press releases at each stage of the proceedings that have been opened. These press releases are available on the implementation and enforcement website of the Directorate-General for Information Society and Media¹⁷⁵ together with overview tables for all cases, which are updated regularly. It is worth noting that this transparency has led to some 40 requests for access to the relevant infringement documents in 2006. It is the Commission's consistent policy¹⁷⁶ to disclose letters of formal notice and reasoned opinions where a proceeding has been finally closed, unless they contain otherwise sensitive information, but a case-by-case evaluation is undertaken of requests for access to documents for open cases, given the exception provided in the regulation for the purpose of investigations.

In addition to the pending infringement proceedings, there were 24 complaints pending at the end of 2006, most of them related to authorization issues, including frequency management and rights of way. The Commission's monitoring of the implementation of the Single European Emergency Number 112 had been the subject of a petition to the European Parliament¹⁷⁷, launched on behalf of the "European Emergency Number Association (EENA)" in 2005. On 13 September 2006, the EP Petitions Committee decided to close the file, following the explanations given by the Commission, but invited both the Council and the Commission to take actions in order to increase awareness of 112. With regard to EENA's complaint to the European Ombudsman¹⁷⁸, the European Ombudsman, in its Closing Decision of 30 November 2006, alleged maladministration inasmuch as the Commission had informed EENA of the status of its complaint only four months after the date of expiry of the one-year period from the registration of its complaint submitted to the Commission, even without a request for such information had been submitted. The European Ombudsman made a further remark to the effect that it would be useful to align all the language versions of Point 8, second paragraph of the Commission Communication on relations with the complainant in respect of infringements of Community law (the "Communication")¹⁷⁹ with the English and Swedish versions so that the Commission is required to inform complainants on its own initiative whenever it finds itself unable to complete its examination of a complaint submitted to it within the period of one year.

Finally, the European Court of Justice issued several important judgments on substance in the electronic communication area in 2006, in particular on request for preliminary ruling by a national court or tribunal under Article 234 of the Treaty. These covered the costs for number

¹⁷⁵ http://europa.eu.int/information_society/policy/ecom/implementation_enforcement/index_en.htm

¹⁷⁶ See in particular Article 4(2) of Regulation(EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

¹⁷⁷ Petition 688/2005 ; the Commission replied to this petition on 2 February 2006.

¹⁷⁸ Ref. 880/2005/TN.

¹⁷⁹ Commission communication to the European Parliament and the European ombudsman on relations with the complainant in respect of infringements of community law (COM(2002)0141 final) - Official Journal 244, 10/10/2002 p.5-8

portability and confidentiality under national appeal mechanism (C-438/04 – *Mobistar*), license fees for private use of electronic communications networks (C-339/04 – *Nuova società di telecomunicazioni*) and repayment of illegal licence fees (C-392/04 and C-422/04 – *i-21 Germany and Arcor*).

Overall, the implementation of the regulatory framework is working to bring competition to electronic communications markets, with resulting benefits to consumers in terms of prices and innovative converged services. Examples of best practice are available from every Member State across the range of regulatory and market issues.

However, in order to realise the full potential of the internal market, more consistency of application across the EU and a strengthening of the framework in areas such as spectrum management are needed. The Commission is now reviewing the framework, and will come forward with proposals in mid-2007. Moreover, the Commission services are working closely with the Member States in the Radio Spectrum Committee to develop a Commission decision that would effectively replace the GSM Directive 87/372/EC and achieve a consistent approach across the EU for a more flexible use of the relevant frequency bands. As regards roaming prices in the Community, the Commission has already proposed an amendment to the framework by a single market measure in the form of a Regulation on roaming within the Community in July 2006. The proposal is currently under discussion in the European Parliament and Council, and should be approved by summer 2007.

2.7.2. *Audiovisual and Media*

The main objective of the “**Television without Frontiers**” directive is to create the conditions for the free movement of television broadcasts within the Union¹⁸⁰. For this purpose, the Television without Frontiers Directive provides simultaneously for the country of origin principle and some minimum rules of coordination, aimed at safeguarding essential objectives of general interest. EU Broadcasters must comply with these minimum provisions and the stricter or more detailed rules contained in the legislation of the Member States in which they are established, where applicable. In fact, the Television without Frontiers Directive constitutes the basic regulatory framework for broadcasting services in Europe. Up to now, it has proved satisfactory, as confirmed by the 2003 and 2006 application reports. The fundamental objectives of public interest that the Directive aims to safeguard remain valid. However, in view of market and technological developments, a need to review the current EU regulatory framework became apparent; so the Commission adopted an amending proposal in December 2005, which is now in discussion in Council and Parliament. In 2006, this text started its progress through the initial steps of the co-decision procedure in Council and Parliament.

As guardian of the Treaty, the Commission ensures that these provisions are appropriately implemented in Member States’ legislation. For this purpose, the Commission continuously ensures that relevant information and indicators are available in order to fulfil its reporting obligations pursuant to the 2002 Communication on improving application of the monitoring of Community law. In this regard, two important reports were adopted in 2006:

¹⁸⁰ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities as amended by Directive 97/33/EC.

- the Fifth application report on the application of the Television without Frontiers directive¹⁸¹: this report analysed the salient aspects of the application of the Directive during the period 2003 – 2004 and demonstrated that this legal framework continues to play a valuable role in ensuring the freedom to provide television services in the EU, while underlining the need for a review given market and technological developments;

- the Seventh communication on the application of Articles 4 and 5 of the Television without Frontiers Directive¹⁸²: this Communication revealed that Europe's television broadcasters on average devote over 60% of their programming time to European works and over 30% to works by independent European producers. This Communication also contains an annex, which depicts the country-by-country status of Member States' obligations pursuant to Articles 4 and 5 of the Directive; these provisions aim to promote European, notably independent production.

Apart from this reporting exercise, the Commission convened the Contact Committee - set up under Article 23a of the Television without Frontiers Directive - in order to hold meetings where issues of interpretation or application of certain rules could be discussed with Member States. The Contact Committee met on 15 November 2006 and various concrete application issues were discussed. The agenda included the following items: measures notified by the Finnish Authorities as regards Article 3a of the Directive, on the National lists of events of major importance for society and a possible conflict of jurisdiction in a particular case. An *ad hoc* group of representatives of Member States' regulatory authorities meets on average twice a year, also with a view to ensuring consistent application of the provisions of the Directive and good cooperation between regulatory authorities. In March 2006, the Member of the Commission responsible for audiovisual policy, Mrs Reding, held a meeting of the chairmen of these authorities in Brussels¹⁸³.

As part of its monitoring of the transposition and proper application of the Directive, the Commission pursues infringement proceedings where necessary, generally in response to complaints. In 2006, 6 proceedings were terminated following fruitful discussions with the Member States. The Commission also exercises a monitoring activity, which allows it to detect cases of infringement on its own initiative. For this purpose, an independent consultant was retained following a public tender procedure. The task of this consultant was notably to monitor how the rules laid down by the directive on television advertising are applied in practice by Member States. In 2006, the situation in 5 Member States was examined and corresponding reports duly delivered to the Commission.

Where necessary, the Commission reviews the legislative framework. 2006 was rich in developments in this respect. Firstly, the proposal for an audiovisual media services Directive adopted by the Commission in 2005 commenced its progress through the co-decision procedure. The most salient steps were the general approach adopted by the Council on 15

¹⁸¹ Fifth application report to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the application of the Directive 89/552/EEC "Television without Frontiers" adopted on 10 February 2006. SEC(2006) 160 /* COM/2006/0049 final. <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:52006DC0049:EN:NOT>

¹⁸² Seventh communication on the application of Articles 4 and 5 of the Television without Frontiers Directive adopted on 14 August 2006. SEC(2006) 1073 /* COM/2006/0459 final */ <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:52006DC0459:EN:NOT>

¹⁸³ It has to be noted in this respect that the amending proposal – see hereafter – recognises the role of these independent regulatory authorities.

November and the first reading vote by the Parliament on 13 November¹⁸⁴. The general approach prepared by the Finnish Presidency and the Parliament's vote were broadly in line with the Commission proposal. Secondly, the European Parliament and the Council adopted a Recommendation on the Protection of Minors and Human Dignity and on the Right of Reply¹⁸⁵. This Recommendation builds upon the 1998 Council Recommendation on the protection of minors and human dignity, which complements the Television without Frontiers Directive and offers guidelines for the development of national self-regulation regarding the protection of minors and human dignity. The 2006 recommendation includes media literacy, cooperation and sharing of experience and good practices between self-, co- and regulatory bodies, action against discrimination in all media, and the right of reply concerning online media.

2.7.3. Public Sector Information

The **Directive 2003/98 on the re-use of public sector information** (PSI Directive) pursues three main objectives: first of all, to facilitate the creation of Community wide services based on PSI, secondly, to enhance an effective cross-border re-use of PSI for added-value services, and finally, to limit distortions of competition on the Community market.

The Directive is built around two key pillars of the internal market: transparency and fair competition. It contains provisions e.g. on the procedures to deal with requests, on upper limits for charging, on the transparency of conditions and non-discrimination, on prohibition of cross-subsidies and exclusive arrangements, as well as on practical means to facilitate finding and using the material available for re-use. Ultimately, the Directive aims at a change of culture in the public sector, creating a favourable environment for the re-use of its information resources.

