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SITUATION IN THE DIFFERENT SECTORS

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SITUATION IN THE DIFFERENT SECTORS

1. ENTERPRISE AND INDUSTRY

1.1. General introduction

Responsibility for ensuring the free movement of goods within the Single Market is entrusted to the Directorate General for Enterprise and Industry which manages a large part of the Community acquis consisting of Articles 34 to 36 TFEU in the non-harmonised area and a large quantity of subordinate Community legislation (regulations, directives and decisions) in the harmonised area. The acquis of the European Union under the management of DG Enterprise and Industry" (the latest version of the "Pink Book") is on the internet at

http://ec.europa.eu/enterprise/dg/files/pink_book_2008_en.pdf

As 'harmonising' rules are adopted in more and more sectors of the Single Market, the non-harmonised area is gradually shrinking. But some 25% of the market is still not subject to harmonised rules and, here, Articles 34-36 TFEU ensure the easy cross-border exchange of goods.

Generally speaking, the Community acquis governing the free movement of goods is stable and effective, although the highly technical nature of much of the legislation means that there is always considerable activity adapting it to technological progress. Steps are being taken to streamline this activity, for example in the automotive sector where a framework instrument lays down fundamental principles while technical specifications are established through comitology. In the cosmetics sector, the principal legislation has been recast in the form of a regulation, adopted by the legislature in November, which will apply from 11 July 2013. Future technical adaptations will be made by directly applicable Commission regulations.

The Commission's legislative activity in the "Enterprise and Industry" sector is fully in accordance with Better Regulation principles with preference being given to regulations which require less effort in relation their transposition. This sector also regards the simplification and codification of existing legislation as important tools in achieving better implementation of EU law. For example, preparatory work continued during 2009 for a recast of the medical devices legislation.

The REACH Regulation continues to be phased in with the Directive governing restrictions being repealed and replaced on 1 June. The pharmaceutical package continued its progress through the legislature under the co-decision procedure and measures were also adopted to simplify the systems governing variations and the classification of pharmacologically active substances regarding maximum residue limits.

In relation to the "goods package", adopted in 2008, the first national reports on the application of the regulation on procedural aspects of the mutual recognition principle are due in May 2010 which will enable an assessment of its initial impact to be made. Work is ongoing to align 10 existing new approach directives1 with the 'new legislative framework',

1 The 10 directives are-

created by the package. This will simplify the application of EU harmonising legislation. Crucially, the package will strengthen rules on market surveillance to protect consumers from unsafe products, shelter business from unfair competition from operators not complying with the law and reduce the risk for enterprises that their products do not gain access to the market of the Member State of destination. Efforts continued during 2009 to enhance the quality of market surveillance by the Member States.

In May 2009, the Council and the European Parliament adopted directive 2009/43/EC simplifying intra-EU transfers of defence-related products (OJ L 146, 10.6.2009, p. 1–36). This directive is the first internal market instrument dealing with the circulation of defence-related products. The directive will enable defence industries to benefit from smoother and more predictable supply chains while improving security of supply for EU armed forces relying on cross-border deliveries. The Directive must be transposed before 30 June 2011 and will fully apply from 30 June 2012.

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1. **Low Voltage Directive**: Directive 2006/95/EEC on the harmonisation of the laws of Member States relating to electrical equipment designed for use within certain voltage limits;

2. **Simple Pressure Vessels Directive:** Council Directive 2009//105/EC on the harmonisation of the laws of the Member States relating to simple pressure vessels;

3. **Non-automatic Weighing Instruments Directive:** Council Directive 90/384/EEC on the harmonisation of the laws of the Member States relating to non-automatic weighing instruments;

4. **Civil Explosives Directive**: Council Directive 93/15/EEC on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses;

5. **ATEX Directive:** Directive 94/9/EC of the European Parliament and the Council on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres;

6. **Lifts Directive** European Parliament and Council Directive 95/16/EC of 29 June 1995 on the approximation of the laws of the Member States relating to lifts

7. **Pressure Equipment Directive:** Directive 97/23/EC of the European Parliament and of the Council on the approximation of the laws of the Member States concerning pressure equipment;

8. **Measuring Instruments Directive**: Directive 2004/22/EC of the European Parliament and of the Council on measuring instruments;

9. **Electromagnetic Compatibility Directive**: Directive 2004/108/EC on the approximation of the laws of the Member States relating to electromagnetic compatibility and repealing Directive 89/336/EEC

10. **Pyrotechnic articles** Directive 2007/23/EC on the placing on the market of pyrotechnic articles

The proposal to recast the late payment directive was adopted on 8 April 2009. This is part of the Small Business Act which introduced a comprehensive SME policy framework for the EU and its Member States.

The Commission provides also guidance and other assistance to help Member States to transpose and implement new directives on time. Assistance is given using a variety of different tools (e.g. interpretative documents, bilateral meetings and Committee meetings).

A very valuable tool for dealing *in advance* with possible technical barriers to the free movement of goods in the non-harmonised area is Directive 98/34/EC, which requires the 27 Member States, the EFTA countries and Turkey to notify all national technical regulations concerning products and Information Society Services *at the draft stage*. The steady high number of notifications (736 in 2009) and reactions from the Commission (173) and the Member States (217) underlines the importance of Directive 98/34/EC as a tool for the prevention of barriers to intra-Community trade - and indeed for better regulation since it provides a forum for making suggestions to improve the quality of national legislation. Its ex ante operation means that time-consuming and sometimes controversial infringement procedures can be avoided.

In addition, the Commission monitors the correct application of the *acquis* under its responsibility and opens infringement procedures against Member States if necessary. In 2009, the Commission registered 50 new complaints in this sector.

The Commission services attach great importance to resolving problems coming to its attention as quickly as possible and support the use of methods other than infringement proceedings such as the EU Pilot project, designed to clarify and solve problems with the application of EU law in cooperation with the participating Member States. They also organise “package meetings” and bilateral meetings with the Member States to provide advice to national authorities to help ensure the correct application of the EU law.

In the framework of infringement proceedings, non-communication cases and article 260 TFEU cases are dealt with as quickly as possible, given their automatic priority status under the September 2007 Communication. In accordance with the other criteria set out in the Communication, since 2009 priority status in this sector has been given to the following cases:

Non-harmonised area

• The failure by a MS to notify national technical rules in draft under Directive 98/34/EC. Such failure renders the rules liable to be declared null and void.

• Breaches of Articles 34-36 TFEU raising horizontal questions about the functioning of the market (e.g. the registration of vehicles).

Harmonised area

Breaches of key directives, in particular new legislation which is adopted in response to a clearly identified need to correct/enhance market performance and should be enforced in a manner commensurate with the risk of failing to achieve that aim.

The considerable share of the Community acquis dealt with by the Commission services responsible for the "Enterprise and Industry" sector covers a wide variety of product domains,

in relation to each of which are set out below a description of the current state of the legislation in force, an evaluation of the effectiveness of regulatory framework in the domain concerned and an indication of plans for the future. Information is also provided about infringement proceedings pursued in each product domain.

1.2. Automotive Industry

Current position

The harmonized regulatory framework in the automotive sector covers motor vehicles, motorcycles (two and three-wheel vehicles as well as certain quadricycles), and agricultural or forestry tractors. The legislation, which lays down common requirements designed to protect environmental and safety objectives, is based on a system of whole-vehicle type approval which allows manufacturers to have a vehicle "type" approved in one EU Member State and then to be able to market vehicles of that type in all other Member States without further tests. It deals with a multitude of detailed technical specifications for different vehicle systems and components which are frequently modified to adapt them to technical progress while reducing the regulatory burden on industry.

In relation to type-approval of new vehicles, there are three main framework Directives:

Directive 2007/46/EC establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles;

Directive 2002/24/EC relating to the type-approval of two-or three-wheel motor vehicles; and

Directive 2003/37/EC relating to the type-approval of agricultural or forestry tractors, their trailers and interchangeable towed machinery, together with their systems, components and separate technical units.

While the latter two directives still allow a national approval system to operate for certain vehicle categories in parallel**,** Directive 2007/46/EC in principle provides for the phasing-in of obligatory EC-whole vehicle type approval (and in particular the phasing out of national whole vehicle type approval for heavy-duty vehicles and their trailers).[2] In addition to the framework Directives, separate regulatory acts lay down harmonized technical requirements for the type-approval of individual parts and characteristics of a vehicle.

In line with better regulation and simplification principles and to increase the competitiveness of EU industry on the global market, in the wake of the CARS 21 exercise the regulatory framework in the automotive sector has been reformed along the following lines: (i) the introduction of the 'split-level' approach: the co-decision 'framework' act is intended to lay down fundamental provisions while the technical specifications are set out through comitology; (ii) the use of Regulations instead of Directives; and (iii) international

2 From 29 April 2009, the national legislation transposing Directive 2007/46/EC became applicable, and the repeal of its predecessor, Directive 70/156/EEC, took effect.

harmonisation: whenever possible, EU acts are replaced by UNECE Regulations compliance with which is made mandatory.[3]

Report of work done in 2009

During 2009, various steps were taken to implement, simplify and update the technical legislation in the sector. In particular, in early 2009 Regulations were adopted on the type-approval of motor vehicles with regard to pedestrian protection[4] and on the type-approval of hydrogen-powered vehicles[5]. This was followed in June by a Regulation adopted by the Council and the European Parliament laying down stricter exhaust emission levels for heavy-duty vehicles (Euro VI).[6] Shortly thereafter, in July, the Commission adopted a Regulation on type approval requirements for the general safety of motor vehicles.[7] By virtue of this last Regulation, UNECE regulations adopted in accordance with the 1958 UNECE Agreement will become compulsory for the majority of items currently the subject of EU type-approval, thereby significantly simplifying the regulatory system. Preparatory work was also begun on the revised regulatory framework for type-approval legislation in relation to two and three-wheeled vehicles and tractors, notably the impact assessments for the two proposals and a very specific comitology approval for some aspects of the tractor legislation.

In October 2009, the Commission decided to establish the *Type-Approval Authorities Expert Group* (TAAEG) - a consultative body composed of representatives of all national type-approval authorities. Bearing in mind that EC whole vehicle type-approval will gradually become mandatory by October 2012 for all new types of motor vehicles, the aim of the TAAEG is to ensure uniform application of the relevant technical requirements within the EU type-approval system. This will involve several tasks, including monitoring the enforcement of EU legislation by national authorities and solving the issue of diverging views concerning type-approval in order to ensure mutual recognition.

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3 UNECE Regulations are harmonized technical regulations regarding new motor vehicles and motor vehicle equipment that are adopted pursuant to the 1958 Agreement under the auspices of the United Nations Economic Commission for Europe (www.unece.org). As a contracting party to the 1958 UNECE Agreement, the European Union can decide to apply a Regulation.

4 Regulation (EC) No.78/2009 of the European Parliament and of the Council of 14 January 2009 on the type-approval of motor vehicles with regard to the protection of pedestrians and other vulnerable road users (OJ L 35, 4.2.2009, p.1).

5 Regulation (EC) No.79/2009 of the European Parliament and of the Council of 14 January 2009 on type-approval of hydrogen-powered vehicles (OJ L 35, 4.2.2009, p.32).

6 Regulation (EC) No.595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information (OJ L 188, 18.7.2009, p.1).

7 Regulation (EC) No.661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor (OJ L 200, 31.7.2009, p.1).

The Commission has also taken steps to provide practical guidance to Member States. In particular, it became clear in early 2009 that many Member States had introduced or were planning to introduce scrapping schemes for vehicles. In light of this, a seminar on best practices on scrapping schemes was organized for Member States in February 2009. This was followed by the publication of guidance on scrapping schemes.[8] Member States also introduced or have announced their intention to introduce financial incentives for vehicles that fulfil pollutant emission limits that are stricter than those currently in force. Consequently, in November 2009, a Commission staff working document, "Guidance on Financial Incentives for Vehicles" was published with a view to providing practical guidance for Member States wishing to introduce such incentives.[9]

Thirty-two infringement cases were opened during 2009 in relation to EU legislation in this sector (compared to 29 cases in 2008). All but one of these cases resulted from late communication of national measures transposing EU Directives (which generally contained technical updates of the *acquis*). The Member States most at fault were Austria, Latvia and Portugal (with four proceedings each). The majority of these cases were closed after national implementation measures were communicated by the Member States. In around two-thirds of these closed cases, communication took place before the Commission issued a Reasoned Opinion. The Commission opened one own-initiative infringement case in 2009 concerning the conformity of national financial incentives with the harmonised Euro 5/Euro 6 legislation for light-duty vehicles.

During 2009 the Commission services continued to deal with a steady number of questions, complaints and queries in relation to legislation in the automotive sector. Complaints or requests for information were also periodically sent via the petition procedure. Most inquiries were submitted by individuals or SMEs. In many cases, the issues raised could be dealt with by giving guidance on the Commission's interpretation of the relevant EU legislation. Where the complaint turned out to be unsubstantiated, the matter was closed and the reasons for doing so were explained.

Evaluation

Through the CARS 21 process, the Commission has developed a medium to long-term, coordinated and predictable policy framework for the automotive industry based on continuous dialogue and consultation with all main stakeholders. In the preparation of legislative proposals and policy initiatives, the Commission is assisted by two types of advisory bodies: comitology committees and working groups. In the case of technical amendments to legislation, the Commission acts in close cooperation with Member States in comitology on implementation issues. The informal working groups, which may consist not only of national experts but also experts or stakeholders from industry, NGOs, trade unions, academia, etc., provide expert advice to the Commission.

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8 http://ec.europa.eu/enterprise/sectors/automotive/competitiveness-cars21/competitiveness/index_en.htm

9 SEC(2009)1589 final/2

As a result of this close cooperation between the Commission and Member States, significant problems regarding conformity or incorrect application are a relatively rare occurrence. Nevertheless, the complexity of the legislation in this sector and the constant development of new technologies (and the corresponding adaptation of legislation) mean that problems of interpretation are an ever-present risk. On occasion, the Commission has had to give its interpretation of the legislation in order to maintain a harmonized approach. In addition, Member States may take measures which risk compromising the harmonized approach.

In many cases, due to the technical nature of the legislation, Member States resort to transposing technical amendments by reference to EU acts. However, this is not always the case. Where this occurs, the use of correlation tables is particularly helpful.

Finally, the approach taken in co-decision legislation on the harmonization of vehicle standards now favours the adoption of Regulations rather than Directives (one exception being the framework Directive 2007/46/EC on the type-approval of motor vehicles). Consequently, there is no transposition of these acts and this should increase overall efficiency by lowering the overall number of infringement cases based on non- or late communication of national transposition measures.

Consequences of evaluation

The main priority in the automotive sector continues to be the proper implementation, management and enforcement of legislative acts. This is unchanged over the last 12 months. In particular, there has to be long-term regulatory clarity as well as accurate quantification of the costs and benefits of legislative activity, notably by recourse to impact assessments where appropriate. Given the impact of the current economic crisis, the Commission will weigh up the costs and benefits of new legislative initiatives and seek, as far as possible, to avoid creating new economic burdens.

A significant proportion of the work in the automotive sector in 2010 and beyond will be focused on recasting the legislative framework, its subsequent completion and the implementation of new technical legislation.

In particular, regulatory framework for type-approval legislation in relation to two and three-wheeled vehicles and tractors is to be revised. New legislation will update and replace the present framework Directive and separate Directives. The Commission is also working on various proposals to complete the framework Directive 2007/46/EC for the type-approval of motor vehicles and trailers (e.g. a Commission Regulation to harmonize the administrative and technical provisions regarding individual approvals) as well as implementing measures for the type-approval of hydrogen vehicles, Euro VI and general safety. A number of Directives due for partial repeal through the application of the General Safety Regulation and for which there is no equivalent UNECE Regulation will be the subject of a recast and where possible simplified. Finally, preparatory work is ongoing to make mandatory the application of UNECE Regulation No.100 for the type-approval of electric vehicles.

Summary

The current situation regarding compliance by Member States with the *acquis* in the automotive sector is generally acceptable. Nevertheless, there are delays in the transposition of certain Directives (for example, framework Directive 2007/46/EC, where only 15 Member States communicated national transposition measures before the deadline). The constant

evolution of technical legislation means that it is important to pay close attention to timely transposition and effective enforcement to ensure that objectives are met.

1.3. Chemicals

1.3.1. REACH

Current position

Regulation No 1907/2006 (REACH) is the cornerstone of the EU's new chemicals legislation, which began to apply on 1 June 2008.