The deadline for implementing the Directive by the Member States was 1 July 2005. 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.

At the end of 2006, 20 Member States had notified full transposition, while 5 Member States (Austria, Belgium, Luxembourg, Portugal and Spain) had still not notified it. These countries, following the first phases of the infringement procedure for non-communication of national transposition measures (Letters of Formal Notice and Reasoned Opinions), have finally been referred to the Court of Justice.

At the same time, the evaluation of the conformity of the notified national transposition went on during 2006. This is likely to lead to the opening of the first infringement proceedings for non-conformity during 2007.

Commission decision 2006/291/EC, Euratom on the "Reuse of Commission information" was adopted on 6 April 2006. It applies to Commission documents the principles of the PSI

¹⁸⁴ For more information, you may consult the webpage :

http://ec.europa.eu/comm/avpolicy/reg/tvwf/modernisation/proposal_2005/index_en.htm

¹⁸⁵ Recommendation of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry (OJ L 378, 27.12.2006, p. 72–77)

Directive, going beyond it in certain provisions such as only charging of marginal costs for dissemination.

In conformity with the Communication on improving monitoring of the application of Community law, the Commission has continued pursuing several accompanying measures in addition to formal infringement procedures regarding the transposition of the PSI Directive.

First of all, the Commission organises and chairs the PSI Group (2 meetings in 2006), where experts from Member States meet regularly, in order to provide assistance regarding transposition and implementation issues and to facilitate the exchange of good practices. Member States give up-to-date information on the state of implementation of the PSI Directive and provide examples of good practices as practical measures to enhance re-use of PSI, and the Commission gives assistance e.g. with the interpretation of the key provisions of the Directive. Secondly, the Commission provides expert assistance to Member States through bilateral contacts and contributes to awareness raising activities by participating in seminars and workshops organised in Member States. Thirdly, the Commission concluded in 2006 a baseline study on exploitation of PSI – Measuring European Public Sector Information Resources (MEPSIR). The aim of this study is to assess the impact of the Directive on the framework conditions for PSI re-use for the review of the Directive (foreseen for 2008). It defined, tested and applied a methodology to measure the re-use of PSI in Europe. The study estimated the overall market size for PSI to be worth between €10-48 billion in the EU. Finally, the Commission undertakes stimulation and communication actions (e.g. the Commission's PSI website contains the transposition status of each Member State, as well as examples of good practices and links to national portals), networking across Europe and co-funds an awareness network for promoting PSI reuse (ePSIplus) through the eContentplus Programme.

2.7.4. Electronic signature

The main objective of the **e-signature Directive** is to create a Community framework for the use of electronic signatures, allowing the free flow of electronic signature products and services cross border, and ensuring a basic legal recognition of electronic signatures. The deadline for implementing the Directive by the Member States was 19 July 2001. All 25 EU Member States have implemented the general principles of the Directive¹⁸⁶.

2.8. Fisheries and Maritime Affairs

Owing to deficiencies identified in the monitoring and inspection of fishing activities and in the pursuit of those responsible for practices contrary to the respective laws, the Commission sent a reasoned opinion to Ireland on 4 July.

Under proceedings relating to irregularities in the measurement of capacity of fishing vessels, the Commission sent a reasoned opinion to the Netherlands on 18 October.

¹⁸⁶ For further details see the Commission Report on the operation of Directive 1999/93/EC on a Community framework for electronic signatures, COM(2006) 120 of 15.3.2006; http://europa.eu.int/information_society/eeurope/i2010/docs/single_info_space/com_electronic_signatures_report_en.pdf

Under proceedings initiated owing to the non communication of data on catches and fishing effort, the Court delivered a judgment on 12 January¹⁸⁷ declaring that France, by failing to provide the information required under Article 18(1) and the first and third indents of Article 19i of Council Regulation (EEC) N° 2847/93 establishing a control system applicable to the Common Fisheries Policy¹⁸⁸, had failed to fulfil its obligations under those provisions.

Under proceedings initiated owing to the unsatisfactory control of technical conservation measures¹⁸⁹, the Commission required France, on 1st March, to pay, on the basis of Article 228 EC, a penalty of EUR 57.761.250. France has contested the Commission's decision before the Court of First Instance¹⁹⁰. Following that decision, the verifications made by the Commission confirmed substantial improvements in what concerns the control of these measures by the French authorities. As a consequence, the Commission decided to close these proceedings on 23 November.

Under proceedings initiated owing to the non communication of data on fishing effort, the Court delivered a judgment on 9 November¹⁹¹ declaring that the United Kingdom, by not communicating in time the data required by the first and third indents of Article 19i of Council Regulation (EEC) N° 2847/93, had failed to fulfil its obligations under that Regulation.

Under proceedings initiated owing to the non communication of catch data, the Court delivered a judgment on 7 December¹⁹² declaring that Italy, by failing to notify the data referred to in Articles 15(4) and 18(1) of Council Regulation (EEC) N° 2847/93, had failed to fulfil its obligations under those provisions.

The Commission decided to close proceedings against Greece relating to legislation prohibiting the fishing, marketing and sale of the species "*Xiphias gladius*" in the Greek territory from October to January. Information was provided by the Member State according to which the legislation applies to Greek vessels only if they fish in the Greek territorial waters. Therefore, the transport, landing and marketing in Greek territory in the above-mentioned period of this species caught outside territorial waters are not contrary to the Greek legislation, interpretation which is in conformity with Community law.

The Commission also decided to close proceedings against some Member States (Belgium, France and the Netherlands) in which fishing quotas were exceeded in 2001 and 2002. Information was provided by the Member States concerned on the measures taken to ensure compliance with the quotas and the mechanisms put in place to ensure closer monitoring of fishing activities. An analysis of the measures and the fact that overfishing didn't take place in the subsequent years led the Commission to close the proceedings.

¹⁸⁷ Case C-179/05, Commission v France.

¹⁸⁸ OJ L 261 of 20.10.1993, p.1.

¹⁸⁹ Case C-304/02, Commission v France.

¹⁹⁰ Case T-139/06 France v Commission (pending)

¹⁹¹ Case C-236/05, Commission v United Kingdom.

¹⁹² Case C-161/05, Commission v Italy.

The Commission decided furthermore to close proceedings against two Member States (Ireland and the Netherlands) relating to the non communication of data on catches and fishing effort. The lacking data were all notified by the Member States concerned and, afterwards, in what concerns these obligations under the relevant provisions of Community law, they have been fulfilled by the Member States on a regular basis. This situation led the Commission to close the proceedings.

2.9. Internal Market and Services

2.9.1. Freedom to provide services and freedom of establishment

In the area of these **two fundamental freedoms guaranteed by the Treaty**, the Commission, while negotiating the Directive on services in the Internal Market finally adopted in December¹⁹³, continued its actions via infringement procedures in various areas concerning the Internal Market. Main sectors 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, etc.

Concerning the *posting of workers*, the Commission decided, following a Court judgment of January 2006¹⁹⁴, to address a letter of formal notice and a reasoned opinion to Germany for not having adapted its legislation concerning the posting of third-country nationals by EU companies which according to the Commission should only require those companies to signal the presence of such workers at the beginning of the works in order to allow the national authorities to verify, within the limits of Community law, whether the posted workers are regularly employed and whether the working conditions are respected¹⁹⁵.

Concerning *private security services*, the Commission, following a judgment against the Netherlands from October 2004¹⁹⁶ and against Spain from January 2006¹⁹⁷, sent a letter of formal notice to Spain and a reasoned opinion to the Netherlands for not amending their legislation in line with the Court's judgement¹⁹⁸.

Concerning *health services*, the Commission issued a second reasoned opinion to France for the incompatibility with Article 43 of the EC Treaty of restrictions on the ownership by non-biologists of a stake in a firm operating biological analysis laboratories which limits the potential for partnerships, particularly with legal entities from other Member States, and limits the freedom of establishment in France of laboratories established in other Member States that do not meet the criteria laid down in French law¹⁹⁹. In another case concerning French Laboratories, the Commission has decided to send a reasoned opinion to France for failure to implement the judgment of the Court of Justice handed down in March 2004²⁰⁰ concerning

¹⁹³ OJ L 376, 27.12.2006, p. 36.

¹⁹⁴ Judgment of 19 January 2006, Case C-244/04 *Commission v. Germany*.

¹⁹⁵ IP/06/889 and IP/06/1791.

¹⁹⁶ Judgment of 7 October 2004, Case C-189/203 *Commission v. the Netherlands*.

¹⁹⁷ Judgment of 26 January 2006, Case C-514/2003 *Commission v. Spain*.

¹⁹⁸ IP/06/505 and IP/06/1355.

¹⁹⁹ IP/06/1793.

²⁰⁰ Judgment of 11 March 2004, Case C-496/01 *Commission v. France*.

the incompatibility of the legislation on bio-medical analysis laboratories with article 49 of the Treaty²⁰¹.