REACH deals with the registration, evaluation, authorisation and restriction of chemical substances. Registration of chemicals with the European Chemicals Agency ("ECHA") is designed to obtain information on manufactured and imported substances to establish whether industry is taking adequate measures to ensure their safe use. Subsequent evaluation by ECHA may include a compliance check on registration files and the examination of testing proposals. Certain substances may undergo 'substance evaluation', whereby national authorities may request from industry further information on a given substance, taking a risk-based approach, and consider further regulatory measures. In relation to substances giving rise to very high concern, it may be necessary to obtain Commission authorisation before they can be placed on the market or used, under stipulated conditions. Finally, the manufacture, import and use of substances that pose unacceptable risks to human health or the environment may be partly or totally restricted.

Report of work done in 2009

The REACH system is supplemented by a comprehensive package of technical guidance documents that was already in place by mid 2008, to ensure its uniform and consistent interpretation. Throughout 2009, the Commission assisted ECHA in developing further guidance and reviewing and updating existing guidance, actively participated in various ECHA committees and organised workshops for industry stakeholders with a view to ensuring that REACH functions properly. Many implementation problems were resolved in collaboration with ECHA, which has developed various tools to help operators fulfil their REACH obligations (guidance package, Navigator tool, helpdesk, FAQs etc.). National REACH helpdesks are also functioning well.

The Commission also carried out a review of Annex II of REACH (compilation of the safety data sheet), with the main aim of aligning it with the new "CLP" Regulation (Regulation (EC) No 1272/2008). With regard to restrictions, REACH replaced Directive 76/769/EEC on 1 June 2009. Until then, amendments to Directive 76/769/EEC were being enacted as decisions instead of directives, as they did not require transposition. A number of decisions on restrictions were adopted: Decision No 455/2009 of the European Parliament and of the Council on Dichloromethane, Commission Decision No 2009/424 on lamp oils and grill lighters and Commission Decision 2009/425 on organotin compounds. The Commission reviewed Annex XVII of REACH, clarifying the drafting to facilitate implementation when the text is directly applicable. It was also adapted to definitions contained elsewhere in REACH and to the "CLP" Regulation, and to ensure coherence of the restrictions under REACH with other EU legislation. In addition, Annex XVII was completed with recently adopted restrictions not included in the existing text which reflected the situation in mid 2006: Directive 2006/122/EC on perfluorooctane sulfonates (PFOS), Directive 2006/139/EC on

arsenic, Directive 2007/51/EC on mercury in measuring devices and Decision 1348/2008/EC on 2(2-methoxyethoxy)ethanol, 2-(2-butoxyethoxy)ethanol, methylenediphenyl diisocyanate, cyclohexane and ammonium nitrate.

The Commission actively participated at three meetings of the Forum for the Exchange of Information on Enforcement, comprised of representatives of national enforcement authorities, with a view to identifying joint enforcement strategies and priorities. The first EU-coordinated enforcement project was carried out by Member States during 2009 and more than 1000 inspections were carried out. The results of this project are expected by the end of the first quarter of 2010. In addition, the Forum is developing an electronic information exchange procedure.

The Commission continued to hold regular dialogues on various implementation issues with Member States, competent authorities and other stakeholders in three meetings of its expert group "Competent Authorities for the REACH and CLP Regulations (CARACAL)" and its subgroups, notably the Subgroup on nanomaterials.

In 2009, the Commission dealt with a very limited number of enquiries regarding REACH compliance. Following a public announcement by the enforcement authority of one Member State that it would enforce a certain REACH obligation (related to substances in articles) differently, the Commission took action to have that statement withdrawn, without recourse to infringement proceedings.

National provisions on penalties for infringement of REACH had to be notified by 1 December 2008. As not all Member States fulfilled this obligation on time, the Commission launched 8 infringement proceedings for non-notification. Two are still open (at the stage of reasoned opinion). In this respect, the Commission also contracted out a study to analyse and compare types and levels of notified national penalties and assess their effectiveness, proportionality and dissuasiveness.

Three infringements proceedings were launched for non-implementation of Directive 2006/122/EC on PFOS. One petition (139/2009) was received concerning the fact that articles containing asbestos are still being sold in Portugal. The Commission confirmed that, on the basis of EU legislation (Directive 76/769/EEC before 1 June 2009 and REACH from 1 June 2009) and national law, the sale of products containing asbestos fibres has been illegal in Portugal since June 2005 and that responsibility for the enforcement rests with Portuguese national authorities. The Commission had invited the Portuguese authorities to report on the inspections carried out, which Portugal had done. The Commission awaits further details and facts from the petitioner in order to provide the Portuguese authorities with more specific information.

Evaluation

As REACH is a Regulation, directly applicable in Member States, its enforcement is primarily ensured by the Member States through a system of official controls and other appropriate activities.

It needs to be stressed that, at this stage, the main REACH obligations are still being phased-in and so enforcement is still at an early stage. The pre-registration of substances by industry, which was the first main phase was completed successfully in 2008. Around 2.75 million pre-

registrations were made by 65,000 companies for 143,000 different substances. Pre-registration allowed the vast majority of businesses to benefit from extended deadlines for the fulfilment of the main registration obligation. The first registration deadline for high volume substances and the most dangerous substances is 30 November 2010 (further deadlines are in 2013 and 2018) and enforcement of registration will begin thereafter. This is also why the Commission has not yet received complaints regarding Member States' enforcement of REACH.

Obligations related to the provision of information in the supply chain are already applicable and should be enforced by Member States. The Commission has not received any complaints about this.

The enforcement of *restriction obligations* came under the umbrella of REACH in the second half of 2009. The change from Directive 76/769/EEC to REACH will allow more coherent implementation of restrictions in the Member States. The volume of enquiries relating to restrictions under Directive 76/769/EEC has always been high. There are still a lot of enquiries concerning restrictions under REACH as new restrictions continue to be adopted. But a set of Frequently Asked Questions has been developed over the years and is published on the website of the Commission. It is regularly updated. With the replacement of Directive 76/769/EEC by the REACH Regulation, fewer infringements are expected in the future as less transposition will be required.

The Member States will submit to the Commission their first report on the operation of REACH, including evaluation and enforcement aspects, by 1 June 2010.

Consequences of evaluation

(1) Priorities

As REACH is based on a completely new regulatory approach and has shifted much of the burden for ensuring the safe use of chemicals onto industry, the Commission needs to monitor closely whether its implementation is effective and consistent throughout the EU. In 2010, the Commission will continue to monitor the enforcement by Member States of pre-registration, registration obligations (including obligatory data sharing within "substance information exchange forums"), information in the supply chain and restriction provisions.

(2) Planned action (2010 and beyond)

The Commission will need to closely monitor how Member States enforce REACH in order to ensure transparency, impartiality and consistency in enforcement throughout the EU. To this end, the Commission will in particular continue to work closely with the Forum for the Exchange of Information on Enforcement which co-ordinates a network of national authorities responsible for enforcement. The Commission will, in particular, review Member States' reports on the operation of REACH by 1 June 2010.

Concerning registration obligations, 2010 is a crucial year for industry. The Commission will continue meeting industry stakeholders, resolving interpretation problems and participating in workshops to ensure timely implementation of REACH. A "Director Contact Group" has been created by the Commission involving the main industry stakeholders to help resolve urgent issues.

The Commission will discuss with Member States the results of the study on national penalties with a view to ensuring a consistent approach throughout the EU. If necessary, appropriate follow-up action may be taken by the Commission.

The Commission will prepare itself for one of its main roles under REACH - granting authorisations for the placing on the market and the use of substances giving rise to very high concern. This will become the Commission's main role under REACH in the future.

In 2011, on the basis of Member States' and ECHA's reports on the operation of REACH, the Commission will prepare the first general report on the operation of REACH and will review its scope by June 2012.

The Commission will also continue to work to enhance good cooperation, coordination and exchange of information with national authorities and ECHA.

Summary

REACH, as a new horizontal regulatory framework for chemicals, has the long-term objective of providing a high level of protection of human health and the environment while ensuring the free circulation of substances on the internal market and enhancing competitiveness and innovation. This objective should be progressively attained over the next decade and beyond. The correct implementation of REACH is vital to the chemical industry sector in the coming years. We are still at the early phase of its implementation and it will only be possible to evaluate to what extent its objectives are being fulfilled over the coming years, whereupon corrective action will be taken if necessary.

Links to legislation

REACH and its implementing legislation are available through the following link:

http://ec.europa.eu/enterprise/sectors/chemicals/documents/reach/index_en.htm

REACH and its links to previous legislation on restrictions is available here:

http://ec.europa.eu/enterprise/sectors/chemicals/documents/reach/archives/market-restrictions/index_en.htm

1.3.2. Other chemicals legislation

Current position

Drug precursors are chemicals used in the illicit manufacture of drugs such as cocaine, heroin, ecstasy or methamphetamines. However, these chemicals also have a wide variety of legitimate uses, for example in the production of plastics, pharmaceuticals, cosmetics, perfumes, detergents or aromas. Effective control of the legitimate trade of these chemicals is therefore required to fight against their diversion into illicit drug manufacture. Work continued on infringement procedures against Member States for non transposition of national implementing measures. Out of 8 infringement cases opened in 2007, 3 were still pending at the Court of Justice of the European Union. Activity continued at national level with a view to bringing these remaining cases to a close.

The purpose of Regulation (EC) No 2003/2003 on mineral **fertilisers** is to allow the free circulation within the internal market of 'EC fertilisers'. In 2009 the Regulation was adapted to technical progress to include new types of fertilisers that can be marketed as 'EC fertilisers' and to introduce new CEN test methods that will facilitate compliance with the provisions of the Regulation. The adoption of Regulation (EC) No 764/2008 on mutual recognition raised a lot of interest in the fertiliser area. The Regulation was discussed with national authorities responsible for implementing the fertiliser legislation to ensure that the recently introduced measures were fully understood and avoid potential situations of non compliance.

Regulation (EC) No 648/2004 on **detergents** ensures that only detergents with surfactants that are fully biodegradable are placed on the market and that laundry detergents are appropriately labelled to protect the health of consumers, especially against allergies. The Regulation was adapted to technical progress to grant a derogation for the placing on the market of a surfactant that does not fulfil the requirements of ultimate biodegradability in line with the criteria foreseen in the Regulation.

Additionally, progress was made on a Court case against Luxembourg for the non-implementation of the detergents Regulation. In its judgment of 24 March 2009 (C-184/08) the European Court of Justice held that Luxembourg had failed to implement its obligations pursuant to Regulation EC No 648/2004 by not adopting the relevant penalties. The national authorities are drafting legislation to comply with the Court ruling.

Directive 2007/23/EC protects consumers by requiring that **pyrotechnic articles** must meet essential safety requirements. It also creates an internal market for those articles that meet these essential safety requirements. In 2009, the Commission continued discussions with Member States to ensure the correct application and coherent implementation of the Directive, which has to be transposed by Member States in 2010. In future, the Directive will be recast to align it with the New Legislative Framework.

In the **explosives** sector, the Commission monitored progress and difficulties with the transposition of Directive 2008/43/EC setting up a system for the identification and traceability of explosives for civil uses. The Directive harmonises the safety requirements for civil explosives at a high level of protection in order to protect the general public from illicit uses. Infringement procedures were launched against 10 Member States for non communication of national transposition measures. Work is on-going to ensure that all Member States have the required measures in place by 2012, when the Directive must be applied.

Directive 93/15/EEC on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses will be recast to align it with the New Legislative Framework.

Evaluation and consequences

In 2009, the Commission adopted a report to the European Parliament and the Council on the implementation and functioning of Regulation (EC) No 273/2004 on drug precursors, which identifies key areas where Community action is recommended to improve the functioning of this area of the internal market. This action consists mainly of striving for better implementation of existing legislation to achieve immediate gains from the use of established best practices, but does not exclude amendment of the legislation subject to further analysis of the impact of various options for both competent authorities and economic operators.

Work is expected to continue in order to include additional types of fertilisers in Regulation (EC) No 2003/2003 and replace some national standards by common ones across the EU. As recommended in the Risk Reduction Strategy on Cadmium established in the framework of Regulation (EC) No 793/93 on the evaluation of the risk of existing chemicals, the Commission has started to assess the possibility of reducing the content of cadmium in phosphate fertilisers. Meetings have been organised with stakeholders and Competent Authorities to understand the impact of potential measures and gather information for the required impact assessment.

Pursuant to Article 16 (1) of the Regulation, in 2007 the Commission had submitted a report to the Parliament and the Council on the use of phosphates in detergents. In the wake of this Report, a study was carried out to obtain scientific evidence on the contribution of detergents to the eutrophication of EU waters. The study was completed in 2009 and reviewed by the Scientific Committee of Health and Environmental Risks (SCHER). The Commission is in the process of preparing an impact assessment for a range of policy options regarding the use of phosphates in detergents and if legislative action is to be adopted, a legislative proposal will be prepared by the Commission in 2010.

Article 16 (2) of the Detergents Regulation requires the Commission to review and report on the environmental impact of detergent ingredients other than surfactants, and where justified, to prepare a legislative proposal. The Commission prepared reports on the anaerobic biodegradation of surfactants and the main non-surfactant organic detergent ingredients. The conclusion was that there are currently no risks that require additional legislative restrictions. Further investigation will be done on certain issues (e.g potential environmental effects of certain detergent ingredients) in collaboration with industry and any new scientific evidence will be evaluated by the Commission Working Group on Detergents.

Summary

The acquis in these sectors is stable and effective overall and does not require significant modification.

Links to legislation

Legislation and documents related to the specific chemical sectors are available at: http://ec.europa.eu/enterprise/sectors/chemicals/documents/specific-chemicals/index_en.htm

1.4. Pharmaceuticals

Current position

Over the past decades the pharmaceutical sector has been increasingly regulated at EU level with the result that nowadays many aspects concerning safe, effective and high-quality medicinal products are harmonised. EU legislation specifically focuses on authorisation requirements for human and veterinary medicines by establishing the principal procedures and the substance of the scientific assessment; but it also covers surrounding aspects like clinical trials, orphan medicines and advanced therapies. Such legislation is mainly based on the internal market competence of the Union, but also partly on health competencies.

As regards compliance with the *acquis*, in 2009 the Commission received fewer new complaints than in 2008, but had to launch more proceedings for non-communication.

By the end of the year, several infringement cases were closed following agreement between the Commission and the Member States on solutions to the problems. However, it was not always possible to reach agreement in the pre-litigation stage and the Commission decided to refer one case against Poland to the Court of Justice (C-349/09). It concerns a failure to implement parts of 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 requirements for authorising the manufacture or importation of such products.

In 2009, the Commission continued to use preventive techniques to ensure the correct, timely and coherent implementation of the pharmaceutical *acquis*. Nevertheless, ten new cases had to be opened in November for non-communication in relation to Directive 2009/9/EC, which replaces Annex I to the veterinary medicines Directive. However, the exceptionally short transposition period of seven months must be taken into account.

There is constant dialogue with Member States and competent agencies on regulatory matters in the pharmaceutical sector. This is mainly done through working parties dealing with the general interpretation of European pharmaceutical legislation, in preparation for its transposition and implementation by the Member States, namely the Pharmaceutical Committee and the "Notice to applicants" group which examines the need to update guidelines on the requirements for marketing authorisations. In 2009, the activities of this group were rather limited due to other priorities. Nevertheless, those two forums are important tools used by the Commission to find pro-active solutions outside, or in parallel with, infringement proceedings under Article 258 TFEU.

If necessary, the Commission also establishes ad-hoc groups on specific subjects, such as the development of guidelines on the implementation of Directive 2001/20/EC relating to good clinical practice in the conduct of clinical trials on medicinal products for human use.

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

Preliminary rulings of the Court of Justice help clarify the pharmaceutical *acquis*. In 2009 the Court of Justice gave rulings in the following cases:

- C-140/07 and C-27/08 on the concept of medicinal products by function in relation to dosage and content of the active ingredient in the product concerned (Articles 1 and 2 of Directive 2001/83/EC on human medicines).[10]

- C-527/07, confirming that reference products used in generic applications must be authorised in accordance with Union law.[11]

- C-421/07, clarifying that the advertising rules of Directive 2001/83/EC may in principle also apply to the dissemination of product information by third parties, even if such third parties are not connected to the manufacturer or seller of the product.[12]

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10 Case C-140/07 Hecht-Pharma; Case C-27/08 BIOS Naturprodukte.

11 Case C-527/07 Generics (UK).

As regards legislative developments, Directive 2009/53/EC on variations entered into force in 2009. The Directive is part of a revision of the legal framework on variations to make the overall system clearer, simpler and more flexible. After the adoption of the Directive, the Commission published two guideline documents on its implementation.

2009 also saw improvements in the implementation of advanced therapy provisions. Directive 2009/120/EC adapted Annex I to Directive 2001/83/EC to new advanced therapy specifications by updating the definitions and detailed scientific and technical requirements for gene therapy medicinal products and somatic cell therapy medicinal products, and by establishing technical requirements for tissue engineered products, advanced therapy medicinal products containing devices and combined advanced therapy medicinal products. In July a Commission regulation was adopted, laying down provisions for the certification of quality and non-clinical data for SMEs developing advanced therapies. It is intended to facilitate access to finance for SMEs at an early stage of the product development cycle.

Legislative discussions on the so-called "pharmaceutical package" continued in 2009 within the co-decision procedure. That package contains:

- Two legislative proposals on pharmacovigilance, involving amendments to Regulation (EC) No 726/2004 and Directive 2001/83/EC;
- Two legislative proposals on the provision of information to patients , also involving amendments to Regulation (EC) No 726/2004 and Directive 2001/83/EC;
- A legislative proposal on counterfeit medicines, involving amendments to Directive 2001/83/EC.

Finally, at the end of the year, the Commission adopted a Commission Regulation (EU) 37/2010 on pharmacologically active substances and their classification regarding maximum residue limits. It aims to simplify and clarify Community procedures and ensure consistency with international standards.

The legal basis for future pharmaceutical legislation has been slightly accentuated by the addition to the health chapter of the Treaty on the functioning of the European Union of the specific competence to set high standards of quality and safety for medicinal products. To date, measures in this regard have been solely based on internal market competence but it was a specific aim of the Lisbon Treaty (see Articles 2-6 TFEU) to define competences more clearly and Article 168(4)(c) TFEU seems to be the result. This change is not expected to have a large impact on the content of future harmonisation measures but in some instances the legislator may opt for a dual legal basis, together with the internal market competence of the Lisbon Treaty (Article 114 TFEU).

Four petitions were dealt with in 2009.

Evaluation and consequences

The pharmaceutical sector remains a highly dynamic sector, which is subject to frequent change. In this environment, questions of timely and correct implementation of EU law are

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12 Case C-421/07 Damgaard.

crucial to achieving the public health goals of the legislation and guaranteeing a level-playing field for the operators involved. In this respect the priorities remain unchanged.

Summary

Experience over the years shows that in general the legal framework is well respected. Implementation and compliance by Member States is satisfactory. Important contributors in this regard are the various working groups, committees and networks in the pharmaceutical sector which are useful forums for raising, discussing and resolving various issues and questions. At the same time they provide the impetus for tightening up or clarifying the *acquis*, where necessary.

Legislation: see Annex 1- point I.2.

The Transparency Directive

In accordance with the Treaty, pharmaceutical pricing and reimbursement policies fall within the responsibility of the Member States. However, Directive 89/105/EEC - commonly referred to as the "Transparency Directive" - lays down a series of procedural requirements to ensure the transparency of national pricing and reimbursement measures. Its provisions do not affect the capacity of Member States to determine the organisation and financing of their healthcare systems. In particular, each Member State is free to set the prices of medicines and to decide on their reimbursement status in the framework of national or regional health insurance schemes.

Directive 89/105/EEC is a peculiar instrument under Community law because it lies at the interface between EU competences (free movement of goods within the internal market) and national responsibilities (organisation of social security systems). The directive only provides for partial harmonisation, based on the underlying principle of minimum interference in the organisation by Member States of their domestic social security policies. In other words, Member States are at liberty to establish their own regulatory framework, provided that the rules and procedures chosen include certain guarantees of transparency. This specificity is not without consequences for the management of infringement procedures: the investigation of complaints always requires a case-by-case analysis of complex national systems and the exercise is often complicated by the repeated reforms or adjustments of social security schemes introduced by many Member States in order to curb rising public health expenditure. The specific features and the legal complexity of each national system, together with the constant evolution of pricing and reimbursement rules in many EU countries, make it difficult to manage infringement procedures in the same way and within the same timeframe as with other directives. Where compliance issues arise, Member States must implement their own solutions because they remain competent for the organisation of their social security systems. In addition, pharmaceutical pricing and reimbursement is a politically sensitive area in all Member States due to the impact of national measures on healthcare budgets. Consequently, the resolution of infringement cases always requires dialogue and sustained cooperation with the competent national authorities.

The Commission has significantly stepped-up its efforts to ensure the enforcement of the Directive in the last five years. It became apparent that several Member States - both old and new - had adopted pricing and reimbursement measures at odds with the principles of the Transparency Directive. Different issues relating to compliance with time-limits and other procedural obligations were identified by the Commission on the basis of complaints from

economic operators. A majority of these issues were resolved through constructive dialogue with the competent national authorities. This enabled the Commission to close infringement proceedings in a dozen cases between 2005 and 2008. In 2009, two additional infringement cases - one against Slovenia and one against Austria - were closed following the adoption of national legislation compatible with the requirements of the Directive. Austrian legislation, in particular, was amended to comply with the judgment of the European Court of Justice in Case C-311/07. Discussions with the Member States on the application and interpretation of the Directive also took place in the Transparency Committee which convened in July 2009. In addition, three on-going cases (respectively against the Czech Republic, Slovakia and Poland) are being closely monitored as the competent authorities are preparing new legislation to ensure compliance with the Directive.

Given the rapid evolution of health insurance systems and the recent multiplication of cost-containment measures in many Member States, the compatibility of national measures with Directive 89/105/EEC continues to require constant scrutiny. The Commission will therefore continue to investigate complaints pointing to potential incompatibilities of national measures with the Directive; priority will be given to cases where insufficient or incorrect implementation of the procedural requirements of the directive into national law could entail significant barriers to trade in medicinal products

1.5. Medical devices

Current position

The medical devices sector is regulated by three main directives: Directive 90/385/EEC relating to active implantable medical devices, Directive 93/42/EEC concerning medical devices, and Directive 98/79/EC on *in vitro* diagnostic medical devices.

The first two directives have been amended several times, most recently by Directive 2007/47/EC which was due to be transposed by the Member States by 21 December 2008. However, transposition was slow and in 2009 the Commission initiated 22 infringement proceedings for non-communication of transposition measures. At the beginning of 2010, seven cases remain open, six of which are at the reasoned opinion stage, while in the seventh the Commission is awaiting notification of a transposition measure adopted in 2009.

The Commission has been able to check the conformity of national measures transposing Directive 2007/47/EC in more than half of the Member States. No substantial deviations have been identified so far. Correlation tables were extremely helpful in the performance of that task, in particular where provisions of the Directive(s) were transposed by amendment of different legal acts of the Member States. In connection with the transposition exercise, various guidance documents were developed to facilitate the task of the Member States.

Four infringement cases based on non-conformity with medical devices directives or incorrect application of national transposition rules were still open at the end of 2009. Two cases should be closed in 2010. One new complaint was received in 2009 concerning an issue (i.e. registration requirements for medical devices in Italy) for which the Commission had already started proceedings based on three complaints received in 2007.

In 2008, the Commission had launched a public consultation concerning the recast of the medical device directives which elicited 200 responses. In 2009, preparation for the recast continued, inter alia through intensive bilateral stakeholder consultations, exchanges of views

with the Member States and analysis of a number of topics emerging. The Commission intends to enhance patient safety by ensuring a uniformly high level of control of medical devices, facilitate market access for innovative technologies and maintain the competitiveness of the industry by providing a clear, predictable and appropriate legal framework.

Article 168(4)(c) of the Treaty on the Functioning of the European Union creates a new Union competence to set high standards of quality and safety for medical devices.

Evaluation and consequences

The last revision of the medical devices directives was implemented too slowly by many Member States. The quality of transposition is, however, good. There are few infringements by Member States (apart from the initial non-communication).

Summary

The present regime in the medical devices sector must be continually adapted for a broad range of products and issues in order to ensure a high level of safety for patients, users and third parties, to further improve safety standards and market surveillance in the light of technical and scientific progress, to ensure the smooth functioning of the Internal Market and to simplify the legislation in accordance with better regulation principles.

Links to legislation

Regulatory Framework:

http://ec.europa.eu/enterprise/sectors/medical-devices/regulatory-framework/index_en.htm

1.6. Cosmetics

Current position

The Cosmetics "acquis" consists of Council Directive 76/768/EEC, which was amended seven times by the European Parliament and the Council and modified for the purpose of adapting to technical progress 59 times13. It will be replaced by Regulation (EC) No 1223/2009 on cosmetic products.

In 2009, there were three meetings of the Standing Committee on Cosmetics Products (a regulatory comitology committee), and three meetings of the Working Group on Cosmetics, which includes Member States, representatives of the Industry and the Consumers. The agenda of the Standing Committee always included a point on the transposition of directives.

In 2009, seven directives adapting the Cosmetics Directive to technical progress were adopted by the Commission, three with transposition deadlines in 2009 and four in 2010. After the adoption of each directive, the Commission sent a letter to the Member States reminding them of the deadlines and offering support with the transposition. The inclusion of an obligation on the Member States to provide correlation tables was not necessary for the above-mentioned

13 The consolidated text of Council Directive 76/768/EC and the adaptations to technical progress are available on: http://ec.europa.eu/enterprise/cosmetics/html/consolidated_dir.htm.

directives because of the nature of their content (technical changes to annexes) and the fact that Member States use the original text of the directive for their transposition measures.

National transposition measures are systematically checked to ensure that the text submitted relates to cosmetic products, that the reference of the directive transposed is mentioned and that all of the substances concerned by the adaptation are mentioned.

The Commission launched 15 infringement proceedings *for non communication* of national transposition measures relating to Commission Directives 2008/88, 2008/123 and 2009/6 on the adaptation to the technical progress of Council Directive 76/768/CEE on cosmetic products, whose transposition deadlines were in 2009. 11 of these proceedings were closed within the same year.

One complaint was received for alleged incorrect application of Directive 76/768/EEC, which is currently being investigated, and one non-conformity case reached the stage of reasoned opinion.

Regulation (EC) No 1223/2009 of the European Parliament and of the Council on cosmetic products was adopted on 30 November 2009. This new (recast) Regulation aims at guaranteeing the safety of cosmetic products in the light of innovation and simplifying the legislative environment. It will apply from 11 July 2013.

Evaluation and consequences

By its very nature, the cosmetics sector is subject to continuous innovation and technical progress and so the legislation will continue to be dynamic. In this context, the Commission acknowledges the very fruitful cooperation enjoyed not only with the Member States but also with all stakeholders.

The recast of the principal legislation in the form of Regulation (EC) No 1223/2009 will improve the efficiency with which the internal market for cosmetics functions. After the date of application of the Regulation, all future technical adaptations will also be adopted by regulation. This will lead to a single identical legislative framework as the sole reference for operators on the internal market; in addition, it will allow resource savings by removing the need to adopt and monitor transposition measures and by avoiding infringement proceedings for non-communication. During the transition period between the adoption of the Regulation and its application, the Commission will continue to adopt technical adaptation directives to update the Annexes to Directive 76/768/EEC, which will be repealed on 11 July 2013.

Summary

The current legislative regime on cosmetic products is solid and dynamic. The new Cosmetics Regulation is an attempt to reinforce the safety of cosmetic products in the light of innovation, and to simplify the legislative environment and the Commission looks forward to its entry into force to assess whether it has been successful.

Links to legislation

Cosmetics Regulatory Framework:

http://ec.europa.eu/enterprise/sectors/cosmetics/regulatory-framework/index_en.htm

1.7. Mechanical, electrical and telecommunications equipment

Current position

The Machinery Directive 2006/42/EC, published on 9th June 2006, began to apply from 29th December 2009, replacing Machinery Directive 98/37/EC. The new Directive does not introduce any radical changes compared with 98/37/EC but aims to consolidate the achievements of the Machinery Directive in terms of free circulation and safety, while improving its application. However, the scope of the new Directive is extended, since construction-site hoists and portable cartridge-operated fixing and other impact machinery, designed for industrial or technical purposes only, will no longer be excluded.

The new Directive has already been amended to introduce into the Directive environmental protection requirements for new machinery placed on the market for use in the application of pesticides.

Eight infringement proceedings for non-communication of national measures implementing the Directive were closed following receipt of the measures. Reasoned opinions were addressed to Greece, Italy and Luxembourg which had still not notified their transposition measures. By the end of 2009, these three Member States are the only ones not having communicated their transposing measures.

Two cases brought under the old Directive (98/37/EC) were closed and another was referred to the Court since the required changes to the national legislation had not yet taken place.

With respect to Directive 2004/108/EC on the approximation of the laws of the Member States relating to electromagnetic compatibility and repealing Directive 89/336/EC, following notification of the national transposition measures, the Commission decided to withdraw the case against Luxembourg that had been referred to the ECJ the previous year. In the course of 2009, all national transposition measures were communicated by Member States.

Two other cases were closed, one under Directive 1999/5/EC on radio equipment and telecommunications terminal equipment and one under Directive 2000/9/EC on cableways, following modification of infringing national legislation.

Finally, with regard to the lifts Directive, 95/16/EC, one case was closed and a reasoned opinion was issued in a case where the Member State must amend its national legislation.

Evaluation

Compliance by Member States with the law in this sector is satisfactory. The existing acquis is relatively long-standing and well established and has not required (and is not expected to require) much substantial development. The situation is stable, manageable and acceptable. The volume of problems arising is reasonably limited and stable and no special corrective action is required.

Consequences of evaluation

Priorities

As in 2008, priorities were the non-communication cases. In 2008, Directive 2004/108/EC and Machinery Directive 2006/42/EC had been the main focus. In 2009 Directive

2004/108/EC was fully transposed and the priority non-communication cases remained those relating to the Machinery Directive.

Planned action

Following adoption of Decision No 768/2008/EC on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC, some existing directives must be revised, in particular Directive 2006/95 relating to electrical equipment designed for use within certain voltage limits, Directive 2004/108/EC on the approximation of the laws of the Member States relating to electromagnetic compatibility, Directive 94/9/EC regarding equipment intended for use in potentially explosive atmospheres and Directive 95/16/CE on lifts. It is intended to start this revision process in the course of 2010.

An increase in work on the amendment of existing legislation is therefore expected..

An amendment is planned for 2010 to Directive 97/68/EC on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery. The changes to be made are an adaptation to technical progress, relating to type approval testing procedures for certain larger diesel engines, and a revision of the "flexibility scheme".

Summary

Planned work will include the revision of some directives, in order to align them to Decision No 768/2008/EC on a common framework for the marketing of products. However, the acquis is relatively well established and the situation is stable. The sectors of mechanical, electrical and telecommunications equipment function smoothly.

1.8. Gas appliances, pressure equipment and legal metrology

Gas appliances, pressure equipment, and metrology are technically complex sectors that are regulated by EU law to a certain extent. Legislation in the sector is designed to protect health and safety in relation to risks posed by high pressure and covers goods ranging from simple pressure cookers to the largest chemical installations.

1.8.1. ***Gas appliances***

Current position

The gas appliances sector is regulated by Directive 2009/142/EC relating to appliances burning gaseous fuels[14] which codifies one of early New Approach Directives. It has the dual purposes of ensuring the free movement of gas appliances through technical harmonisation with regard to hazards due to gas and guaranteeing a high level of protection of health, safety,

14 Directive 2009/142/EC of the European Parliament and of the Council of 30 November 2009 (OJEU L330, 16.12.2009, p.10). This Directive is the codification of Directive 90/396/EEC relating to appliances burning gaseous fuels.

the environment and consumers. It defines mandatory essential requirements and sets up mandatory conformity assessment procedures.

The final Report on a "Competitiveness study on the EU gas appliances sector" has been published. The study was intended to provide information to the Commission, the Member States and stakeholders on the current situation in the gas appliances sector and to highlight future prospects and developments in the sector.

A case against Germany was closed as following a letter of formal notice Germany modified the contested provision. A letter of formal notice was sent to Greece for incorrect implementation of the Directive.

Summary

The Directive has been operating satisfactorily for more than fifteen years. However, experience of its implementation and technical progress and innovation led to an examination of the need for revision by the Commission together with the Member States Working Group on Gas Appliances. A subgroup was created to present specific proposals, and to facilitate and accelerate the preparatory phase. In this context, the Directive will also be aligned with Decision 768/2008/EC on a common framework for the marketing of products.