The Commission has decided to take Italy to the Court of Justice on the account of restrictions imposed by its national legislation on the acquisition of holdings in and ownership of retail pharmacies, and also to send a reasoned opinion to Austria and Spain, formally requesting them to amend their national rules relating to the setting-up of pharmacies²⁰².

The European Commission has decided to send official requests for information on national legislation in the field of *gambling* to nine Member States (Denmark, Finland, Germany, Hungary, Italy, the Netherlands, Sweden, Austria and France). The complaints concern restrictions on the provision of sports betting services and in the Austrian case, on casinos, including the requirement for a State concession or licence (even where a provider is lawfully licensed in another Member State) or even the total ban of non-national operators. In some cases, restrictions also extend to the promotion or advertising of the services and to the participation of nationals in the Member State in question in the games²⁰³.

The Commission also formally requested France to amend its rules on the *establishment of shops*, based on criteria not sufficiently objective and precise, most of them aimed at assessing the potential economic impact of the opening of a new shop²⁰⁴.

The Commission has also taken several actions to put an end to *obstacles to the free movement of services* in France. It has decided to refer France to the European Court of Justice over its legislation which requires chief architects of historical monuments to be of French nationality. The Commission has also decided to send a letter of formal notice asking for full information on its execution of a 2006 Court judgement²⁰⁵ concerning restrictions on performing artists' agencies and self-employed performing artists that wish to work in France. In addition, the Commission has decided to send a formal request to France to modify its legislation which restricts the ability of sworn translators to work in France²⁰⁶.

The Commission has equally decided to taken action against Austria by referring Austria to the European Court of Justice over its rules which discriminate against nationals from eight member States that joined the EU in 2004 wishing to establish a company in Austria²⁰⁷.

The Commission has decided to send an additional formal request to Germany on its application of a bilateral agreement with Poland in relation to the *construction sector*. By virtue of this agreement, German contractors may use Polish subcontractors, subject to quotas, whereas companies from other Member States performing construction work in Germany may not use Polish subcontractors in a similar fashion²⁰⁸. The Commission also formally requested Germany to amend the parts of its law on chimney sweeps that the Commission considers to

²⁰¹ IP/06/505.

²⁰² IP/06/858.

²⁰³ IP/06/436 and IP/06/1632.

²⁰⁴ IP/06/1794.

²⁰⁵ Judgment 15 June 2006, Case C-255/04, *Commission v. France*.

²⁰⁶ IP/06/1793.

²⁰⁷ IP/06/1790.

²⁰⁸ IP/06/1791.

be incompatible with EC Treaty rules on the freedom of establishment (Article 43) and the freedom to provide services²⁰⁹.

In the area of *authorisation of vehicle inspection organisations*, the Commission has decided to refer Germany to the European Court of Justice over its authorisation rules for vehicle inspection organisations and to formally request Portugal to amend its rules on the granting of authorisations to bodies of other Member States wishing to carry on vehicle inspection activities in Portugal²¹⁰.

Concerning the **financial services**, the Commission opened in July 2006 a publicly available internet database giving complete access to national laws implementing Directives adopted under the *Financial Services Action Plan ("FSAP")*. The database is a follow up action of one of the Better Regulation tasks contained in the White Paper on Financial Services Policy (2005-2010). It should help improving implementation of EU financial services laws at national level while providing a single resource where all information on national transposition can be easily accessed and compared.

In the area of *securities markets*, in 2006, the Commission terminated 58 non-communication infringement cases referring to the Market Abuse Directive and its implementing directives²¹¹. Likewise, the Commission terminated 14 non-communication infringement cases, which had been instituted due to the Member States' untimely transposition of the Prospectus Directive²¹². At the end of 2006, there was left only 1 infringement case concerning the non-communication of the aforementioned securities directives.

Ahead of the transposition deadline for Markets in Financial Instruments Directive (MiFID) and its implementing directive²¹³ set on 31 January 2007, the Commission organised a series of 7 transposition workshops and a number of bilateral meetings with national administrations and experts involved in this task at working level, in order to enable Member States a timely and consistent transposition of the Level 1 and Level 2 directives. Meetings of the European

²⁰⁹ IP/06/1355.

²¹⁰ IP/06/1795.

²¹¹ Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), OJ L 345, 31.12.2003, p. 64; Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation, OJ L 339, 24.12.2003, p. 70; Commission Directive 2003/125/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest, OJ L 339, 24.12.2003, p. 73; Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions, OJ L 162, 30.4.2004, p. 70.

²¹² Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, OJ L 345, 31.12.2003, p. 64.

²¹³ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, OJ L 145, 30.4.2004, p. 1; Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, OJ L 241, 2.9.2006, p. 26.

Securities Committee and package meetings with the Member States' authorities were also used by the Commission to exert pressure with a view to accelerating consistent transposition of the securities markets directives.

Beyond transposition and implementation, in order to get a good overview of whether securities directives produce the intended effects, the Commission has set up a European Securities Markets Expert group composed of representatives of the industry. This group is expected to provide input on performance with respect to securities markets directives. Further work in order to assist Member States in the transposition and application of the MiFID and its implementing measures consisted in the preparation of a Questions and Answers database ('Your questions on MiFID') operated by DG Internal Market and Services. In total, in the course of 2006 three complaints from citizens were registered that concern the area of securities markets.

As far as the *insurance* sector is concerned, the Commission decided to refer Italy, Finland, Ireland and Sweden to the Court of Justice. A remarkable press attention was paid to the Italian case in which the Commission objects to national legislation requiring all third party motor liability insurers operating in Italy to offer insurance for all categories of insured in all regions of Italy. The Commission considers that the obligation to contract is as such an unjustified restriction to the principle of freedom of establishment enshrined in Article 43 EC and to the principle of the free provision of services contained in Article 49 EC.

In the *banking sector*, 12 infringement proceedings started in 2004 against several Member States for failure to transpose Directive 2001/24/EC on the reorganisation and winding up of credit institutions²¹⁴, Directive 2002/87/EC on the supplementary supervision of financial conglomerates²¹⁵, and Directive 2004/69/EC amending the banking directive²¹⁶, were terminated. These Directives were to be transposed by 5 May 2004, 11 August 2004 and 30 June 2004 respectively. An infringement for failure to transpose Directive 86/635/EC on the annual accounts and consolidated accounts of banks and other financial institutions²¹⁷ against a new Member State was also closed.

However, further to the referral by the Commission, Luxembourg and Sweden were sentenced by the Court of Justice for failure to notify measures transposing Directive 2002/87/EC²¹⁸. Following to the Court's sentences, both these Member States notified the national measures transposing the said Directive and the Commission was able to terminate the proceedings.

Regarding restrictions on the freedom of establishment, the Commission closed a case against Germany concerning the national banking law (section 40, Kreditwesengesetz) which prevents the sale of savings banks with the name "Sparkasse", to private acquirers. The case was closed after an agreement was reached between the Commission and Germany which allows for privatisation of German savings banks and the continuation of the name "Sparkasse" by the privatised bank under a number of conditions according to which the Member State can require that certain public service obligations are met²¹⁹.

²¹⁴ OJ L 125, 5.5.2001, p.15.

²¹⁵ OJ L 35, 11.2.2003, p. 1.

²¹⁶ OJ L 125, 28.4.2004, p. 44.

²¹⁷ OJ L 372, 31.12.1986, p. 1.

²¹⁸ Judgment of 23 November 2006, Case C-156/06 *Commission v Kingdom of Sweden* and judgment of 14 December 2006, Case C-218/06 *Commission v Grand-Duchy of Luxembourg*.

²¹⁹ See press release IP/06/1692 of 6.12.2006.

Following a preliminary ruling of the Court of Justice, the Commission issued a reasoned opinion against France because their prohibition to pay interest for current accounts is incompatible with the EC Treaty.

In the area of **postal services**, the Commission adopted a “*Commission report to the Council and the European Parliament on the application of the Postal Directive (Directive 97/67/EC amended by Directive 2002/39/EC)*” on 18 October 2006²²⁰. This Report follows the two previous Commission reports in 2002 and 2005. It indicates that postal reform in the EU has advanced well and that intermediate policy results of the Postal Directive have been achieved. Monopolies have been reduced and competition has increased, although not at the expected pace. Incumbent universal service providers have restructured and successfully adapted to the regulatory and market developments to date. Quality of postal service has improved, consumer satisfaction is high and the universal service has been safeguarded. The Report concludes that market conditions are conducive to continue with further reform and that Member States should continue to ensure a high level of universal service and maintain its focus on consumer needs.

The proceedings initiated against Estonia for failure to notify Directive 2002/39/EC²²¹ were closed in 2006 after the adoption of the required transposition measures.

2.9.2. Free movement of capital (application of Articles 56 et seq.)

2006 has been a particularly active year in the area of capital movements. The Commission has responded promptly to several important and high profile cases where protectionist reactions have created obstacles to the free movement of capital and establishment.

In addition, a significant effort has been made to make progress in cases that had been open for several years. On the basis of efforts and guidelines to improve performance in the enforcement of Internal Market rules, the time lag in the treatment of cases in this area has been reduced considerably.

The majority of the infringement cases open in 2006 were related to different kinds of special rights that governments maintain in private or privatised companies on the basis of framework laws governing privatisation or other laws applicable to particular companies or sectors. However, it is important to note that there is an increasing frequency of free capital movement infringements in regulated sectors, and in particular, in financial services and energy sectors.