The management of the Directive and its correct and effective implementation, including the infringement procedures and safeguard clauses, will continue in 2010, together with discussions and preparations for the revision of the Directive.

1.8.2. ***Pressure equipment***

Current position

Until 2009, the main EU legislation in the area was the harmonising Directives 87/404/EEC on simple pressure vessels and 97/23/EC on pressure equipment, covering design, manufacture and conformity assessment. Directive 87/404/EEC has been replaced by Directive 2009/105/EC of the European Parliament and of the Council of 16 September 2009 relating to simple pressure vessels (codified version), (OJEU L 264, 8.10.2009, p.12), in the interests of clarity and rationality, as it had been previously substantially amended several times. The legislation is being aligned with the new legal framework for the marketing of products, in particular Decision No 768/2008/EC of the European Parliament and of the Council on a common framework for the marketing of products.

Directive 75/324/EEC on aerosol dispensers covers the safety and labelling requirements that aerosol dispensers must satisfy in order to be placed on the market. Directive 2008/47/EC of 8 April 2008[15], modified Directive 75/324/EEC to adapt it to technical progress. Member States had until 29 October 2009 to transpose it and it will apply from 29 April 2010. Infringement proceedings were begun against 13 Member States for non communication of transposition measures. Following up these procedures will be a priority in 2010.

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15 Directive 2008/47/EC amending, for the purposes of adapting to technical progress, Directive 75/324/EEC on the approximation of the laws of the Member States relating to aerosol dispensers (OJ L 96, 9.4.2008, p.15).

The four old Directives on pressure vessels (framework directive 76/767/EEC and three specific ones on gas cylinders, namely Directives 84/525/EEC, 84/526/EEC and 84/527/EEC), would be repealed by a proposal adopted by the Commission on 18 September 2009, for a Directive of the European Parliament and of the Council on transportable pressure equipment (COM(2009)482).

One case against Spain concerning solar panels used for the production of hot water was closed, as it concerned installation aspects rather than design requirements relating to the product itself.

Infringement procedures and issues relating to the correct implementation of the Directives will be priority issues for the Commission services in the pressure sector in 2010, as well as the alignment of Directives 97/23/EC and 2009/105/EC to Decision No 768/2008/EC.

Summary

The pressure sector functions smoothly and there are no major problems. Managing this part of the *acquis* is largely a matter of enforcing transposition on time. This will be pursued rigorously where required.

1.8.3. ***Legal metrology***

Current position

Legal metrology covers units of measurement and the metrological requirements to be satisfied by pre-packed products and measuring instruments before they may be legally placed on the market and put into service.

The main Directives relating to the design and manufacture of measuring instruments are Directives 71/316/EEC on the common provisions for both measuring instruments and methods of metrological control, 90/384/EEC on non-automatic weighing instruments and 2004/22/EC on measuring instruments.

Directive 71/316/EEC was replaced by (recast) Directive 2009/34/EC of the European Parliament and of the Council of 23 April 2009 relating to common provisions for both measuring instruments and methods of metrological controls, as it had been substantially amended several times (OJEU L 106, 28.4.2009, p.7). It has also been adapted to the new regulatory procedure with scrutiny, established by Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, as amended by Decision 2006/512/EC.

Directive 2004/22/EC was modified by Commission Directive 2009/137/EC of 10 November 2009 in relation to maximum permissible errors and the instrument-specific annexes MI-001 to MI-005 (OJEU L 294, 11.11.2009, p.7). Member States must transpose these changes by 1 December 2010. The new Directive will apply from 1 June 2011. Timely transposition will be a priority for the Commission services in 2010.

Discussions in the Council and European Parliament continued on a Commission proposal for a Directive of the European Parliament and of the Council repealing 8 old metrology

Directives (COM(2008)801)[16]. These Directives were adopted under the old framework Directive 71/316/EEC and co-existed aside with national provisions. However, in practice adaptation of the regulatory framework to technical progress and innovation in relation to the measuring instruments concerned was effected by the voluntary application of European or international standards, or of national provisions implementing such new specifications. In the specific case of tyre pressure gauges, the existing Directive on Tyre Pressure Gauges for Motor Vehicles (Directive 86/217/EEC) is virtually obsolete in terms of technology and, in the absence of an up-to-date international standard, a standardisation mandate has been issued to the European Standardisation Organisations. More generally, it was considered that the free circulation within the internal market of the products concerned could be adequately ensured by Articles 34 to 36 TFEU and the mutual recognition principle.

Transposition of Commission Directive 2007/13/EC of 7 March 2007[17] modifying Annex II to Directive 71/316/EEC to include drawings of the distinguishing capital letters of some Member States (used in the initial verification mark affixed on a measuring instrument to show conformity) has been completed. Four remaining cases were closed by the Commission following communication of national transposition measures.

Directive 90/384/EEC was replaced by Directive 2009/23/EC of the European Parliament and of the Council of 23 April 2009 on non-automatic weighing instruments (codified version), (OJEU L 122, 16.05.2009, p.6) in the interests of clarity and rationality as it had been substantially amended.

With regard to pre-packed products, Directives 75/106/EEC on pre-packaged liquids and 80/232/EEC on ranges of nominal quantities and nominal capacities for certain pre-packaged products were repealed on 11 April 2009 when Directive 2007/45/EC came into force. As of that date, Directive 76/211/EEC contains the metrological requirements for all pre-packaged products as defined in its amended scope. Directive 2007/45/EC will liberalise nominal quantities of pre-packaged products within the EU in line with Court of Justice jurisprudence, with the exception of wine and spirits for which nominal quantities will continue to be defined at Community level. Transposition (due by 11 October 2008) is almost complete - only one infringement procedure remains open, against Italy.

Units of measurement are harmonised by Directive 80/181/EEC which creates a harmonized regulatory framework throughout the EU, eliminating trade barriers between Member States. Directive 80/181/EEC was modified by Directive 2009/3/EC of the European Parliament and of the Council of 11 March 2009 to allow the use of supplementary indications to legal units of measurement on a permanent basis, to adapt the Directive to technical progress and, in line with the subsidiarity principle, to allow the United Kingdom and Ireland to continue to use the mile for road signs/speed indications, the pint for milk in returnable bottles and for beer and cider on draught and the troy ounce for transactions in precious metals. Keeping these local and limited exemptions does not lead to barriers to the free circulation of products. Member

16 The Directives that are proposed to be repealed are Directives 71/317/EEC, 71/347/EEC, 71/349/EEC, 74/148/EEC, 75/33/EEC, 76/765/EEC, 76/766/EEC and 86/217/EEC.

17 Commission Directive 2007/13/EC amending Annex II to Council Directive 71/316/EEC on the approximation of the laws of the Member States relating to common provisions for both measuring instruments and methods of metrological control (OJ L 73, 13.3.07, p.10).

States had until 31 December 2009 to transpose it and it applied from 1 January 2010. Enforcing transposition where national measures have not been communicated will be a priority in 2010.

Summary

The sector functions smoothly and no serious problems are encountered.

1.9. Construction products

Current position

Directive 89/106/EEC on construction products ("the CPD") has not been amended recently, which has allowed its steady implementation within Member States' national systems. Harmonisation through European standards, published in the OJEU has continued and conditions for businesses operating in the sector, whether as manufacturers or users of construction products, have experienced stable progress during 2009. However, certain fundamental problems with the implementation of the CPD remain unsolved, resulting in different transposition in the Member States and thus causing deficiencies in regulatory framework.

The constant enlargement of the sphere harmonised and its inherent complexity have exacerbated these difficulties. This situation is reflected in the number and variety of infringement cases currently underway in the construction sector.

The revision of the CPD has proceeded during 2009 more or less as expected: after the adoption of the Commission proposal for a Regulation ("the CPR") on 23 May 2008, the best case scenario was first reading in the European Parliament based on a compromise with the Council before the 2009 elections, with adoption of the CPR during 2009 and the new legislation entering into force in mid-2011. However, developments in the co-decision procedure before the elections made this impossible; instead after a first reading vote in the plenary in late April 2009, the proposal was left to be dealt with by the newly chosen Parliament. This, together with differences in the positions of the Member States in the Council, hampering agreement on key issues of the proposal, has considerably delayed the adoption and the entry into force of the CPR.

Evaluation

Infringement procedures (both current and future) must be seen in the context of the revision of the CPD. One of the main reasons for revising the CPD is the confusion caused by different approaches taken by the Member States to its transposition (in particular as regards the use of CE marking). It is difficult to pursue cases under the CPD where the approach taken under the CPR will be different. Yet, the opinion of the Court of Justice would be helpful in formulating certain aspects of the CPR and it must be borne in mind in this regard that the CPR will not come into force in 2010 or even 2011.

Consequences of evaluation

The emphasis will continue to be on the legislative process for the CPR which will monopolise resources. Yet, since the new legislation will not be in place in the next two years, we will continue to be confronted with legal uncertainties deriving from the CPD and its various interpretations in Member States.

However, the intention is to reduce the number of pending infringements. Looking forward, the focus will be on dealing with complaints, present and future, more swiftly than before, with greater use being made of the new procedures such as the EU Pilot in the case of new complaints against participating Member States. Contact with all Member States must be intensified with a view to the introduction of the CPR to promote discussion of necessary adjustments to their current practices.. On certain occasions during 2009, this approach appears to have contributed well towards us avoiding the necessity of registering new infringement cases in this field for this whole year.

1.10. Textiles/clothing, footwear and wood

Current position

Textiles and clothing are regulated by Directive 2008/121/EC on textile names. This Directive was adopted on 14 January 2009 as a recast Directive and repealed Directive 96/74/EC on textile names. Directive 2008/121/EC incorporates Commission Directives 97/37/EC, 2004/34/EC, 2006/3/EC and 2007/3/EC which amended Directive 96/74/EC. Directive 2008/121/EC was itself amended by Commission Directive 2009/121/EC. Other legislation on textiles is Directive 96/73/EC (adapted to technical progress by three Commission Directives 2006/2/EC, 2007/4/EC and 2009/122/EC) and Directive 73/44/EEC specifying testing methods for sampling and analysis of fibre mixtures to determine the conformity of information supplied on a label in accordance with Directive 96/74/EC. Due to the technical nature of the textiles directives, the Committee for textile names and labelling (composed of experts from Member States and other interested parties) assists the Commission in their adaptation to technical progress.

One ongoing infringement case was closed in 2009, but there no new infringement case was launched during the course of the year.

In the *footwear* area, the legislation (Directive 94/11/EC on the labelling of materials used in consumer footwear) is well-established and stable - , unlike the clothing and textiles legislation, it is not necessary to amend this legislation often in the light of technical developments. There is no committee work in this area.

In the *wood* sector, there is no EU legislation.

Changes underway (only concerns textiles and clothing)

Due to the length and cost of the procedure for the technical adaptation of textiles Directives on the adoption of a new fibre name (involving the introduction of new fibre names and testing methods by Commission Directive) it was proposed that they be revised and replaced by a regulation which would simplify this procedure and create a single directly applicable legal instrument. The Commission adopted a Proposal for a Regulation on textile names and related labelling of textile products [COM(2009) 31 final] on 30 January 2009.

In accordance with the ordinary legislative procedure, this Proposal is currently under discussion in the relevant Council Working Party and in the Internal Market and Consumer Protection Committee of the European Parliament. It has already received the favourable opinion of the European Economic and Social Committee.

Evaluation and consequences

The major legislative effort in the textiles sector is going to be the continuation of work on the Proposal for a Regulation on textile names and related labelling. Monitoring the implementation and application of the legal instruments already in force will continue as necessary.

Summary

Stable *acquis* posing few enforcement difficulties.

Links to legislation

The relevant legislation can be found at the following webpage:

http://ec.europa.eu/enterprise/sectors/textiles/single-market/textiles-names-legislation/index_en.htm

1.11. Toys

The new toy safety Directive was adopted on 18 June 2009 and published on 30 June 2009. Member States must adopt and publish implementing provisions by 20 January 2011 and apply them from 20 July 2011. The later date of 20 July 2013 is laid down for the application of chemical requirements.

The objective of the new Directive is to ensure a high level of safety of toys, ensuring the health and safety of children, whilst guaranteeing the functioning of the internal market by setting harmonised safety requirements for toys and minimum requirements for market surveillance. The Directive applies to products designed or intended, whether or not exclusively, for use in play by children under 14 years of age.

The main changes to the current legal framework concern: enhanced requirements, especially in relation to the use of chemicals in toys, mandatory safety assessment prior to the marketing of toys and stringent obligations for economic operators.

In July 2009, the Commission issued a mandate to CEN (European Committee for Standardisation) and CENELEC (European Committee for Electrotechnical Standardisation) to review the existing harmonised standards and adapt them to the requirements of the new directive. The process is under way and revised standards should be available before the directive becomes applicable.

General and specific guidance documents aimed at facilitating the application of the new directive are currently being prepared and will be available on the Commission website over the course of 2010.

1.12. Cultural goods

In 2009, the *acquis* in this area remained stable.

The proposal to codify Directive 93/7/EEC on the return of cultural objects was part of the Codification exercise of the Commission. However, this proposal was withdrawn from the Codification exercise in June 2009 because, in the light of the Court's decision in case C-133/06, it was concluded that Article 16(3) of the Directive constitutes a second legal basis and therefore the European Parliament must be involved in the procedure. As no changes of substance can be made on codification, the proposal to codify was withdrawn.

On 30 July 2009, the Commission adopted its third report reviewing the application of the Directive by the Member States over the period 2004-2007. The Commission concluded that amendment of the Directive should be considered and that the impact of any proposal to amend should be analysed in depth by the national authorities responsible for implementing the Directive.

To that end, the Commission service responsible for the Directive suggested to the Committee on the Export and Return of Cultural Goods that a working group be set up to identify problems associated with the application of the Directive and suggest solutions with a view to its possible amendment. The "Return of cultural goods" working group held its first meeting in November 2009.

A second meeting will be organised during the first half of 2010. The intention is to proceed with a recast of Directive 93/7/EEC in 2012.

1.13. Late payment

Despite the entry into force of Directive 2000/35/EC, late payment in commercial transactions is still a general problem within the EU. Late payment affects the competitiveness and viability of companies, notably SMEs. This risk strongly increases in periods of economic downturn when access to financing is particularly difficult.

On 8 April 2009, the Commission adopted a legislative proposal to strengthen the existing rules combating late payment in contracts between businesses or between businesses and public authorities. It is essential to introduce additional tools to reduce the number of late payments in commercial transactions, to shorten payment periods for public administrations and to substantially reinforce incentives for public administrations to pay on time. The new proposal amending and recasting Directive 2000/35/EC should have a direct and positive effect on the cash flow of enterprises, facilitating their day-to-day business.

The proposal, which is now under the ordinary legislative procedure, would improve remedies for late payment by introducing an entitlement to the recovery of administrative costs and compensation for internal costs incurred as a consequence of late payment. In the case of public administrations, the proposal would shorten payment periods by harmonising periods for payment by public authorities to businesses. Finally, it would also abolish the possibility to exclude claims for interest of less than €5.

In 2009, four new complaints were received. One case dating back to 2005 was closed and two others were closed in January 2010. Two cases remain open.

1.14. Weapons

Council Directive 91/477/EEC on control of the acquisition and possession of weapons has been amended by Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008, which is to be transposed by Member States by 28 July 2010. The rationale of the amending directive is twofold: to comply with the requirements of the United Nations Protocol against the illicit manufacturing of and trafficking in firearms (signed by the Community in 2001) and to enhance security in firearms-related issues. On 11 May 2009, the Commission held the first meeting of the "Contact Group on Firearms" created by the

amending directive, and provided the Member Sates with assistance to facilitate appropriate and timely transposition of the Directive.

1.15. Product liability

Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products is a consolidated instrument that fairly apportions risk between citizens and producers, assuring citizens of the safety of products put into circulation in the internal market.

In 2009, the Court of Justice gave two preliminary rulings. In the first, where the Appellate Committee of the UK House of Lords had requested clarification of the meaning of "instituted proceedings against the producer" in article 11 of the Directive 85/374, the Court ruled that:
"Article 11 of Council Directive 85/374/EEC precludes national legislation, which allows the substitution of one defendant for another during proceedings, from being applied in a way which permits a 'producer', within the meaning of Article 3 of that directive, to be sued, after the expiry of the period prescribed by that article, as defendant in proceedings brought within that period against another person.