In this context, a reasoned opinion was addressed to Italy following the non-implementation of a ECJ-judgement delivered in 2005²²² in which the Court found that the automatic suspension of voting rights for shareholdings in excess of 2% in Italian electricity and gas companies, where such holdings are acquired by public companies not quoted on the stock exchange and holding a dominant position in their own domestic markets, breaches the EC Treaty rules on the free movement of capital. A decision to close the case was taken after Italy adopted (in August 2006) the measures to comply with the Court ruling.

²²⁰ COM (2006) 595 final.

²²¹ Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services, OJ L 176, 5.7.2002, p. 21.

²²² Judgment of 2 June 2005 in case C-174/04.

An infringement procedure against Spain was closed after the notification of measures (taken in May 2006) to comply with a 2003 European Court of Justice ruling²²³. The ruling had found that certain privatisation provisions, in so far as they implement a system of prior administrative approval, were incompatible with the EC Treaty rules on the free movement of capital.

Still in the area of special rights, three cases have been referred to the Court in 2006: Hungary (privatisation law), Italy (privatisation law) and Spain (companies in the energy sector).

A reasoned opinion was issued against Portugal (companies in the telecom sector). A case has also been opened concerning the French legislation (adopted late in 2005) providing for an authorisation procedure for certain categories of foreign direct investment.

2006 was also a year where free capital movement cases appeared in the context of intended cross-border M&A: Spain (functions of the energy regulator) and Italy (motorway concessions). In these cases, infringement proceedings under Art 226 for violation of Art 56 and 43 of the Treaty were launched in parallel with the application of Art. 21 of Regulation (CE) 139/2004²²⁴. This joint treatment of these cases has significantly improved the effectiveness of Commission intervention in the enforcement of Internal Market and competition rules.

Regarding other forms of restrictions on the free movement of capital, the Commission has continued proceedings against France regarding legislation preventing football and other professional sports clubs from being listed on stock markets and regarding obligations for joint owners of real estate in France, as well as against Sweden for disclosure provisions concerning foreign bank accounts.

The European Court of Justice (ECJ) made one important ruling²²⁵, concluding that the special rights of the Netherlands State in Koninklijke KPN N.V. (KPN) and TNT Post Groep N.V. (TPG) are incompatible with the free movement of capital. The involved special rights include the right to approve certain management decisions, which are not limited to cases where the intervention of that State is necessary for overriding reasons in the general interest and, in the case of TPG NV in particular for ensuring the maintenance of the universal postal service. After the ruling, the Commission monitored its effective implementation and was able to close one of the two infringement cases concerned.

2.9.3. The business environment

In the area of **industrial property**, the Commission adopted on 9 June 2006 a Regulation on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries which public health problems²²⁶. This Regulation aims to implement in the EU the WTO Decision of 30 August 2003.

²²³ Judgment of 13 May 2003 in case C-463/00.

²²⁴ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1.

²²⁵ Judgment of 28 September 2006 in joined cases C-282/04 and C-283/04.

²²⁶ Regulation (EC) No 816/2006 of the European Parliament and of the Council of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems, OJ L 157, 9.6.2006, p. 1.

Directive 2004/48/EC²²⁷ on the enforcement of intellectual property rights had to be implemented in the Member States by 29 April 2006. The Member States Bulgaria, Denmark, Estonia, Hungary, Italy, Romania, Slovenia and the United Kingdom timely notified the Commission of the full transposition of the Directive. The Member States Austria, Cyprus, Czech Republic, Finland, Ireland, Lithuania, Malta and Spain did so only after the opening of infringement procedures in accordance with Article 226 ECT. Thus, at the end of 2006, there were eleven Member States that had still to notify the Commission of their full legislation implementing this Directive.

In relation to **copyright and neighbouring rights**, Directive 2001/84/EC²²⁸ on resale right had to be implemented in Member States by 1st January 2006. Further to the opening of infringement procedures in accordance with Article 226 ECT, most Member States notified their national measures to implement the Directive. In December 2006, the Commission had to take the decision to refer Belgium, Greece, France and Sweden to the European Court of Justice.

The Court of Justice of the European Communities²²⁹ confirmed that Portugal, Spain and Italy failed to implement properly the provisions relating to public lending right in Directive 92/100/EEC²³⁰ (now codified in Directive 2006/115/EC²³¹). The Commission decided to pursue the procedure of Article 228 against Portugal. On the other hand, the Commission closed the case against Luxemburg, which notified its new legislation implementing this right.

In the field of **public procurement**, the Commission carried out its control of the application of Community law by means of infringement procedures, but especially also via complementary means, such as bilateral meetings with the Member States involving the contracting authorities concerned. 183 cases (47% of all cases treated in 2006) could be closed; only 5 (less than 2%) had to be referred to the ECJ. Among the Commission activities in 2006 in the control of the application of European procurement law the following are in particular worth mentioning:

In order to enhance compliance with Community public procurement rules and principles, the Commission encouraged national authorities to provide specific guidance to contracting authorities in cases where *recurring infringements* have been found. For example, following the acknowledgement of such an infringement in a series of cases in which selection and award criteria have been mixed up, the Greek authorities have sent an administrative circular to contracting authorities on how to avoid mistakes on this point. Furthermore, all relevant calls for tender would be checked by a central entity and professional training seminars organised for all those involved in the organisation of tender procedures.

Concerning *contracts between public entities*, the Commission decided to bring Germany before the ECJ in a case concerning the award of waste disposal services by several communes in Northern Germany to another public entity controlled by the City of Hamburg.

²²⁷ OJ L 157, 30.4.2004, p. 45.

²²⁸ OJ L 272, 13.10.2001, p. 32

²²⁹ Decisions of the Court of 6.7.2006 and 26.10.2006.

²³⁰ OJ L 346, 27.11.1992, p. 61.

²³¹ OJ L 376, 27.12.2006, p. 28.

These services are provided against remuneration until the year 2019 and have been awarded directly in contradiction with the case-law of the ECJ, notably in case C-84/03²³².

As regards *public-private partnerships (PPP)*, the Commission was able to close several infringement cases concerning long term service contracts awarded directly to mixed public-private undertakings by the municipalities of Mödling (where the violation of Community law had already been confirmed by the ECJ in its judgement C-29/04²³³, Kapfenberg and Hartberg. The Austrian authorities agreed to an early termination of these contracts opening the way for new awards in EU-wide procedures with fair and open competition.

In the field of *contracts below the thresholds* the Commission recalled the relevant case law of the ECJ in its Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives. This Communication also refers to the Court case C-231/03²³⁴, Coname, which states that only contract awards relevant to the internal market are subject to the EC-Treaty. In line with this case law the Commission for example closed a case about the direct award of several planning service contracts awarded by a municipality in the German State of Mecklenburg-Vorpommern with contract values between 6,000 and 26,500 Euros per contract. The Commission considered that the contracts were not relevant to the internal market. In particular, the low contract values of around 10% of the threshold values for the application of public procurement Directive 2004/18/EC indicated that the contracts were of no interest to undertakings located in other Member States.

As regards the *transposition of the public procurement Directives* 2004/17/EC and 2004/18/EC²³⁵ the deadline for notifying transposition measures expired on 31 January 2006. Despite important efforts by the Commission to encourage and support Member States in their transposition, a considerable number had not notified their national provisions before that deadline. Infringement procedures for non-communication of national transposition measures were therefore opened against originally 18 Member States. In October 2006 reasoned opinions were sent to the 11 Member States, Belgium, Estonia, Finland, Germany, Greece, Ireland, Luxemburg, Portugal, Slovenia, Spain and Sweden, that had still not complied with their transposition obligation.

2.9.4. Regulated professions (qualifications)

The volume of complaints and infringements relating to qualifications for regulated professions remained broadly stable in 2006. The Commission received around 30 complaints concerning restrictions in breach of Articles 39, 43 and 49 of the EC Treaty and the directives on the mutual recognition of professional qualifications.

Among the ongoing proceedings, the Commission sent reasoned opinions to Germany, Austria, Belgium, France, Greece, Luxembourg and the Netherlands on the grounds that these

²³² Judgment of 13 January 2005, Case C-84/03 *Commission v. Spain*.

²³³ Judgment of 10 November 2005, Case C-29/04 *Commission v. Austria*.

²³⁴ Judgment of 21 July 2005, Case C-231/03 *Consorzio Aziende Metano (Coname) v Comune di Cingia de' Botti*.

²³⁵ Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, OJ L 134, 30.4.2004, p. 1 and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, OJL 134, 30.4.2004, p. 114.

Member States allow only nationals of their own country to practise as notaries. In the view of the Commission, this nationality condition is contrary to the freedom of establishment provided for in Article 43 of the EC Treaty and cannot be justified by reference to Article 45, which exempts activities related to the exercise of official authority. Since the same nationality condition exists in the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, the Commission also sent these countries letters of formal notice. Spain, Italy and Portugal have abolished the nationality condition previously in force for notaries.

The Commission also decided to refer France to the European Court of Justice in relation to unwarranted restrictions on the freedom to provide services for doctors, dentists and midwives established in other Member States and eligible for automatic recognition of their qualifications in France under Community Directives.