However, first, Article 11 must be interpreted as not precluding a national court from holding that, in the proceedings instituted within the period prescribed by that article against the wholly-owned subsidiary of the 'producer', within the meaning of Article 3(1) of Directive 85/374, that producer can be substituted for that subsidiary if that court finds that the putting into circulation of the product in question was, in fact, determined by that producer.

Second, Article 3(3) of Directive 85/374 must be interpreted as meaning that, where the person injured by an allegedly defective product was not reasonably able to identify the producer of that product before exercising his rights against the supplier of that product, that supplier must be treated as a 'producer' for the purposes, in particular, of the application of Article 11 of that directive, if it did not inform the injured person, on its own initiative and promptly, of the identity of the producer or its own supplier."

In the second, on the scope of Articles 9 (concept of "damage") and 13 ("rights of an injured person under the rules of the law of contractual or non-contractual liability or a special liability system") of the Directive, the Court ruled that:

"*Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products must be interpreted to mean that it does not preclude the interpretation of domestic law or the application of settled domestic case-law according to which an injured person can seek compensation for damage to an item of property intended for professional use and employed for that purpose, where that injured person simply proves the damage, the defect in the product and the causal link between that defect and the damage".*

In 2010, the Commission will begin to prepare the fourth report on Directive 85/374/EEC.

1.16. Defence goods

In May 2009, the Council and the European Parliament adopted directive 2009/43/EC simplifying intra-EU transfers of defence-related products (OJ L 146, 10.6.2009, p. 1–36).

This directive is the first internal market instrument dealing with the circulation of defence-related products.

The directive aims to:

- support cross-border industrial cooperation, requested by industry, by enabling defence industries to benefit from smoother and more predictable supply chains. SMEs, often operating as defence subcontractors, will much more easily be able to join cross-border programmes managed by large system integrators.

- improve security of supply for EU armed forces relying on cross-border deliveries.

Directive 2009/43/EC must be transposed before 30 June 2011 and will fully apply from 30 June 2012.

During the transposition period, the Commission will pay particular attention to the certification of European defence companies that wish to reap maximum advantage from the EU simplified transfers regime. Certification will establish the reliability of the recipient undertaking, in particular as regards its capacity to observe export limitations of defence-related products received under a transfer licence from another Member State. The Commission is considering the preparation of a recommendation or guidelines on the practical implementation of certification at national level.

1.17. Non-harmonised area

Current position

Articles 34-36 TFEU (ex-Articles 28-30 EC) ensure the easy cross-border exchange of goods within the Internal Market in areas that are not subject to harmonisation by EU legislation. The Commission monitors the correct application of these rules and related Regulations and opens infringement procedures against Member States when necessary.

In 2009, the Commission dealt with fewer complaints and infringement cases in the various non-harmonised fields covered by Article 34-36 TFEU – 65 in 2009, compared with 73 in 2008 and 85 in 2007. In 2009, 29 new complaints were received and 3 own-initiative cases begun, compared to 27 and 1 respectively, in 2008.

The main areas of concern remain national rules on registration of vehicles, obstacles to the free movement of food supplements and restrictions on the parallel imports of medicines and plant protection products. A new area of concern might be the resurgence of systematic border checks on individuals and their goods. Today's restrictions on the free movement of goods often relate to requirements imposed on products in one Member State that are additional to, or more stringent than, those imposed in another. Market access for imported products can also be hampered by complicated and time-consuming administrative procedures.

The majority of complaints (around 2/3) are still brought by SMEs. This confirms findings that, in contrast to large operators who have been very successful in benefiting from the opportunities of the internal market, SMEs often find it fragmented and difficult to penetrate.

In 2009, several infringement cases were closed after the Commission and the Member States found solutions to the problems:

- Finland modified its legislation to remove obstacles to the registration of vehicles previously registered in other Member States.

- Latvia suppressed the excessive custom formalities applied to the sending of packages within the EU.

- France inserted a mutual recognition clause in its legislation relating to products and processes for the treatment of water intended for human consumption, allowing products legally marketed in other Member States to be marketed in France.

- Italy adapted its legislation to remove obstacles to the use of venturimetric diaphragm gas meters.

The Court of Justice delivered the following judgments confirming the position taken by the Commission, thereby further clarifying the scope of Articles 34-36 TFEU:

In case C-88/07[18], it was held that the Spanish administrative practice of withdrawing from the market products based on medicinal herbs legally marketed in other Member States if they included herbs not included in a limitative list was in breach of Article 34 TFEU.

In case C-100/08[19], the Court held that Belgian legislation imposing restrictive conditions on the import, keeping and sale of specimens of birds born and bred in captivity and legally brought to the market in another Member State, contravened Article 34 TFEU.

In case C-109/08, the Commission had brought second proceedings against Greece under Article 260 TFEU for not implementing the Court of Justice's decision on amusement machines[20]. On 4 June 2009[21], the Court ordered the Hellenic republic to pay into the European Union own resources' account a penalty payment of EUR 31 536 for each day of delay in implementing the measures necessary to comply with the judgment in Case C-65/05 applying from the date of delivery of the judgment. It further ordered the Hellenic Republic to pay a lump sum of EUR 3 million.

However, in one judgment relating to Italian legislation[22] prohibiting 'motorcycles' from towing a trailer, the Court dismissed the proceedings brought by the Commission as it found that, even though the national measure was a trade restriction, it was justified for the protection of road safety.

The Commission continued to find pro-active solutions outside or in parallel with infringement proceedings under Article 258 TFEU EC through the SOLVIT problem-solving network, the preventive mechanism of Directive 98/34/EC (whereby Member States are

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18 Judgment of 5 March 2009, Case C-88/07, Commission v. Spain

19 Judgment of 10 September 2009, Case C-100/08, Commission v. Belgium

20 Judgment of 26 October 2006, Case C-65/05, Commission v. Greece

21 Judgment of 4 June 2009, Case C-109/08, Commission v. Greece

22 Judgment of 10 February 2009 , Case C-110/05, Commission v. Italy

obliged to notify new national technical rules to the Commission at the draft stage), the EU PILOT[23] mechanism which facilitates contacts with Member States and helps resolve some complaints more swiftly and through bilateral meetings organised with Member States to discuss active complaints and infringement cases as well as various horizontal issues.

Regulation (EC) 764/2008 (the so-called "Mutual Recognition Regulation") began to apply on 13 May 2009. This Regulation sets out the procedural requirements for denying mutual recognition and defines the rights and obligations of national authorities on the one hand and, on the other, enterprises wishing to sell in one Member State products lawfully marketed in another, when the competent authorities intend to take restrictive measures in relation to the product. It is a crucial tool in facilitating enterprises', in particular SMEs', access to other national markets. In 2009, attention focused mainly on ensuring the correct application of this regulation: the Committee created by the regulation was set up and its first meeting organized, the list of national "Product Contact Points" to inform enterprises about national technical rules was established and published, an indicative list of products not covered by EU harmonisation was set up and work on a database incorporating this data has advanced.

Some petitions were dealt with in 2009. Two of them (1087/2002 and 1374/2002) concerned a request for information of case C-109/08 against Greece. The Commission explained that several letters have been sent to Greece during 2009 asking for the payment as established in the Court' judgment. The Commission also clarified that this case only related to amusement game machines where no gambling is involved.

In petition 488/2006 the petitioner asked for information on Greece's ban on the use of electronic games in Internet cafés, in particular law 3037/2002, which had been subject to proceedings before the Court in case C-65/05. The Commission explained that it has taken a decision on 17 October 2007 to refer Greece to the Court given that Greece has not yet complied with the judgment delivered in case C-65/05.

Petition 578/2007 concerned a complaint about the French legislation regarding the dossier requirements to place on the market either a product or a process to treat water for human consumption. The Commission explained that the new legislation seemed compliant with Art. 34 TFEU.

Finally, in petition 721/2009 the petitioner informed the Commission that some of the herbal products that his online company sells have been banned by Germany and confiscated by the police. Having also contacted directly the Commission services, these explained to him that neither the ban nor the confiscation of stocks containing products suspected to infringe national narcotic law amounted to an infringement of Community law.

Evaluation

Articles 34-36 TFEU remain essential to tackling cross-border obstacles to trade. As these provisions apply only to the non-harmonised area, their ambit fluctuates in accordance with developments in secondary Community legislation.

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23 16 complaints or requests for information were handled through the EU-PILOT which has proved, in some cases, to be a useful tool to provide very quick solution to problems.

In 2009, a further slight decrease in the number of open infringement cases was observed, conforming to a longer term trend. This is due to the quicker handling of cases and importance given to the pursuit, when possible, of alternative solutions through dialogue and cooperation with the Member States outside the infringement procedure. Nevertheless, the volume of infringement cases and the volume of new cases remain substantial and show that there is still a significant degree of non-compliance with the principle of the free movement of goods and a lack of understanding of the concept of mutual recognition, resulting in practical barriers to cross-border trade in goods. The main sectors concerned evolved slightly even though car registration cases still trigger a lot of complaints from citizens.

As regards mutual recognition, Regulation (EC) No 764/2008 should reduce the number of problems and complaints occurring as a result of Member States incorrectly applying recognition procedures and thereby denying access to their markets.

As regards the specific sector of vehicle registration, which is one of the priority sectors, new framework Directive 2007/46/EC which was to be transposed by the end of April 2009 should create more legal certainty, which ought to facilitate the re-registration of used vehicles in Member States and hopefully decrease the number of infringement cases.

Consequences of evaluation

On the basis of the evolution observed in the main sectors of complaints as well as the anticipated effects of Directive 2007/46/EC, priority cases are to be re-focused on cases relating to free movement of food supplements, parallel imports of medicines and plant protection products and obstacles which, on a case by case analysis, have the greatest economical impact on internal trade. When a pattern of complaints reveals a similar issue arising in several Member States, all Member States may be asked to explain their particular approaches by means of a horizontal enquiry..

In the light of positive results observed so far, the Commission is encouraged to engage in dialogue with Member States with a view to reaching quicker solutions to free movement of goods issues.

To raise awareness of the free movement of goods principles among Member States and their officials, an updated version of the 'Guide to the application of Treaty provisions governing Free Movement of Goods (Articles 34-36 TFEU)'24 has been prepared which will be distributed to all national officials concerned.

The first national reports on the application of the "Mutual Recognition Regulation" are due in May 2010. The impact of the regulation on the application of the mutual recognition principle by national authorities will then be assessed together with the anticipated effect on the volume and type of infringement cases brought by Commission.

Summary

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24 This Commission staff working document has been adopted on 12 May 2009 http://ec.europa.eu/enterprise/policies/single-market-goods/files/goods/docs/art2830/new_guide_en.pdf

Monitoring the application of the free movement of goods principle in the non harmonised area remains a substantial task as a constant flow of complaints and requests for information arrives at the Commission. Many solutions are found in non-litigious dialogue with the Member State but sometimes referral to the Court is inevitable. The Treaty and related regulations are adequate tools to ensure that the fundamental freedom of free movement of goods is safeguarded. While any breach of this fundamental freedom must be pursued, the priorities are and will continue to reflect the emergence of problematic cases and areas having the greatest impact on intra-EU trade.

Legislation

Treaty Articles:

http://ec.europa.eu/enterprise/policies/single-market-goods/files/treaties/tfeu_en.pdf#page=15

Regulation Mutual recognition regulation

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0021:0029:en:PDF

1.18. Preventive rules of Directive 98/34/EC

Current position

In 2009, preventive action continued under Directive 98/34/EC through the provision of information, advice, interpretation and guidance with regard to national draft technical regulations of the 27 Member States, the EFTA countries and Turkey concerning products and Information Society Services.

In 2009, fruitful collaboration between the Member States and the Commission took place on several levels. Firstly, three meetings of the Committee on "Standards and Technical Regulations" were held to discuss current problems connected with the implementation of Directive 98/34/EC. These meetings not only play an important role in supervising the operation of the 98/34 procedure and in the examination of policy issues raised by the notifications, but also remind the Member States to notify regularly to the Commission all their draft technical regulations.

Secondly, seminars were held in Ireland, Italy, Slovenia and Portugal on the operation of the notification procedure. The seminars were attended by representatives of national authorities and industry. These seminars are an excellent opportunity for the Commission to present Directive 98/34/EC as a key instrument of the Internal Market, which prevents problems ex-ante and avoids infringement proceedings. Moreover, the seminars strengthen relations between the Commission and representatives of the national authorities. The opportunity to present information about the obligation to notify national technical regulations and the notification procedure itself, as well as discussions and exchanges of views on all problems connected with the operation of the 98/34 procedure, are all very important. The awareness campaign of national authorities on the need to respect the requirements of the 98/34 notification procedure yielded good results and a higher number of notifications was made in 2009 than in 2008. This upward trend seems to be continuing at the beginning of 2010.

In addition, following a conference with Member States and economic operators that took place in 2008 a working group with representatives of the Member States was set up which

will meet three times in 2010 to evaluate the results of the 98/34 notification procedure and see whether improvements can be made.

Changes underway

There were 2 new complaints in 2009 concerning failures to notify national technical regulations under Directive 98/34/EC.

Evaluation

The steady high number of notifications (736) and reactions from the Commission (173) and the Member States (217) underlines the importance of Directive 98/34/EC as a tool for the prevention of barriers to intra-Community trade - and for better regulation since it also leads to improvements in the quality of national legislation. Its ex ante operation means that time-consuming and sometimes controversial infringement procedures can be avoided.

2. COMPETITION

2.1. Current position

2.1.1. General Introduction

The infringement-related work in the competition sector focuses on:

- the monitoring of Member States' behaviour in relation to liberalized network industries and financial services;
- non-compliance with Commission recovery decisions; and
- the correct transposition and implementation of secondary legislation.

Most of the infringement cases handled by the Commission services in this sector have their origin in a complaint submitted by undertakings or citizens that are based on a breach of Article 86(1) EC in conjunction with Articles 81 and/or 82 EC or Articles 81, 10, 3(g) EC by the Member State concerned. The Lisbon Treaty entered into force on 1 December 2009. Since then, the numbering of the articles has changed. For antitrust, Articles 81, 82 and 86 EC have become respectively Articles 101, 102 and 106 TFEU. The provisions are in substance identical. Articles 10 and 3(g) EC have been replaced with 4(3) EC-new TFEU. Throughout this document, references to the old numbering have been maintained when they relate to proceedings taken before 1 December 2009. Also since 1 December 2009, the European Court of Justice (ECJ) is renamed the Court of Justice of the European Union (CJEU).

Out of a relatively stable number of some 30 pending infringement cases, 73% are complaints, 7% of the cases concern the wrong transposition or non-communication of Directives, and 20% of the cases deal with the non-recovery of State aids pursuant to Art. 260 TFEU. The relatively low number of infringement cases dealt with by the Commission services in the competition sector can be explained, on the one hand, by the very stable *acquis* – no new Directives in the field of competition law have been adopted in 2009 – and, on the

other hand, by the fact that most cases in the competition field derive from the infringement of Treaty provisions by undertakings (antitrust, mergers) or by Member States granting State aid, none of which constitutes an infringement covered by this Annual Report.

As in 2008, the control of the transposition of Directives in 2009 focused on:

- the Financial Transparency Directive in the field of State aid (80/723/EEC as subsequently amended); and

- the field of electronic communications, particularly with regard to the Directive on Competition in the Markets for Electronic Communications and Services (2002/77/EC).

Proceedings pursuant to Art. 260 TFEU constitute another important component of the Commission infringement work as they not only seek to remedy an infringement of competition rules by the Member State but also because the recovery of incompatible state aid is necessary to remove the distortion of competition resulting from the granting of incompatible aid. These proceedings are initiated where a Member State does not comply with a Commission decision requiring the recovery of incompatible state aid. In a first step, the Commission may refer the Member State directly to the CJEU pursuant to Art. 108(2) TFEU in derogation of Art. 258 TFEU. If the Member State still fails to recover the aid although the Court has found that this failure constitutes an infringement, the Commission may refer the Member State again to the CJEU, this time pursuant to Art. 260 TFEU. This Annual Report only covers the last stage of the recovery proceedings, i.e., from the sending of the Letter of Formal Notice pursuant to Art. 260 TFEU onwards.

2.1.2. **Work done in 2009**

In 2009, the priority in competition policy in relation to State conduct was to improve competitive conditions in liberalised network industries (e.g., post and telecommunication, electricity, electronic communications) and financial services and to ensure non-discriminatory access to infrastructure, as well as full and proper transposition of legislation. The implementation of these priorities is reflected in the infringement cases dealt with in 2009 on which significant progress has been made over the year.