Furthermore, the Commission also sent reasoned opinions to France for its breach of Articles 39, 43 and 49 of the EC Treaty and Directive 92/51/EEC²³⁶ on the general system for the recognition of diplomas by refusing to allow canyoning guides and snowboard instructors from other Member States to pursue their specific professional activities in France on the grounds that these activities can only be practised by other professionals in France (i.e. mountain guides, potholers or mountaineering instructors for canyoning and ski instructors for snowboard). On the basis of the judgment of the Court of Justice in case C-330/03²³⁷ and taking into account the fact that the differences between the fields of activity are so great that in reality the compensatory measures required from the migrant amount to a full programme of education and training, the Commission considers that France has to allow partial taking-up of the professions concerned.

2.10. Regional Policy

Directorate general Regional policy has no infringement proceedings under way at present. 30 complaints have been dealt with during the year 2006. 22 cases were closed during the reporting period.

The complaints concern in particular the selection process of individual projects under the different programmes co-financed by Community Structural Funds. Rejection of the complainant's cofinancing proposal is the reason this type of complaint: however, where the selection is made in accordance with the criteria established by the monitoring committee, complies with the programming documents (i.e. the decision granting the assistance and the programming complement) and does not infringe any provision of Community law, in principle the Commission cannot intervene owing to the lack of a legal basis. Even in this case, though, the Commission as a rule contacts the national authorities to request their point of view. It should be noted, too, that these complaints could be examined by the competent national administrative or judicial authorities.

Other complaints concern the respect of Community law on environment policy or of the conditions for awarding public procurement contracts.

When the examination of the allegations proves that Community law has been breached, this may lead to the opening of a financial correction procedure. Consequently, the normal

²³⁶ Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC, OJ L 209, 24.7.1992, p. 25.

²³⁷ Judgment of 19 January 2006, Case C-330/03 *Colegio de Ingenieros de Caminos, Canales y Puertos v. Administración del Estado*.

sanction of the lack of respect of Community law when implementing Community Structural Funds is a financial correction, asking for reimbursement of grants unduly received, and not an infringement proceeding.

Finally some cases concern the opportunity of project selection pretending that a particular infrastructure project is not on the right place (e.g. roads), does not work properly (water sewage treatment plants) or constitute some other waste of the European taxpayer's contribution. In these cases, the legal possibilities of the Commission to judge the assessment of the competent national authorities are even less evident.

2.11. Taxation and Customs Union

In the area of **customs law**, 42 complaints have been examined and 6 own initiative investigations have been started.

At the same time particular attention has been paid to indirect control of the application of EC's customs law by coordinating the Commission position before the European Court of Justice in 23 preliminary reference cases.

The main priority has been to try also to stimulate the use of tools that are specific to EC customs law, like for instance tariff classification regulations, to solve problems of non-uniform application within a reasonable period of time.

For direct and indirect taxation, a further increase of Court cases could be registered in 2006.

Within the area of **indirect taxation**, both the enlargement and the strategic objectives adopted by the Commission for the period 2005-2009, were for a second successive year reflected in an increasing number of infringement cases and a considerable input related to new Court cases. During the year 2006, the Court of justice has delivered 38 judgments related to indirect taxation. Some cases merit extra attention:

In the joined cases *Nadasdi/Nemeth*²³⁸, the Court considers that the Hungarian registration duty is contrary to Article 90 EC in so far as it imposes a heavier burden on imported used vehicles than on similar used vehicles already registered in Hungary.

In the case *Joustra*²³⁹, the Court points out that only products transported personally by private individuals are exempt from excise duty in the Member State of importation.

In the 'IRAP' judgment in the case *Banca Popolare di Cremona*²⁴⁰, the Court rules that IRAP (regional tax on productive activities) differs from VAT in such a way that it cannot be characterised as a turnover tax within the meaning of the Sixth VAT Directive and it can be maintained by Italy.

Another important issue concerns companies unwittingly party to carousel fraud. Some cases²⁴¹ regarding this problem were joined and the Court held that the right to deduct VAT for a taxable person who is not part of the fraud and carries out transactions, cannot be

²³⁸ Judgment of 05.10.2006, joined cases C-290/05 and C-333/05

²³⁹ Judgment of 23.11.2006, case C-5/05

²⁴⁰ Judgment of 03.10.2006, case C-475/03

²⁴¹ Judgment of 12.01.2006, joined cases C-354/03, C-355/03 and C-484/03

affected by the fact that in the chain of supply of which those transactions form part, another prior subsequent transaction is vitiated by VAT fraud.

Finally some joined *cases*²⁴² regard schemes drawn up by certain economic operators in order to reduce their VAT liability. The Court held that the Sixth VAT Directive does not grant a taxable person any right to deduct input VAT where the transactions from which that right derives constitute an abusive practice.

For **direct taxation**, the Court cases mainly having their origin in requests for preliminary rulings. The focus was in 2006 as in the past on the differential tax treatment of domestic and cross-border situations. In addition to a legal follow-up, the judgment in the *Marks & Spencer*²⁴³ case gave rise to political action insofar as it led the Commission to adopt in December 2006 a Communication on cross-border losses with a aim of triggering an intensified coordination between the Member States in order to find appropriate solutions for the implementation of this judgment, which can hardly be found by autonomous legislation of a Member State alone.

In the *Cadbury Schweppes*²⁴⁴ judgment the Court brought about further clarification to the effect of the freedom of establishment, as it made it clear that the use of that freedom with the principal aim of benefiting from lower taxation may not be compromised by general national rules on tax evasion.

The *Denkavit*²⁴⁵ judgment was the first judgment, by which the Court required the source State of dividends to renounce to the withholding tax agreed under a tax convention, if a credit of that tax in the residence State was not available because of the tax exemption of the recipient. On the other hand, the Court refused in the Kerckhaert-Morres case to consider the application of the same rate to domestic and foreign dividends by Belgium to be discriminatory, even though, by virtue of a tax convention, the dividend had undergone a withholding tax in the source State.

Of importance for many owners of real estate property will be the judgment against *Portugal*²⁴⁶, by which the deferral of tax on capital gains from a house sale may not be refused, if a reinvestment does not take place in Portugal, but in another Member State.

In total, within the area of direct taxation, the Court of Justice delivered 19 judgments.

2.12. Education and Culture

Austria and Belgium, were condemned by the ECJ in cases C-147/03 and C-65/03 respectively, for their legislation, which had placed other EU nationals at a disadvantage since they could not gain access to higher education of these countries under the same conditions as nationals. Following the abolition of its discriminatory system of access, Belgium was faced with an influx of students mainly from its neighbouring country, France, with which it shares a common language and which applies a strict policy of *numerus clausus* for access to certain fields of study. Belgium (the French Community) passed new legislation in 2006 which

²⁴² Judgment of 21.02.2006, joined cases C-255/02, C-419/02 and C-223/03

²⁴³ Judgment of 13.12.2005, case C-446/03

²⁴⁴ Judgment of 12.09.2006, case C-194/06

²⁴⁵ Judgment of 14.12.2006, case C-170/05

²⁴⁶ Judgment of 26.10.2006, case C-345/05

introduced quotas for the enrolment of non-nationals. Austria, after having temporarily suspended the legislation condemned by the Court, introduced in 2006 legislation which provides that, in medicine and dentistry, 75% of the study places are reserved to applicants with a secondary education diploma awarded in Austria, with only 20% reserved for other EU students and the remaining 5% reserved to third-country nationals, largely in order to limit the access of German students having the same language as Austria and equally confronted in their home country with a national policy of *numerus clausus*.

The French Community of Belgium adopted the decree of 16 June 2006 which introduces a quota of 70% for students who have their residency in Belgium. In 2006, DG EAC contacted these Member States asking them to submit their justifications for the introduction of these systems, which have discriminatory effects on other EU nationals. Discriminatory measures, according to the Treaty, are justified only in cases of public policy, public security and public health. In the present cases, these reasons cannot be invoked and the measures appear to be incompatible with Art. 12 EC.

The area of recognition of diplomas for academic purposes allows young people and students to start or carry on their studies in another Member State than the Member State of origin. It enhances the mobility of students, which is one of the aims of EU activities in the field of education. Academic recognition of qualifications falls within national competence. However Member States must make sure that they do not apply any direct or indirect discrimination on grounds of nationality. Difficulties persist in this field, despite the efforts of the Commission to encourage political cooperation which could lead to the full recognition of studies in other Member States. However, the differences in the organisation of the Member States' education systems and the differences in curricula impede this objective. In this area EAC has examined a case of excessive costs of the academic recognition procedure. In the case of Portugal, the cost imposed on students for the recognition of their qualifications is higher than the real costs for the examination of the application of equivalence by the national administration. This situation is incompatible with the principle of free movement, as it creates obstacles of an administrative nature to the mobility of students. This practice is incompatible with the aims of Community action in the field of education which supports the mobility of students and teachers by encouraging, *inter alia*, the academic recognition of diplomas and periods of study. A letter of formal notice was sent to Portugal in 2006.

Directorate general Education and culture also examined, with the cooperation of Directorate general Internal market, the case of a holder of an undergraduate degree on combined literature studies from a UK University who later obtained a post-graduate diploma in legal practice and wished to enrol with the Bar in Greece (case Morgenbesser), but her qualifications were not recognised by the competent Greek authorities and consequently she cannot practice law in that country. In cases of this type the national authorities must take into account, not only the diplomas obtained but also any other knowledge that the complainant obtained in legal issues and the professional training undergone. The national authorities have the right to ask the complainant to demonstrate that she has acquired the knowledge and qualifications that she lacks, before taking her up into the list of trainee lawyers.

Directorate general Education and culture continues to receive a large number of letters from EU citizens regarding the exercise of their rights of free movement. The questions concern the conditions of access to education, the conditions of eligibility for grants and loans in the host Member State, etc. When Directorate general Education and culture receives questions concerning individual cases, it submits them to the SOLVIT network, which has dealt with a

number of questions and successfully assisted citizens in resolving the problems they have experienced with national administrations.

2.13. Health and Consumer Protection

In the health and consumer protection policy area the Commission is continuing its efforts to improve the existing legislation by clarifying and simplifying the existing provisions, while maintaining a high level of public health safety. A new legislation on hygiene of foodstuffs aiming to achieve a high level of consumer protection at all stages of the food chain, entered into force on 1 January 2006. The new rules effectively bring together 14 different Directives on consumer protection in food, animal health and controls²⁴⁷.

The timely transposition of Directives and correct implementation of the legislation remains one of the main priorities of the Commission in. It must be noted that in most cases infringement procedures in this policy area have been initiated on the basis the Commission's own initiative as a result of the verification of transposition measures or as a result of an insufficient response by Member States to the recommendations made in the Food and Veterinary Office (FVO) inspection reports.

Also prevention of infringements remains an important objective for the Commission services in charge of health and consumer protection. Under the procedure provided for in Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations, these services commented in 2006 135 notifications of draft legislations in order to avoid that Member States adopt legislations which would not be compliant with Community law.

An overview of proceedings under way regarding *failure to notify transposition measures for Directives* is presented in Annex IV, part 2 to this report

Public health

Particularly in this field of its competencies, the Commission has been very active and developed an important pressure on the Member States in order to obtain without delay the full compliance with the Community legislation i.a. the legislation aiming to reduce the risks related to the consumption of tobacco. It made an optimal use of the infringement procedure as laid down in Article 226 of the Treaty.

The Tobacco Advertising **Directive 2003/33/EC** bans tobacco advertising in printed media, on radio and over the internet. It also prohibits tobacco sponsorship of cross-border events or activities, such as Formula One races. It applies only to advertising and sponsorship with a cross-border dimension. Advertising in cinemas and on billboards or using merchandising (e.g. ash trays or parasols) therefore falls outside its scope, although these can still be banned under national law. Tobacco advertising on television has been banned in the EU since the early 1990s, and is governed by the TV Without Frontiers Directive.

²⁴⁷ In this respect it can be recalled that in a specific infringement case, the Commission issued very rapidly a letter of formal notice vis-à-vis the United Kingdom since it did not purport the necessary controls with regard to a company which produced cheese using milk not complying with the requirements of the hygiene regulation 854/2004.

On 28 June, the European Commission decided to refer Germany to the European Court of Justice (ECJ) for non-transposition of the Tobacco Advertising Directive 2003/33/EC. However Germany subsequently complied with its communication obligation.

The Commission assessed in very short time the national legislations notified under this Directive and launched without delay the necessary legal actions against Member States which did not correctly transpose this Directive or allowed exemptions from the sponsorship ban, which is a core aspect of this legislation.

In this context the Commission initiated in April 2006 infringement proceedings against the Czech Republic, Italy, Hungary and Spain. The Commission has referred already in November the infringement case against Italy to the Court. It sent also reasoned opinions to Spain, Hungary and the Czech Republic.

Furthermore, the Commission started in December 2006 the infringement procedure under Article 228 of the Treaty against Finland because this Member State failed to comply with the judgment of the Court in case C- 343/05. In that case the Court condemned Finland because the Aland Islands did not transpose the obligation to prohibit the placing on the market of oral tobacco as provided in Article 8 of **Directive 2001/37/EC** .

Consumer protection

Directive 93/13/EEC of the European Parliament and of the Council of 5 April 1993 aims to protect consumers against unfair terms in contracts. On 10 April 2006 the Commission initiated an infringement procedure under Article 228 of the Treaty against Spain for having failed to comply with the judgment of the Court of 9.9.2004 in case C-70/03. This judgment was a result of an infringement procedure started by the Commission, on its own initiative, against Spain because this Member State had not correctly transposed the before mentioned Directive. After having received a reasoned opinion Spain adopted end of December 2006 legislation with the aim to put an end to the infringement. The Commission now assesses this legislation.

Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety regulates safety controls of all consumer products (except food). It sets safety requirements for consumer products such as sports- and playground equipment, child care articles, lighters and most household products such as textiles and furniture. For the first time, manufacturers have the legal obligation to inform authorities if a product is unsafe. These are recalled and taken of the market. Also for the first time the Commission can even now initiate recalls and provisional bans to assure the same level of protection for the entire EU.

In March 2006 the European Court of Justice condemned Luxembourg for failure to transpose the General Product Safety Directive (Case C-310/05). Luxembourg, subsequently complied with its communication obligation.

Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC lays down common rules for selling contracts for credit cards, investment funds, pension plans, etc. to consumers by phone, fax or internet. It complements and underpins the e-commerce Directive, making it

easier for businesses to operate under legal certainty and for consumers to make transactions with confidence.

In December 2006 the European Court of Justice condemned Luxembourg for failure to transpose the Directive 2002/65/EC (Case C-127/06). Luxembourg, subsequently complied with its communication obligation.

Food safety, animal safety and animal welfare

The FVO works to assure effective control systems and to evaluate compliance with EU standards within the EU. The FVO does this mainly by carrying out inspections in Member States.

The FVO makes recommendations to the Member States' competent authority to deal with any shortcomings revealed during the inspections. The competent authority is requested to present an action plan to the FVO on how it intends to address any shortcomings. Together with other Commission services, the FVO evaluates this action plan and monitors its implementation through a number of follow-up activities.

In the cases that Member States do not realise sufficient progress when implementing the action plans the Commission does not hesitate to start infringement proceedings.

In that framework the Commission sent in 2005 a reasoned opinion to Denmark because that Member State allowed to import fishery products from Russian freezer vessels which were not on the positive list established by Decision 97/102/EC. After having been informed by the Danish authorities, in May 2006, that the necessary measures had been taken to comply with the reasoned opinion, the Commission decided to close this case.

In three other cases, all against Greece, the Commission decided to continue the infringement proceedings because that Member State failed to comply swiftly enough with several important pieces of the Community legislation. The Commission sent a reasoned opinion because FVO inspections demonstrated that the Community provisions concerning the protection of animals during transport and in slaughterhouses are not applied in a satisfactory way. Furthermore, as the FVO found in September 2005 evidence of major deficiencies in the treatment of animal by-products, the Commission decided to send also a reasoned opinion for these shortcomings which may put in danger human health. Already in 2004 the Commission launched an infringement procedure against Greece because the FVO missions have highlighted since 1998 the existence of important fundamental shortcomings in the performance of the Greek authorities' official controls in the area of food safety, animal health animal welfare. These shortcomings are attributable to the scarcity of human resources in the Greek veterinary services. As the Commission concluded that the results of the efforts made by the Greek authorities to solve this problem were unsatisfactory, the Commission decided in December 2006 to refer the case to the Court.

In two cases the Commission was able to close infringement procedures: Sweden, by amending its legislation which provided unacceptable obligations on traders which import meat and meat products from other Member States, complied with the judgment of the Court of 20 October 2005 in case C-11/03; France, by repealing a legislation prohibiting the placing on the market of thymus, avoided a referral to the Court.

Finally, the Commission has sent a reasoned opinion to two Member States which infringe provisions of Directive 91/414/EEC concerning the placing of plant protection products on

the market. A first case concerns the Netherlands which restrict too much the movement of plant protection products which are not authorised in that Member State but which are intended to be exported to another Member State where these products are authorised. Although the Dutch authorised announced the intention to comply the Commission was not satisfied by the speed of the Dutch legislative process. In the second case the Commission considered that Spain failed to comply with the provisions concerning data protection because this Member State adopted a legislation providing for a derogation which is not foreseen in Directive 91/414/EEC.

2.14. Justice, Freedom and Security

2.14.1. Transposition of directives on asylum and immigration

In 2006, the deadlines for transposition by the Member States have expired for four Council Directives: Directive 2004/83²⁴⁸, Directive 2003/109²⁴⁹, Directive 2004/81²⁵⁰ and Directive 2004/82/EC²⁵¹. Concerning all these Directives, a disappointing number of Member States have failed to comply with the transposition deadline, resulting in infringement procedures opened against them. Regarding Directive 2003/109, reasoned opinions were sent to Belgium, Cyprus, Finland and the Netherlands, while a decision was taken to refer Germany and Lithuania to the Court of Justice, and Spain²⁵², France²⁵³, Hungary²⁵⁴, Italy²⁵⁵, Luxembourg²⁵⁶ and Portugal²⁵⁷ were referred to the Court of Justice for non-communication of national transposition measures.