For instance in the energy sector, the Commission handled a number of complaints based on Art. 106 in conjunction with Art. 102 TFEU and investigated an infringement of Article 21 of the Merger Regulation with a view to opening up national energy markets allowing companies to enter and compete with incumbents. In the same vain, the Commission services have actively pursued infringement cases in the field of electronic communications to open up the recently liberalised broadcasting markets and allow competitors to benefit from the technological developments. A more detailed account of the cases handled in 2009 that have entered the formal infringement procedure can be found below.

Postal sector

The European Commission has continued with the infringement proceedings under Article 258 TFEU against the Slovak Republic for the non-implementation of the Commission 2008 decision[25]. In its decision, the Commission found the remonopolisation of the hybrid mail

25 OJ C 322, 17.12.2008, p. 10–11.

sector to the benefit of the postal incumbent Slovak Post to be in breach of competition rules. Hybrid mail is a service whereby the content of a communication is electronically transmitted from the sender to the service provider, which then prints, envelopes, processes and delivers the postal item to the final addressee. As a result of the Slovak postal law amendment, alternative postal operators were no longer allowed to deliver hybrid mail items, an activity previously open to competition. Following the Commission's decision, Slovakia has not informed the Commission of any measures which would have put an end to the infringement. As a result, on 29 October 2009, the Commission adopted a Reasoned Opinion[26]. Should Slovak Republic fail to comply with the Commission Decision, the Commission may refer the matter to the CJEU. In the meantime, the alternative operators may rely on the Commission's decision.

Energy sector

In its efforts to promote competition in the recently liberalised energy markets, the Commission adopted a decision 4 August 2009 pursuant to Article 86(3) EC by which it has accepted commitments made by Greece to ensure fair access to Greek lignite deposits[27]. The commitments have been given in order to comply with the Commission's decision of 5 March 2008 on the granting and maintaining in force by Greece of privileged access to lignite in favour of Public Power Corporation S.A. (PPC)[28]. Currently competitors of PPC in the electricity market cannot compete effectively with PPC because they are denied access to sufficient quantities of lignite. Greece has specifically committed to grant exploitation rights to four lignite deposits through public tenders excluding PPC, to ensure that competitors of PPC in the Greek electricity market get access to lignite and to lignite-fired generation. The Commission's decision makes the proposals legally binding on Greece and requires the commitments to be implemented within one year. On the basis of Greece's proposals, competitors of PPC will potentially access about 40% of all exploitable Greek lignite deposits. The Commission is satisfied that the implementation of the proposed measures would remove the anticompetitive problems identified in the Commission's decision of 5 March 2008.

On 31 January 2008, the European Commission sent Spain a Letter of Formal Notice for failure to comply with a Commission decision of 5 December 2007 finding that Spain had breached Article 21 of the Merger Regulation29 by subjecting the approval decision of the

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26 IP/09/1632.

27 OJ C243, 10.10.2009, p. 5.

28 OJ C92, 15.4.2008, p. 3.

29 OJ 2004, L 24/1, available at:http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004R0139:EN:NOT

acquisition of control over Endesa by Enel and Acciona to a number of conditions, thereby unduly interfering with the Commission's exclusive competence to decide on a concentration with Community dimension30. As the Spanish authorities' reply to the Letter of Formal Notice did not remove all the Commission's concerns and as Spain did not take any measures to comply with the Commission decision of 5 December 2007, the Commission sent Spain on 15 May 2008 a Reasoned Opinion asking it to withdraw the conditions imposed on the takeover31. On 17 July 2008, the European Court of Justice declared unlawful the Spanish legislation (Royal Decree n 4/2006) on the basis of which Spain imposed its conditions. Following this judgment, Spain declared its willingness to (i) modify the Royal Decree in line with the ECJ judgment and to (ii) withdraw all the illegal conditions based on the Royal Decree. Consequently, negotiations started between the Spanish authorities and the Commission services concerned (namely in the sectors of competition, internal market and energy) on both issues. On 13 November 2009 the Spanish authorities withdrew all the illegal conditions. Discussions on the modification of the draft Decree are still ongoing.

Electronic communications

In the context of an infringement procedure in the broadcasting sector against Italy for failure to comply with the EC regulatory framework on electronic communications, the Commission continued in 200932 to closely monitor the transition (switch-over) from analogue to digital terrestrial broadcasting. Following close contacts with Commissioners Kroes and Reding in the beginning of 2009, the Italian authorities adopted new criteria for the "digitization" of terrestrial television networks in Italy aimed at ensuring that more frequencies would be available to newcomers and to smaller existing broadcasters (AGCom *Delibera* n. 181/09/CONS and *legge comunitaria* 2008). At the same time, it was agreed that asymmetric measures would be taken in favour of non-integrated third party independent content providers wishing to access the digital infrastructure of major TV broadcasters. On 17 September 2009, the Italian Authority for Communications (AGCom) concluded a public consultation on draft tendering rules for the allocation of the frequencies. The tender is expected to be launched in 2010.

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30 This case is linked to another infringement action concerning the takeover of Endesa by E.ON which was also made subject to a number of conditions imposed unilaterally by Spain. In this case, after sending a Reasoned Opinion on 7 March 2007, the Commission decided on 28 March 2007 to refer Spain to the Court of Justice pursuant to Art. 226 EC. In its judgment handed down on 6 March 2008 (C-196/07), the Court declared Spain to be in violation of Community law by not lifting the conditions and thereby not complying with the Commission's Article 21 decision.

31 On 17 July 2008, the European Court of Justice delivered its judgment on the infringement action brought by DG MARKT against Spain concerning the Royal Decree n. 4/2006, which was the legal basis for imposing the conditions on the acquisition of Endesa. The Court declared the Decree incompatible with Community law.

32 A Reasoned Opinion in this case was sent to Italy on 18 July 2007.

On 2 February 2009, following up on the infringement proceedings initiated in the course of 200833, the Commission sent a Reasoned Opinion34 to the Slovak Republic requesting it to bring the Slovak Competition Act into conformity with EU law. The Reasoned Opinion concerned in particular Section 2(6) of the Slovak Competition Act, which excluded the applicability of the Act in situations where the conduct of the undertakings is at the same time subject to sector specific ex-ante regulatory obligations (such as in the electronic communications, energy or postal sectors), thus limiting the ability of the NCA to effectively apply Article 101 and 102 TFEU to anticompetitive behaviour which would also fall within the competence of regulatory authorities. In the Reasoned Opinion the Commission considered this provision of the Competition Act to be incompatible with Article 10 EC (repealed now Article 4(3) EU-new) and Regulation 1/2003 and enjoined the Slovak Republic to take the necessary measures to put an end to the infringement. Following the Reasoned Opinion, the Slovak Republic repealed the contested provision in its entirety with effect from 1 June 2009. On 25 June 2009 the Commission therefore adopted a decision to close the infringement procedure35.

Financial services

On 10 May 2007, the Commission adopted a decision on the basis of Article 86 (3) EC finding that the exclusive right for the distribution of a savings book product (Livret A) granted by France to three banks (Banque Postale, Caisses d'Epargne and Crédit Mutuel) constituted an infringement of Article 86(1) EC in conjunction with the freedom of establishment and the freedom to provide services (Articles 43 and 49 EC) due to the resulting obstacles for French and foreign competitors to enter and develop the market for liquid savings in France. The decision also set a deadline to amend the legislation within nine months. As no such amendment was adopted within the prescribed period, the Commission sent a Letter of Formal Notice on 5 June 2008 with a view to obliging France to end the infringement. As a result of the infringement proceedings, France opened up the distribution of Livret A on 1 January 2009. Since then, a significant number of new "livret A" accounts have been opened in banks which are now enabled to distribute these accounts and the brokerage fees have been cut by nearly half. On 8 October 2009 the European Commission therefore adopted a decision to close the infringement procedure.

Article 260 TFEU cases

On 31 January 2008, the Commission issued a Reasoned Opinion against Italy for failure to comply with a judgment of the ECJ36 condemning Italy for non-execution of the Commission's recovery decision of 11 May 1999 regarding employment aid. The Reasoned Opinion informed Italy that the measures it had taken to implement the Commission decision

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33 The Commission sent a letter of formal notice to the Slovak Republic on 6 June 2008. The Slovak Government replied to the letter of formal notice on 14 August 2008.

34 See IP/09/200.

35 See IP/09/1182. The successful resolution of this case follows a previous infringement procedure against the Czech Republic where similar problematic legislation was also repealed in 2007.

36 C-99/02, Commission v Italy.

were insufficient, also due - to a very significant extent - to the willingness of domestic courts to suspend the execution of recovery orders. Subsequently, Italy adopted a series of legislative measures aimed at speeding up the recovery for cases pending before national judges. In spite of these new provisions, the progress made in the recovery continues to be unsatisfactory. On 25 June 2009, the Commission has therefore decided to refer this case to the ECJ pursuant to Art. 260(2) TFEU and to propose the imposition of financial penalties against Italy. The Commission's Legal Service has in the meantime filed this case with the ECJ37.

In a similar case, which concerns the non-recovery of aid granted to publicly-owned utility companies ("municipalizzate"), the Commission has sent a Reasoned Opinion to Italy on 1 February 2008. This was based on the fact that the ECJ had condemned Italy on 1 June 2006 for failure to comply with the obligations stemming from the Commission's recovery decision of 5 June 200238. Following the judgment, Italy had still not managed to implement the recovery successfully. In recent months, Italy has made considerable progress in the recovery proceedings vis-à-vis a number of beneficiaries. For some of the aid still to be recovered, Italy is facing difficulties related to the suspension of recovery orders by domestic courts, which are slowing down further progress.

On 20 November 2009, the Commission issued a reasoned opinion against Spain for failure to comply with the judgment of 20 September 200739 in which the ECJ confirmed that Spain had failed to fulfil its obligations under three Commission recovery decisions of 20 December 2001 concerning fiscal aid schemes implemented in the three Basque provinces. Although progress has been made in the recovery of the incompatible aid, the decisions are still not fully implemented40. In six other fiscal measures implemented in the Basque provinces, a Reasoned Opinion against Spain had already been issued on 26 June 2008 (for failure to comply with the judgment of 14 December 200641). Although progress has been made in the recovery of the incompatible aid, the decisions are still not fully implemented42. The Commission services in the competition sector are currently assessing the detailed information recently submitted by Spain.

On 20 November 2009, the Commission sent a letter of formal notice pursuant to Art. 260 TFEU against Spain for failure to comply with a judgment of the ECJ of July 200243

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37 Case C-496/09, Commission v Italy.

38 C-207/05, Commission v Italy.

39 Case C-177/06, Commission v Spain.

40 Among others, the Commission services in the competition sector have requested a certification by an independent body that the lists of beneficiaries are completed and that the amounts recovered are correct. This certification has not been submitted to date.

41 Joined Cases C-485/03 to C-490/03, Commission v Spain.

42 Among others, the Commission services in the competition sector have requested a certification by an independent body that the lists of beneficiaries are completed and that the amounts recovered are correct. This certification has not been submitted to date.

43 Case C-499/99, Commission v Spain.

condemning Spain for non-execution of the Commission's recovery decision of 20 December 1989 as regards of the Magefesa Group. Twenty years after the negative Commission decision, Spain has failed to fully and effectively recover the illegal aid from all the beneficiaries. In addition, Spain has not provided a clear timeline for the completion of the recovery.

In the area of recovery of incompatible state aid, the Commission has made significant progress with respect to the execution of recovery decisions by Member States. The amount of illegal and incompatible aid recovered has increased from € 2.3 billion in December 2004 to € 10.4 billion at 31 December 2009 (i.e., 88% of the total amount to be recovered). Accordingly, the percentage of illegal and incompatible aid still to be recovered at the end of 2009 has fallen from 75% to 12%. This is due to the efficient enforcement of recovery decisions by the Commission prompting Member States to recover incompatible aid from the beneficiaries.

2.2. Evaluation based on the current situation

Against the background of the stable *acquis* in the competition law field and the relatively constant if not decreasing number of pending infringement cases in this sector, the situation can be described as stable and satisfactory, not indicating any particular problems that would require urgent attention or the modification of the DG's priorities. Likewise, there are no new measures due to be adopted in the near future nor relevant implementation plans, guidelines, expert group meetings, transposition workshops or management networks.

The current financial and economic crisis has no immediate impact on the infringement work in this sector as it cannot constitute a justification to delay recovery because the beneficiary became insolvent or otherwise entered into financial difficulties. On the contrary, Commission services will continue to pursue its infringement cases on the basis of Art. 260 TFEU and see to it that all incompatible aid is recovered. This is necessary to ensure a level playing field between competitors and a market of undistorted competition – a requirement which becomes all the more important in the current economic circumstances where companies struggle to stay on the market even in conditions of undistorted competition. As already explained before, the Commission has achieved a very good track record in the recovery field. The enforcement action of the Commission services can therefore focus on those instances where Member States have still not shown the desired results in their recovery efforts, mainly because of national legislation creating obstacles to effective recovery.

The priorities for 2009 as set out in the 26th Annual Report - the improvement of the competitive conditions in the liberalised markets and in financial services - have been fully taken up in the infringement work of the Commission services in the competition sector . The infringement procedures in the energy, postal and financial services sectors have made important progress which have resulted in either the closing of the cases or have already led to the sending of a Reasoned Opinion in 2009. Infringement action on the basis of Art. 106 TFEU complaints thereby has to be seen as a complementary tool to, firstly, Community legislation aimed to liberalise certain sectors of the economy (which is mainly adopted by other Commission services) and, secondly, to the direct application of Articles 101, 102 and 107 TFEU (the assessment of which falls outside the scope of this Annual Report). The infringement cases dealt with by the Commission services in the context of liberalisation therefore concern the residual problems of the granting of special or exclusive rights by Member States, i.e., instances of such rights which "survived" the liberalisation and which have not been tackled on the basis of the direct application of Art. 101, 102 or 107 TFEU.

In the field of electronic communications and the correct implementation of the Directive on Competition in the Markets for Electronic Communications and Services (2002/77/EC), the Commission services have actively monitored changes to the relevant provisions in the Italian broadcasting market and maintains its efforts to ensure effective competition in this sector.

With respect to the transposition of the Financial Transparency Directive (80/723/EEC as subsequently amended), the Commission closed infringement proceedings against Germany that fully implemented the Directive and sent Reasoned Opinions to UK and Belgium for not having fully transposed or communicated all the national transposition measures to the Commission. Belgium has not provided sufficient information on the full implementation of the Directive in its entire territory. It is therefore envisaged to proceed with the referral of this case to the Court of Justice in the first half of 2010.

2.3. Priorities and planned action

For 2010, the draft Management Plan envisages infringement action in sectors that have recently been liberalised or are in the process of liberalisation, such as energy or postal services, as well as in the media sector. The priorities for the year 2010 therefore follow closely the priorities established for 2009: the Commission services will continue to focus on these sectors by, for instance, proceeding with the infringement procedure against Slovakia for closing a part of the postal market to competition.

Another area of priority action in 2010 concerns the continued monitoring of the transposition of the Financial Transparency Directive and the Electronic Communications and Services Directive by Member States. The former will result in Commission services pursuing the cases against the UK and Belgium for the non-communication of measures to implement the Transparency Directive correctly and in time.

In the field of complaints-handling, the current economic crisis will require the Commission to ensure that Member States do not violate Art. 106(1) TFEU by granting special or exclusive rights to their own companies in an effort to protect national markets from competition.

Finally, long standing non-recovery cases will if necessary in 2010 be referred to the CJEU pursuant to Art. 260 TFEU with a view to imposing a lump sum and daily penalty payments on the Member State concerned to ensure effective recovery of the aid granted.

3. EMPLOYMENT, SOCIAL AFFAIRS AND EQUAL OPPORTUNITIES

The overall strategy for the monitoring of the application of European law in the field of employment, social affairs and equal opportunities throughout 2009 was a problem-solving and dialogue-based approach. Priority was given to identifying preventive options to infringement proceedings, based mainly on:

– **Strengthening the cooperation with national authorities to foster the prevention of problems of application of EC law**

The Commission continued its practice of bilateral meetings with national authorities to facilitate implementation of Directives. For instance, in the area of anti-discrimination and

gender equality the Commission set up in 2009 a working group composed of representatives of Member States and stakeholders to discuss the implementation of the Directive 2004/113/EC. A similar approach is envisaged for 2010 for the transposition of the new Directive on Parental Leave.