Following the decision of the Court of Justice on 8 September 2005²⁵⁸ condemning Luxemburg for failure to notify measures transposing Council Directive 2001/40²⁵⁹, a reasoned opinion under Article 228 of the EC Treaty was sent to Luxemburg on 10 April 2006. Similarly, following the decision of the Court of Justice on 21 July 2005²⁶⁰ condemning Luxemburg for failure to notify measures transposing Council Directive 2001/51²⁶¹, a reasoned opinion under Article 228 of the EC Treaty was sent to Luxemburg on 18 October 2006.

²⁴⁸ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304, 30.9.2004, p. 12.

²⁴⁹ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44.

²⁵⁰ Council Directive 2004/81 of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ L 261, 6.8.2004, p. 19.

²⁵¹ Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data, OJ L 261, 6.8.2004, p. 24.

²⁵² Case C-2007/059.

²⁵³ Case C-2007/037.

²⁵⁴ Case C-2007/030.

²⁵⁵ Case C-2007/104.

²⁵⁶ Case C-2007/034.

²⁵⁷ Case C-2007/007.

²⁵⁸ Case C-2004/448 *Commission v Luxemburg*.

²⁵⁹ Council Directive 2001/40 of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals, OJ L 149, 2.6.2001, p. 34.

²⁶⁰ Case C-2004/449 *Commission v Luxemburg*.

²⁶¹ Council Directive 2001/51 of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, OJ L 187, 10.7.2001, p. 45.

All Member States have finally completed the transposition of the Council Directive 2001/55²⁶² in 2006.

In relation to the implementation of Council Directive 2002/90²⁶³, Luxemburg was condemned by the Court of Justice on 7 December 2006 for failure to notify measures transposing the Directive²⁶⁴, while the Commission referred Germany to the Court of Justice for non-communication of national transposition measures²⁶⁵.

As for the Council Directive 2003/9²⁶⁶, Austria was condemned by the Court of Justice on 26 October 2006 for failure to notify measures transposing the Directive²⁶⁷ while Belgium, Germany and Greece were referred to the Court of Justice for non-communication of national transposition measures²⁶⁸.

As regards the Council Directive 2003/86²⁶⁹, the Commission sent a reasoned opinion to Cyprus. A decision was taken to refer Germany to the Court of Justice, while Italy²⁷⁰, Luxemburg²⁷¹ and Malta²⁷² were referred to the Court of Justice for non-communication of national transposition measures.

Concerning Council Directive 2003/110²⁷³, a decision was taken to refer Germany, Estonia and France to the Court of Justice, while Belgium²⁷⁴, Greece²⁷⁵, Spain²⁷⁶, Italy²⁷⁷, Luxemburg²⁷⁸, Malta²⁷⁹ and Portugal²⁸⁰ were referred to the Court of Justice for non-communication of national transposition measures. The Commission has also sent a reasoned opinion to Cyprus for non-communication of national transposition measures.

²⁶² Council Directive 2001/55 of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212, 7.8.2001, p. 12.

²⁶³ Council Directive 2002/90 of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence, OJ L 328, 5.12.2002, p. 17.

²⁶⁴ Case C-2006/048 *Commission v Luxemburg*.

²⁶⁵ Case C-2006/485.

²⁶⁶ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L 31, 6.2.2003, p. 18.

²⁶⁷ Case C-2006/102 *Commission v Austria*.

²⁶⁸ Cases C-2006/389, C-2006/496 and C-2006/072 respectively.

²⁶⁹ Council Directive 2003/86 of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003, p. 12.

²⁷⁰ Case C-2007/091.

²⁷¹ Case C-2007/057.

²⁷² Case C-2007/087.

²⁷³ Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air, OJ L 321, 6.12.2003, p. 26.

²⁷⁴ Case C-2007/003.

²⁷⁵ Case C-2007/029.

²⁷⁶ Case C-2007/058.

²⁷⁷ Case C-2007/086.

²⁷⁸ Case C-2007/051.

²⁷⁹ Case C-2007/079.

²⁸⁰ Case C-2007/004.

2.14.2. Citizenship

As for the two Directives on the right of the Union citizens to vote and stand as a candidate in elections to the European Parliament and in municipal elections (Directives 93/109²⁸¹ and 94/80²⁸² respectively), communication of national transposition measures is considered satisfactory. In 2006 the Commission adopted a Communication on European elections²⁸³ and a proposal for a Council Directive amending Directive 93/109²⁸⁴. Implementation by the 10 new Member States that joined the EU in 2004 continued to be assessed.

In its judgment of 12 September 2006²⁸⁵ the Court of Justice confirmed the Commission's view that the United Kingdom legislation granting the franchise in Gibraltar to "qualified Commonwealth citizens" which include certain non-British third country nationals, had extended the voting rights within the margin of discretion presently given to Member States by EU law. Furthermore, in this judgment and in a further judgment of the same day concerning the right to vote of Dutch citizens residing in Aruba²⁸⁶, the Court of Justice stressed that it is currently for Member States to regulate aspects of EP electoral procedure not harmonised at Community level and in particular to define the persons entitled to vote and to stand as a candidate. However, they must respect Community law, including general principles, under the Court's control.

2.14.3. Free movement of persons

According to the third and last Commission's report²⁸⁷, the application of the Directives 90/364, 90/365 and 93/96 on the right of residence for students, economically inactive and retired Union citizens is basically satisfactory as the declining number of infringements shows. However, the national implementation measures of five Member States were still subject to infringements procedures for non-conformity or incorrect application.

Application of Directives 64/221, 72/194, 73/148, 75/34 and 75/35 relating to the movement and residence of foreign nationals is also considered satisfactory, and the number of

²⁸¹ Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, OJ L 329, 30.12.1993, p. 34.

²⁸² Council Directive 94/80 of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, OJ L 368, 31.12.1994, p. 38. Directive as last amended by Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, OJ L 236, 23.9.2003, p. 33.

²⁸³ Commission report on the participation of European Union citizens in the Member State of residence (Directive 93/109/EC) and on the electoral arrangements (Decision 76/787/EC as amended by Decision 2002/772/EC, Euratom) – COM(2006) 790 final.

²⁸⁴ Proposal for a Council Directive amending Directive 93/109/EC of 6 December 1993 as regards certain detailed arrangements for the exercise of the right to vote and stand as candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, COM(2006) 791 final.

²⁸⁵ Case C-145/04, Spain v. UK

²⁸⁶ Case C-300/04, Eman and Sevinge

²⁸⁷ Third Commission report to the Council and Parliament on the application of Directives 93/96, 90/364, 90/365 on the right of residence for students, economically inactive and retired Union citizens – COM(2006) 156 final.

complaints received by the Commission is declining. Nevertheless, there were still individual cases of non-compliance or incorrect application.

Directives 64/221²⁸⁸, 68/360²⁸⁹, 72/194²⁹⁰, 73/148²⁹¹, 75/34²⁹², 75/35²⁹³, 90/364²⁹⁴, 90/365²⁹⁵ and 93/96²⁹⁶ were repealed and replaced by the Directive 2004/38²⁹⁷ with effect from 30 April 2006. This Directive also amended Regulation 1612/68²⁹⁸ and replaced Regulation 1251/70²⁹⁹.

As concerns the implementation of Directive 2004/38, which marks an important step forward in the rights of free movement of persons, Belgium, Czech Republic, Germany, Greece, Spain, France, Italy, Cyprus, Luxembourg, Hungary, Malta, Finland and the UK were sent a reasoned opinion on 15 December 2006 for non-communication of national transposition measures.

On 31 January 2006 the Court of Justice gave an important judgement³⁰⁰ explaining, for the first time, the relationship between the Convention implementing the Schengen Agreement and freedom of movement for persons. Where third country nationals who are the spouses of Member State nationals are persons for whom alerts are entered in the SIS for the purpose of refusing them entry, a Member State must verify whether the presence of those persons constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society before refusing them entry into the Schengen Area.

²⁸⁸ Directive 64/221 of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, OJ 56, 4.4.1964, p. 850, English special edition Series I Chapter 1963-1964, p. 117.

²⁸⁹ Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, OJ L 257, 19.10.1968, p. 13.

²⁹⁰ Directive 72/194 of 18 May 1972 extending to workers exercising the right to remain in the territory of a Member State after having been employed in that State the scope of the Directive of 25 February 1964, OJ L 121, 26.5.1972, p. 32, English special edition Series I Chapter 1972(II), p. 474.

²⁹¹ Directive 73/148 of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, OJ L 172, 28.6.1973, p. 14.

²⁹² Directive 75/34 of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity, OJ L 14, 20.1.1975, p. 10.

²⁹³ Directive 75/35 of 17 December 1974 extending the scope of Directive 64/221 to include nationals of a Member State who exercise the right to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity, OJ L 14, 20.1.1975, p. 14.

²⁹⁴ OJ L 180, 13.7.1990, p. 26.

²⁹⁵ OJ L 180, 13.7.1990, p. 28.

²⁹⁶ OJ L 317, 18.12.1993, p. 59.

²⁹⁷ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30.4.2004, p. 77.

²⁹⁸ Regulation (EEC) No 1612/68 of the Council of 19 October 1968 on freedom of movement of workers within the Community.

²⁹⁹ Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State.

³⁰⁰ Case C-503/03 *Commission v Spain*.

On 23 March 2006 the Court of Justice also ruled in another important case³⁰¹ that by making the right of residence of citizens of the Union subject to the requirement that they have sufficient personal resources Belgium had failed to fulfil its obligations under Article 18 EC and Directive 90/364 and that by making provision for automatic service of an order to leave Belgian territory on citizens of the Union who do not produce within the prescribed period the documents required to obtain a residence permit, Belgium had failed to fulfil its obligations under Directives 90/364, 68/360, 73/148, 93/96 and 90/365.

2.14.4. Visas

Few cases of infringements of Community legislation related to visas have been detected, such as those related to fees to be charged when issuing Schengen visa, uniform application form provided for requesting Schengen visa or not issuing residence permits of the uniform format following prescribed technical specifications, resulting in infringement proceeding ongoing in 2006.

2.14.5. Judicial cooperation in civil matters

By the end of 2006, all Member States notified their national legislation implementing Directive 2003/8 on legal aid³⁰².

Regarding Directive 2004/80³⁰³, a reasoned opinion was sent to Malta, while Greece and Italy were referred to the Court of Justice³⁰⁴ for non-communication of national transposition measures.

A study on application of the Regulation 1206/2001 on taking evidence in civil or commercial matters³⁰⁵ has been launched in 2006, with the final report of the study expected in 2007. An evaluation study of application of Regulation 44/2001 on jurisdiction, recognition and enforcement of judgements in civil and commercial matters³⁰⁶ was continued in 2006, with the final study expected in 2007.

2.14.6. Protection of Personal Data

The Commission has continued the structured dialogue with Member States on the implementation of the data protection Directive. Even though all Member States have now transposed the data protection Directive³⁰⁷, the structured dialogue has shown that some Member States have failed to incorporate a number of provisions of the Directive. In other cases, transposition or practice has not been conducted in line with the Directive or has fallen

³⁰¹ Case C-408/03 Commission v. Belgium

³⁰² Council Directive 2003/8 of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, OJ L 26, 31.1.2003, p. 41.

³⁰³ Council Directive 2004/80 of 29 April 2004 relating to compensation to crime victims, OJ L 261, 6.8.2004, p. 15.

³⁰⁴ Cases C-2007/026 and C-2007/112 respectively.

³⁰⁵ Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, OJ L 174, 27.6.2001, p. 1.

³⁰⁶ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16.1.2001, p. 1.

³⁰⁷ Council Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31.

outside the margin of manoeuvre left to Member States. A number of infringement proceedings have been opened, among which Germany was sent a reasoned opinion in 2006.

2.15. Enlargement

Infringement proceedings in the field of enlargement are usually based on complaints about bad application by Member State authorities or courts of the **Association or Europe Agreements** between the Community and candidate countries.

The Commission referred one Member State to the Court in a case concerning workers' rights on access to the labour market of Member States under **Decision 1/80 related to the EU/Turkey Association Agreement**.

There are at present no other infringement cases related to the Association or Europe Agreements, or Association and Stabilisation Agreements. However, the Court is dealing with a number of references for a preliminary ruling in the field of worker's rights under the EU-Turkey Association Agreement.

2.16. Eurostat

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

The infringement procedure initiated against Greece for failure to submit **statistics on excessive deficits**, in accordance with Regulations (EC) No 3605/93³⁰⁸ and 2223/96³⁰⁹ and for infringement of Article 10 of the EC Treaty and Article 3 of the Protocol on the excessive deficit procedure, to the Commission is ongoing. The Commission is ensuring that the Greek authorities are taking the necessary measures to fully comply with this legislation. In accordance with Regulation (EC) n° 3605/93, a methodological report on the state of affairs, including an Action Plan, has been agreed between the Statistical Office of the European Community (Eurostat) and the Greek authorities. The Greek authorities implemented or agreed to implement most of the Eurostat recommendations. The Commission therefore considers that Greece is complying with this Community legislation.

With regard to **short-term statistics**, a proceeding was opened in 2004 against Greece for non-compliance with Regulation (EC) No 1165/98³¹⁰. Thanks to close cooperation between the Greek statistical authorities and the Commission, most of the information, identified in the letter of formal notice as missing, was subsequently submitted to Eurostat and the case was closed.

2.17. Personnel and Administration

In the Personnel and Administration field, the Commission must guarantee that Community law is applied correctly to the staff of the Communities. To this end it must ensure that the legislation and its implementing provisions are adopted by the Member States in compliance

³⁰⁸ Council Regulation (EC) No 3605/93 of 22 November 1993 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community

³⁰⁹ Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community.

³¹⁰ Council Regulation (EC) No 1165/98 of 19 May 1998 concerning short-term statistics.

with the Protocol on Privileges and Immunities of the European Communities and the Regulations and Rules applicable to officials and other servants of the European Communities.

In 2006, 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.

2.18. Budget

In the field of own resources the Court issued six judgments. All of them concerned traditional own resources: more precisely, those derived from customs duties. The Court confirmed once again that Member States are obliged to ensure that these resources of the Communities are made available rapidly and effectively.

The Court gave rulings on the treatment of non-discharged TIR transit operations in three Member States. In its judgment in Case C-105/02 against Germany, it confirmed the Commission's position that unpaid but guaranteed and unchallenged customs debts should be made available to the Commission in the same manner as collected customs duties. The Court also held that a Member State which unilaterally suspends recovery procedures remains obliged to transfer the relevant own resources to the Community. In a similar case against Belgium (C-377/03) the Court stated in addition that where a Member State does not make available guaranteed customs debts on the ground that they have been challenged, it has to prove such challenge (what Belgium was unable to do). In the case against the Netherlands (C-312/04) however, the Court held that the Commission did not provide sufficient proof that the Netherlands authorities were late in establishing and notifying the entitlements at issue.

As to payment of customs debts by instalments (Case C-377/03 against Belgium), the Court stated that Member States may not hold back the received amounts until full payment of the debt, but should make them available at once. Finally, in Case C-546/03 Commission against Spain concerning post clearance recovery of customs duties, the Court stated that Member States must establish own resources in accordance with the time limits laid down in the Community rules. Thus, national procedures suspending the levying of customs duties are independent from the obligations under the own resources legislation and, therefore, are irrelevant for the time limits concerning the establishment and making available of own resources under Regulation 1150/2000.

The Commission has referred two further cases to the Court in 2006 concerning certain military equipment for Italy and Portugal; thus, the number of pending infringement cases on military imports has increased to nine. In this context, Finland made two applications against the Commission to the Court of First Instance. Finland claims that the Commission is obliged to negotiate an agreement on special conditions under which Finland would make a conditional payment of the amounts at stake and the Commission nevertheless would refer the case to the Court. Since both applications have been unsuccessful at the CFI, Finland has launched an appeal to the Court.

Finally, the Commission has sent letters of Reasoned Opinion to Member States in four cases. Three of those cases (Denmark, Finland and Italy) concern Member States' delays in making available own resources in the framework of post clearance recovery (cf. Case C-546/03 against Spain, mentioned above). The fourth reasoned opinion was addressed to Italy in relation to default interest due for late recovery under the TIR procedure – this case follows

the line taken in 2005 in the context of external Community transit (T1) procedure (file A2003/2241).

2.19. Legal service

Court referral C-459/03, Commission against Ireland

In October 2001, Ireland instituted proceedings against the United Kingdom before the arbitral tribunal provided for under the United Nations Convention on the Law of the Sea with a view to resolving the dispute concerning the MOX plant, the international transfer of radioactive substances and the protection of the marine environment of the Irish Sea. The MOX plant is situated at Sellafield (United Kingdom) on the coast of the Irish Sea. It recycles material from nuclear reactors. Ireland raised the issue of the MOX plant with the United Kingdom authorities, questioning in particular the soundness of the reports and decisions which formed the basis for justification of the plant's construction.

In its judgement of 30 May 2006, in line with the position taken by the Commission in this case, the European Court of Justice declared that, by instituting dispute-settlement proceedings against the United Kingdom of Great Britain and Northern Ireland under the United Nations Convention on the Law of the Sea (UNCLOS) concerning the MOX plant located at Sellafield, Ireland had failed to fulfil its obligations under Articles 10 EC and 292 EC and under Articles 192 EA and 193 EA. Articles 292 EC and 193 EA provide that Member States should abstain from submitting a dispute concerning the interpretation or application of the Treaty in question to any method of settlement other than those provided for in the Treaties. Articles 10 EC and 192 EA provide that Member States have a duty to cooperate for the achievement of the objectives under the EC Treaty.

Following the Court's judgement, Ireland had an obligation to withdraw the dispute settlement proceedings against the UK. Failure to observe the said obligation would trigger the infringement mechanism provided for in Article 228 EC.

A number of communication exchanges took place between the Commission and Ireland after the judgment of the Court³¹¹.

³¹¹ Exchanges which led to the withdrawal by Ireland of the proceedings against the United Kingdom and the closure of the case by the Commission in 2007.