In the area of labour law, an Expert Committee on Posting of Workers provided for an excellent opportunity to discuss, with Member States and Social Partners concerned, a number of implementation, application and enforcement issues related to Directive 96/71/EC. In addition, an informal Governmental Experts Group provided valuable technical assistance in the process of transposition and implementation of the Directives 2008/104/EC and 2009/38/EC. This helped addressing the problems at an early phase and prevented infringement proceedings. Moreover, the Committee of Senior Labour Inspectorates assists the Commission by focusing on problems of enforcement of European Union law, in particular, by encouraging a closer cooperation between the national labour inspection services.

– **Making use of all possible alternative options to infringement proceedings**

The recourse to problem-solving mechanisms such as EU PILOT was streamlined in 2009, and, therefore the number of cases treated by the Commission in EU PILOT and CHAP has increased significantly. The Commission has also made extensive use of external expertise (Equality Bodies, Networks of Independent Legal Experts) to develop informative reports and guides used by legal practitioners across the EU.

– **Raising citizens' awareness regarding their rights**

Substantial effort has been put into improving communication tools to inform the citizens about their rights deriving from EU law particularly in the field of free movement of workers, social security coordination, health and safety at work as well as anti-discrimination and gender equality. This will furthermore continue in 2010 as the entry into force of the Lisbon Treaty which made the Charter of Fundamental Rights legally binding opens new possibilities for citizens to defend their rights.

That overall strategy has obviously prevented the opening of infringement procedures but nevertheless, there were domains where non compliance with specific Directives remained and those domains were linked to very sensitive political issues. Therefore, the reconciliation between the legal and political considerations proved to be very difficult and led to **serious challenges**:

– With regard to working conditions, a key issue was how to pursue the considerable number of registered working time complaints/infringements related in particular to the SIMAP-Jaeger44 rulings whilst negotiations on a Directive proposal were taking place in Council and Parliament on the same issue and had to be ended without success. In that context, it was not possible for the Commission to adopt the comprehensive report on the transposition and application of the Working Time Directive in all Member States, although the report was completed in 2008 and submitted during 2009 to Member States, social partners and experts for comments.

44 Judgment of 3.10.2000 in case C-303/98 and judgment of 9.09.2003 in case C-151/02

– In the area of posting of workers, the challenge was to have a clear picture of the implementation of Directive 96/71/EC and a number of initiatives were taken in order to assess the impact of that Directive, with the launch of a feasibility study on a European platform of cooperation for labour inspectorates, of a study on legal aspects and of a study on the economic and social aspects. Along with the impact assessment and the study on the protection of workers' rights in subcontracting chains to be launched in 2010, these instruments should provide the Commission with the necessary information to establish the content of a forthcoming legislative proposal in this area.

– In the area of anti-discrimination a main challenge was how to advance with the proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, are or sexual orientation outside the labour market. The key issue was how to muster the agreement of all Member States in the Council given that the proposal is based on art. 19 TFUE (ex. art. 13 TEC) and unanimity is required in the Council.

Against the complexity of matters, the Commission nevertheless obtained **commendable achievements** in the area of employment, social affairs and equal opportunities. It is therefore worth mentioning the following:

– On 30 November 2009, the Council reached an agreement on the proposal for a Directive on the parental leave intended to replace Directive 96/34/EC. The proposal for Directive extends the right to parental leave from three to four months per child. At least one of the four months cannot be transferred to the other parent, offering thus incentives to fathers to take the leave. The Framework Agreement on parental leave, on which the Directive is based, was signed by the European social partners (BUSINESSEUROPE, ETUC, CEEP and UEAPME) on 18 June 2009.

– On 27 July 2009, the Council and the Parliament reached an agreement on Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems. The agreement concluded over a decade of negotiations on the new modernised EU social security coordination rules and started the countdown to 1 May 2010, the date of the entry into force of the new legislative package (Regulation (EC) No 883/2004, as amended by Regulation (EC) No 988/2009, and supplemented by Regulation (EC) No 987/2009). The modernised coordination rules will make the system work more efficiently. Central to the modernisation is the introduction of the electronic exchange of social security information.

3.1. Free movement of workers and coordination of social security schemes

3.1.1. Current Position

3.1.1.1. Introduction

In the field of free movement of workers and coordination of social security schemes, 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. Over the years, problems have been brought to the attention of the Commission through individual complaints, petitions of citizens to the European Parliament and Parliamentary questions which has led the Commission to increase its recourse to problem-solving mechanisms and it intensifies communication to prevent problems.

3.1.1.2. Report on progress made in 2009 regarding free movement of workers

The Commission carried out a systematic review of the legislation of all Member States following two preliminary judgments of the ECJ regarding the nationality condition for posts of master and chief mate of ships where the prerogatives of public authority are exercised by private sector workers. Out of 20 procedures opened on this issue in 2004, 3 were still ongoing in 2009. After the Court of Justice confirmed its previous judgments also against Spain45 (in 2008) the Commission has started the procedure to ensure the correct reform of the Spanish rules (Article 260 TFEU); the reform is ongoing and the Spanish authorities have announced that new rules would be adopted by May 2010. After the Czech rules had been brought into line with Community law, the Commission decided to withdraw its case from the Court. In December 2009, the Court confirmed its jurisprudence also in relation to Greece46 and the procedure to ensure the correct reform of the Greek rules (Article 260 TFEU) has been initiated immediately afterwards.

The Commission services have received many queries and complaints concerning the residence rights of migrant workers in the host Member State. It is still partly due to the fact that in May 2006, Directive 2004/38/EC effectively entered into force and introduced new residence formalities and some important new rights (such as the right of permanent residence). With a view to ensuring the respect of the provisions of Directive 2004/38/EC, the Commission services have been organising bilateral contacts with Member States to make sure that the Directive is correctly transposed and applied across the EU.

In the situation of economic crisis, more and more replies had to be provided concerning the rights of jobseekers and people retaining the status of a worker and their family members – e.g. questions on how long they are entitled to stay in the host Member State, whether they have access to social benefits and social assistance, and whether they are protected against expulsion if they are unsuccessfully seeking employment for a long time in another Member State.

The Commission closed the infringement procedure against Denmark concerning the working conditions of Polish Seafarers on Danish Ships. In fact the new legislation adopted in March 2009, Act N° 214 of 24 March 2009 amending section 10(2) of the Act on the Danish International Shipping Register together with the explanatory memorandum met the Commission's concerns about the Danish legislation, expressed in the letter of formal notice of 13 October 2004. The Commission services consider that the new legislation is in conformity with EU law on free movement of workers. It provides guarantees for seafarers from other Member States working on board of a ship flying the Danish flag, insofar as they have, in accordance with the Case law of the European Court of Justice, "a sufficiently close link to Denmark", to be considered in resident in Denmark and consequently to benefit from collective agreements that are concluded by a Danish trade union.

A recurring topic of queries was again the application of transitional arrangements for workers from EU8 and EU2. There were requests for information and complaints about the

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45 C-89/07 (Commission v. France) ECR [2008] I-00045; C-447/07 (Commission v. Italy) judgment of 11.09.08, not yet published; C-94/08 (Commission v. Spain) judgment of 20.11.08, not yet published.

46 C-460/08 judgment of 10.12.09, not yet published

existence of restrictions as such (by citizens) and calls to end them (parliamentary questions). On this basis, the Commission services identified an incorrect application of transitional arrangements: it concerns eligibility for benefits and is linked to a wider problem of compatibility with EU law in a Member State's legislation which is under investigation. The Commission also examined the notifications of three Member States in April 2009 of serious labour market disturbances, pre-condition to continue to apply national conditions on labour market access for EU-8 workers for two more years after 1 May 2009, and accepted them as meeting the requirements of the transitional arrangements.

Employment in the public sector represents in many Member States an important part of the labour market. Therefore, the action of the Commission in this field has a significant effect on the migrant workers' rights; in particular there is a lot of labour mobility in the public teaching and health sectors.

The Commission dealt in particular with the following issues:

– abolition of nationality conditions access for employment in the public sector in line with the jurisprudence of the Court on Article 39 (4) EC. In 2009 an infringement procedure against Bulgaria was closed after the reform of the Bulgarian rules for access to posts in the civil service. Some other cases are still pending.

– the follow-up of the Burbaud-judgment47 has led to the opening of the internal recruitment competition for many posts in the French public sector to fully qualified migrant workers with a certain length of work experience.

– the issue of taking into account periods of employment acquired in another Member State for the purposes of access to the public sector and for determining working conditions (e.g. salary, grade) in the same way when comparable experience is acquired in the host Member State.

– Other complaints regarding public sector concerned: discriminatory working conditions (unrelated to the issue of recognition of professional experience), absence of equal treatment in relation to the taking into account of foreign diplomas for the purpose of access to the public sector (e.g. additional points awarded in a recruitment procedure) and for determining working conditions, disproportionate language requirements in access to posts.

Sport: for many years the Commission has been dealing with the issues of EU law related to free movement of professional sportsmen and sportswomen. In 2009, the Commission services, in particular, focused on the following points:

– The quotas on nationality applied in professional sport: in the follow-up to the Bosman's ruling48 the Commission undertook extensive action, in order to assure the respect of EU law. The Commission analysed and discussed proposals of European and international sport governing bodies, which were aiming at the establishment of quotas on nationality or regulating the transfers of players. However, given the fact that infringement proceedings

47 C-285/01

48 C-415/93.

for breach of Community law in accordance with Article 258 of the TFEU can only be initiated against a Member State of the European Union, the Commission services have sometimes encountered difficulties in enforcing EU law in Member States where a behaviour of private actors violating EU law could not be attributed to the State. To this end the Commission services ordered to an independent expert a comparative study on the State responsibility for professional sport activities which was received in November 2009 and illustrates the role of Member States in the organising and functioning of professional sport activities.

– The Commission was also closely involved in the analysis and the discussions surrounding the FIFA's proposal rule on 6+5 and its conformity with the EU law free movement rules. At present there is a constructive dialogue with football stakeholders on possible alternatives respecting the EU acquis in the area of free movement.

A case concerning the access to social advantages in the Netherlands (study grants for children of migrant workers) has been transferred to the Court49.

Regarding the issue of equal treatment of third country nationals, citizens from countries with which the European Union has signed an international agreement, the Commission has prepared and ensured the follow-up of the case-law of the Court of Justice, namely in the cases Kolpak50, Simutenkov51 and Kahveci52. The follow-up has consisted in answering individual requests as well as disseminating information on the obligation for professional sport clubs to treat equally third country nationals, coming from countries with which the European Union has signed an international agreement containing an equal treatment clause.

Citizens' complaints concern also the violation of their rights as migrant workers by private employers such as discriminatory treatment in access to work or working conditions. However, as in this case the Commission cannot intervene, it can only limit itself to provide the information about the migrant's rights and advise them to seek solutions through means available at the national level. The Commission notes however that enforcement of these rights at a national level is often problematic.

3.1.1.3. Report on progress made in 2009 in the field of social security coordination

In the field of social security coordination, the Commission services have received many queries and complaints concerning the application of Regulation (EEC) No 1408/71 and its implementing Regulation, in particular, from migrant workers about their social security rights, e.g. which legislation applies to them, their entitlement to sickness insurance benefits and family benefits, how to apply for a pension. Complaints concerned residence clauses in national legislation for various kind of social security benefits, incorrect application of the principle of aggregation of insurance periods, cumbersome or incorrect administration of cases involving an EU element.

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49 C-542/09

50 C-438/00.

51 C-265/03.

52 C-152/08.

Major issues concerning sickness insurance benefits in 2009 were the following.

In 2004, the Commission started infringement procedures against Finland, the UK and Sweden concerning benefits for disabled persons. In its judgment of 18 October 2007, the Court stated that the benefits concerned must be qualified as sickness cash benefits (therefore exportable) and not as special non-contributory benefits. As the Member States involved confirmed their willingness to abide with this judgment and the necessary preliminary steps were made, the infringements were closed in 2008. However, during 2009, more than 50 persons contacted the Commission services to signal the application of a so called "past presence test" which in most cases prevents the exportability of these benefits from the UK. The Commission services analysed the national rules of transposition of the ECJ ruling and considered that a problem still existed. The Commission has therefore started infringement procedures in that respect.

Following the introduction of a general sickness insurance scheme in the Netherlands on 1.1.2006, the Commission services received more or less four hundreds complaints from Dutch pensioners residing in another Member State, who suddenly fell under the scope of Regulation 1408/71, in particular article 28 or 28a stipulating that a person in receipt of a legal old-age or invalidity pension and who resides in another Member State than the one that pays the pension, is entitled to sickness benefits according to the legislation of the Member State of residence on behalf of the Member State that pays the pension. The latter may withdraw sickness insurance contributions from the pension paid. The Dutch pensioners claimed that they could not be obliged to pay Dutch sickness insurance contributions and that they were entitled to opt-out. The Commission examined the Dutch legislation and concluded that it was in line with Regulation 1408/71.

Another sensitive issue dealt with by the Commission concerns a decision of the French sickness insurance institution to exclude EU nationals residing in France, who are non-active but not yet in receipt of a state old-age pension, from access to the Couverture Maladie Universelle (CMU). According to the French legislation, all persons residing for more than 3 months in France and who are not covered by a French or foreign legal sickness insurance scheme are obliged to join the CMU (which is a contributory sickness insurance scheme). The exclusion of non-active persons from this regime constitutes an infringement of article 3 or Regulation 1408/71. To this effect, the Commission opened an infringement procedure, which is ongoing, against France in 2008.

As in the previous years, the Commission services received many queries about the European Health Insurance Card (EHIC), namely how to apply for it or how to use it. In 2009, the Commission closed infringement procedures against Cyprus, as regards the eligibility conditions for receiving EHIC and against Italy where EU students who are studying temporarily in Italy were required to present a form E-106 instead of EHIC. The two Member States concerned agreed to take necessary actions to comply with the EU legislation (Art. 22 of Regulation 1408/71). A new infringement procedure was opened against Spain in 2009. Contrary to article 22a of Regulation 1408/71, several Spanish Autonomous Communities refuse to issue EHIC to EU nationals residing in Spain who are entitled to sickness benefits as regional benefit provided by the Autonomous Communities because under Spanish legislation such benefits are not provided under social security legislation.

As regards pensions, the Commission received various complaints about the payment of pensions into the beneficiary's bank account in his or her Member State of residence. It seems that certain Member States have problems with such payments. The SEPA (Single Euro Payment Area) should be the answer to this problem. The Commission opened an

infringement procedure against Belgium, where legislation does not allow the payment of the pension directly to an account without having the foreign bank guarantee that it will repay the amount, should payments have been wrongly made. An infringement procedure was opened against Greece, where persons, in order to have their pensions exported, are obliged to open a bank account at the Greek national Bank, which is in an alleged breach of EU social security coordination rules and EU payment rules (Regulation (EC) No 924/2009).

With regard to unemployment benefits, in view of the economical recession and the rise of unemployment rates, the Commission services received a large number of queries concerning the right of migrant workers to unemployment benefits under Community law. Migrant workers were in particular asking in which State they can claim unemployment benefits, method of calculation of the benefit's rate, special regime for frontier workers and the possibility to have benefits exported in case they were interested to look for work in other Member States. Some of the migrants complained about the cumbersome and time-consuming administration of cases involving an EU aspect.

Several complaints were received by the Commission services from EU-8 nationals previously employed or self-employed in the UK who were not granted certain special non-contributory benefits by the UK authorities as a consequence of their failure to pass the "right to reside test". Under the UK national legislation the eligibility to certain categories of benefits is linked to the condition that the claimant needs to have a right to reside in the UK (a condition derived from Directive 2004/38/EC). At the end of 2009, the Commission services started to analyse the compatibility of those requirements with Community law, in particular their compliance with the principle of equal treatment with regard to the award of social security benefits as stipulated in Article 3 of Regulation 1408/71. The "right to reside test" is also applied under the UK national law to economically non-active persons who intend to settle in the UK when they apply for social security benefits in question.

Although there are no complaints, some Member States are still hesitant when exporting family benefits and paying differential supplements.

Social security coordination legal framework:

In 2009, significant progress was made in view of the entry into application of the new Regulations 883/2004 and 987/2009 (Implementing Regulation) on the 1st May 2010, which involved:

- The Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems was adopted on 16 September 2009.

- The Regulation (EC) No 988/2009, amending Regulation (EC) No 883/2004 and determining the content of its Annexes, was adopted on 16 September 2009.

- The Administrative Commission on social security for migrant workers (CASSTM) adopted a package of interpretative decisions and recommendations for the application of the new Regulations.

- The only drawback is that Commission's proposal (COM(2007)439) aimed at extending the provisions of Regulation 883/2004 and its implementing Regulation to third country nationals who are not yet covered by these provisions solely on the ground of their nationality, did not meet agreement within the Social Question Working Party of the

Council in 2009. Discussion of the proposal will continue under the Spanish Presidency in 2010. With the entry into force of the Lisbon Treaty, the legal basis has become Article 79(2)(b) TFEU, meaning that the ordinary legislative procedure – with involvement of the European Parliament and qualified majority vote in Council – will apply.

The coordination rules require an exchange of social security information between the national institutions. The implementation of the Regulations requires that the transmission of data between institutions should be carried out by electronic means under a common secure network: electronic exchange of social security information (EESSI). The EESSI system is a tool of e-administration and will enable 31 countries to exchange electronically social security information between their administrations thereby fulfilling the ultimate aim of strengthening the protection of mobile citizens' social security rights. This will in turn facilitate and speed up the decision-making process for the actual calculation and payment of benefits to citizens who move around Europe.

In order to assist institutions in the Member States to prepare for the entry into force of the new system of EU social security coordination rules, the Commission held 5 thematic training seminars on the different social security risks for institutions between June and October 2009.

3.1.2. **Evaluation of the current situation**

In 2009, the services of the Commission received for both sectors (free movement and social security coordination) an impressive number of letters and petitions of European citizens and Parliamentary Question of Members of the European Parliament (around 3000), approximately balanced between both sectors. Globally, the volume of incoming queries and complaints is relatively stable.

The nature of the queries remains more or less identical but obviously takes into account new legislation such as Directive 2004/38/EC and the development of the economic crisis.

It should be expected that the entry into application of the new provisions in the field of social security coordination (Regulations 883/2004 and 987/2009) as from the 1st of May 2010 will temporarily increase the number of queries and infringement procedures due to interpretation problems in subsequent years.

The infringement procedures dealt with by the Commission services in relation to the EU rules on free movement of workers concern the non-conformity of national legislation with EU law and systematic bad application of correct national rules by national authorities. In relation to coordination of social security coordination, the infringements concern the incorrect application by the national authorities of Article 48 TFEU and of existing Regulations in that area, namely Regulations 1408/71 and 574/72 on social security coordination.

At the end of 2009, the Commission services were dealing with 46 infringement procedures (compared to 38 procedures at the end of 2008): 18 in the field of free movement and 28 in the field of social security coordination.

In the field of free movement of workers, the current infringement procedures deal mainly with problems linked to access to posts (e.g. nationality condition for access to posts of captains and first officers of ships, language requirements), residence rights of migrant workers, transitional arrangements, sports issues, access to social advantages (e.g. study grants for children of migrant workers) and employment in the public sector (e.g. nationality condition for access to posts; recognition of professional experience).

In 2009, one judgment was rendered, 8 infringement procedures were closed, one case was withdrawn from the Court and 7 new infringement procedures were registered.

In the field of social security coordination, the infringement procedures deal with problems linked to sickness insurance benefits, including the European Health Insurance Card, residence clauses for eligibility for social security benefits, calculation and payment of old-age pension, discriminatory practices for the payment of certain social security benefits.

In 2009, 6 infringement procedures were closed, while 17 new procedures were open.

A number of complaints have been dealt with successfully through EU Pilot. This has enabled to solve problems raised by complainants without initiating an infringement procedure. It is complemented by a system of filtering of letters concerning social security in cooperation with the representatives of the Member States in the CASSTM put in place in 2005. Solving problems mechanisms are privileged tools to favour quick and rapid solutions to citizens' queries and complaints.

The Commission services also use in their monitoring task the work done by networks of academic experts, whose reports on the application of Community law in the field of free movement of workers and coordination of social security are published on a website53.

In view of the very high number of queries, substantial effort was made in terms to supplement monitoring with improved communication tools to better inform the citizens about their rights as regards free movement of workers and social security coordination. In particular, a brochure on rights of migrant workers "Do you want to work in another EU Member State? Find out about your rights! (Update 2007)" has been made available on the website.54 In the field of social security the brochure "The Community provisions on social security. Your rights when moving within the European Union" and the brochure "Moving in Europe. Your social security rights", containing information about national social security rights of 25 Member States, were made available on the website55.

3.1.3. **Evaluation results**

Priorities set up for 2009 have in general been met. Many infringements procedures were successfully closed and many issues resolved through problem-solving mechanisms. The forthcoming years should follow the same trend with the positive impact of the preventive approach based on administrative cooperation and on an increased communication towards citizens and national authorities.

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53 Network of experts on free movement of workers: http://ec.europa.eu/social/main.jsp?catId=475&langId=en

Tress network: http://www.tress-network.org/TRESSNEW/

54http://bookshop.europa.eu/eubookshop/download.action?fileName=KE3008406ENC_002.pdf&eubphfUid=10049296&catalogNbr=KE-30-08-406-EN-C

55http://ec.europa.eu/employment_social/social_security_schemes/national_schemes_summaries/index_en.htm

The monitoring work presented above cannot be strictly planned as it depends largely on the number and type of complaints sent to the Commission. However, in order to set priorities, the importance of the file, from the point of view of its political impact is taken into account. The problems which seem to be widespread in several Member States are also given priority. As described above, the horizontal exercise regarding the nationality condition for posts of masters and chief mates of ships was very successful.

However, due to diversity of problems brought up constantly to the attention of the services of the Commission, it is not easy to concentrate on only one particular issue. As during the last year, in 2010 particular attention will be paid to the ongoing infringement procedures which have been opened more than 3 years ago.

To supplement monitoring activities and in response to the calls by the EPSCO Council56 and European Parliament57, the Commission will also step up its efforts to provide better information to citizens on their rights as migrant workers.

3.1.3.1. Priorities regarding free movement of workers

In addition the Commission sees all infringement procedures concerning the transitional arrangements as a priority and will pay particular attention to infringement procedures concerning sports and public sector issues. To finalize the systematic evaluation concerning the issue of nationality condition for access to posts of master and chief mate of ships the two remaining open infringement procedures (against Spain and Greece) will also be treated as a priority.

Another primary focus for the Commission services will be to ensure the respect of provisions of the Directive 2004/38/EC regarding migrant workers and their family members. The Commission will keep working together with the Member States to make sure that the Directive is correctly transposed and implemented across the EU. In order to achieve this result, the Commission will fully use its powers conferred to it by the Treaty and launch infringement procedures when necessary.

The Commission intends to adopt a Communication on the rights of migrant workers – updating and reviewing the Communication of 2002 (COM (2002) 694).

The Commission intends to adopt a Commission Staff Working Document on issues related to free movement of public sector workers (in particular nationality condition; recognition of professional experience for the purposes of access to posts and for determining working conditions [e.g. salary; grade]; other legal aspects of free movement of public sector workers [e.g. language requirements]; taking into account of diplomas in the recruitment process etc). It will follow-up a report of an independent expert on these issues summarising, analysing and comparing up-to-date information requested by the Commission from Member States (members of the Technical Committee on free movement of workers) on this issue.

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56 Conclusions of the EPSCO Council of 9 May 2009.

57 Vălean report on the application of Directive 2004/38/EC and Gacek report "Problems and prospects concerning European citizenship".

3.1.3.2. Priorities regarding social security coordination

The objective in the area of social security, with regard to the infringements, is to monitor the correct application of the new Regulations 883/2004 and 987/2009 which come into force on the 1st May 2010 by the national institutions. In particular, the Commission will focus on the new aspects of coordination rules.

Therefore, the Commission published on the DG Employment website in January 2010 a set of Explanatory notes, which give some background and explanation of certain new provisions and key concepts in the new rules. These notes are aimed at both the citizen and social security institutions. The Commission is also planning a major information campaign on the new social security coordination rules targeting on the one hand the European citizens and on the other hand the social security institutions of the Member States which have to apply the new provisions.

To enable the implementation of the new coordination rules, the Commission will focus on finalising the development of the system for electronic exchange of social security information (EESSI). The EESSI system will enable countries to exchange electronically social security information between their administrations thereby fulfilling the ultimate aim of strengthening the protection of mobile citizens' social security rights.

In 2010, discussions will continue on the proposal concerning the extension of the provision of Regulations 883/2004 and 987/2009 to third country nationals.

The Commission intends to follow up, as a priority, the Member States' responses to the Court judgment C-229/05, in which the Court ruled that Disability Living Allowance was a sickness benefit. Sickness benefits can be exported within the EU in certain circumstances.

3.1.4. **Summary**

In 2009, the services of the Commission received for both sectors (free movement and social security coordination) an impressive number of letters and petitions (around 3000) from European citizens, approximately balanced between both sectors. Generally, the volume of incoming queries and complaints is relatively stable.

Nevertheless, in view of the forthcoming entry into force of Regulations 883/2004 and 987/2009, and during the period of adjustment for national authorities, it can not be excluded that more complaints will have to be dealt with and will increase the already workload in that area of social security coordination.

The forthcoming years should follow the trend presented above with the positive impact of the preventive approach based on administrative cooperation and on an increased communication towards citizens and national authorities. The objective for 2010 is to monitor a correct application of the new system of coordination by the Member States, with a focus on the new aspects of the Regulations.

3.2. Labour Law

3.2.1. Current position

3.2.1.1. Introduction

The Directives applicable in the area of labour law cover a variety of issues and subjects, such as collective redundancies, European Works Council, information and consultation of employees, posting of workers in the context of the provision of services, fixed term and part-time work, temporary agency work, transfer of undertakings, employer insolvency, protection of young people at work, and working time.

At present, in the area of labour law, the deadline for transposition has expired for all directives in force, with the exception of the following three:

– Directive 2008/104/EC on temporary agency work58, for which the transposition deadline will expire by 5 December 2011;

– Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)59, for which the transposition deadline of the new or modified provisions will expire by 5 June 2011, as well as

– Council Directive 2009/13/EC implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 and amending Directive 1999/63/EC60 for which the transposition deadline will expire not later than 12 months after the date of entry into force of the Maritime Labour Convention, 2006.

3.2.1.2. Report of work done in 2009

Monitoring the application of labour law implies the management of infringement procedures, the preparation of monitoring reports and the setting up and activation of various expert groups.

1. Management of infringements

Along the lines set out horizontally by the Commission for 2008, giving priority to the handling of procedures under Article 260 of the TFEU and of non communication procedures, increased efforts continued in order to close a considerable number of open infringements for non communication and non conformity. As a result the overall number of outstanding infringements and complaints decreased from 76 (31.12.2008) to 59 (31.12.2009), i.e. a reduction of 22 %. It should also be pointed out in this respect that, although the total number of outstanding infringements for non communication increased slightly, the still outstanding

58 OJ L 327, 05.12.2008

59 OJ L 122, 16.05.2009

60 OJ L 124, 20.05.2009

ones relate to one single Directive (2005/47/EC), whereas on 31.12.2008 they related to three directives (2003/72/EC, 2006/109/EC and 2005/47/EC); the so called fragmentation factor therefore has decreased by 66%.

The significant decrease in the total number of outstanding cases, as well as the considerable shortening of delays in handling these, were nevertheless counterbalanced by the fact that still a considerable number of "old registered complaints" (19 in total 61), in particular, on the application of the working time Directive 2003/88/EC, following the SIMAP-Jaeger rulings62. These cases have been pending since the Commission proposed amendments to this Directive in September 2004, which could not be agreed upon by the Council and the European Parliament in Spring 2009.

With regard to the *non communication cases*, the infringement proceeding against Luxembourg for non transposition of Directive 2003/72/CE (due for transposition by 18 August 2006), pursued under Article 228 EC following the ruling of the Court of Justice63, could be closed following the adoption of the necessary transposition measures.

The only other outstanding infringement proceedings against Member States which *failed to notify* the national measures concern Directive 2005/47/EC64 of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector, due to be transposed by 27 July 2008. Of the 17 infringement proceedings for non communication launched against Member States that had failed to take the necessary transposition measures within the required time limit, 8 could be closed following the adoption of the necessary national measures in 2009 and two will be closed in the periodical exercise M03/2010.

As regards problems of *non-conformity* of the national transposition measures of Directives in the area of labour law, a number of proceedings in progress continued. For example, the case against Luxembourg for incorrect transposition of Directive 96/71/EC ('posting of workers') was continued under Article 260 TFEU following the judgment of the Court of Justice65 and an Article 260 TFEU letter of formal notice was sent. The case against France for incorrect and insufficient transposition of Directive 80/987/EEC, and in particular Article 8 (concerning old-age benefits under supplementary company or inter-company pension schemes), could finally be closed.

2. Monitoring reports

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61 However, it should be recalled that the number of outstanding working time cases did decrease considerably in comparison to previous years: a number of the SIMAP-Jaeger complaints could be closed, and a letter of formal notice was notified in the cases concerning annual paid leave (BE) and doctors in training (BE, IE and PT).

62 Judgment of 3.10.2000 in case C-303/98 and judgment of 9.09.2003 in case C-151/02

63 Judgment 9.10.2008, case C-70/08

64 OJ L 195, 27.7.2005, p. 15–17

65 Judgment 19.6.2008, case C-319/06, Commission vs Luxembourg.

In order to have a comprehensive picture regarding labour law in Member States, a series of studies were commissioned, with a view to taking stock of the state of play regarding the transposition and application in the national legal orders of EU 10 member States of all labour law directives. The final output of this exercise, launched in 2005, consists in a series of reports, which was completed with reports concerning Bulgaria and Romania in the second semester of 2009.

The contents of these reports have in the meantime started to be used in the drafting of implementation reports required by Directives and the analysis has enabled the Commission to identify a number of outstanding issues where correct and full transposition of the Directive's requirements by Member States may be at stake, necessitating further clarification or verification. These issues raise either questions of interpretation of the Directive or doubts as regards the compliance of implementing measures with the Directive. However, in comparison with 2008, when five implementing reports could be finalised in the area of labour law, in 2009, the activity concentrated in providing adequate follow-up to new, recently adopted legislation and in preparing initiatives that will be launched in the future. By the end of the year, three draft reports were prepared to be submitted to Member States and to social partners for comments, in view of their adoption in 2010. As regards the *working time Directive*, a comprehensive report on the transposition and application of this Directive in 27 Member States completed during 2008, cross-checked against expert reports, and provided to member states and social partners for comments, still awaits its final adoption by the College.

As a follow-up to a Staff Working Document66 examining the implementation of Article 8 (concerning old-age benefits under supplementary company or inter-company pension schemes) and related provisions of Directive 80/987/EC ('employer's insolvency'), the Commission services pursued their investigation in 2009 through bilateral contacts with Member States, by sending a horizontal questionnaire to all Member States and launched a further evaluation study on the following issues:

– how to protect employees and retired persons against the risk of under-funding of the pension schemes, and to what extent;

– how to guarantee any unpaid contributions to the pension schemes;

– how to deal with cases where the supplementary pensions scheme is managed by the employer himself.

3. European network of legal experts in the field of labour law

To complete the horizontal analysis of conformity of labour law, the European Network of Labour Law Experts was created as of 23.12.2007 and produced quarterly flash-reports providing information on recent key legal developments in the area of labour law, particularly in those areas that are most relevant for the control of EU legislation. This systematic reporting and monitoring of recent developments, carried out under Commission supervision allowed the Commission services to identify problems encountered in the national legislation, its application and administrative practice, and to act in a preventive manner, if necessary.

4. Strengthening pro-active co-operation: committee of experts

66 SEC (2008) 475 of 11 April 2008.

Four new expert groups were created and started their activities in 2009. Two are informal groups whose aim is to assist Member States in the transposition of Directives 2009/38 (' European Works Councils') and 2008/104 ('temporary agency work'). They shall end their mandate in 2011. Another informal group was created with the aim of discussing the issues raised by the conclusion and implementation of transnational company agreements.

Moreover, as regards the *posting of workers Directive*, a formal expert committee was set up67 with the purpose to enhance administrative cooperation between the different authorities in the Member States in the area of the posting of workers and to examine any questions and difficulties which may arise in the implementation, application and enforcement of the posting of workers Directive in practice. It held its first meetings in 2009 and adopted a rolling work programme for its future activities.

3.2.2. **Evaluation based on the current situation**

The importance of labour law for workers in Member States, as well as its importance for the perception of the European Union as a whole, has justified a horizontal analysis of the implementation of the Directives in Member States. Thanks to that systematic, horizontal analysis of the implementation of all labour law Directives, launched in 2005, and to the contribution of the experts' network and other expert groups, the Commission has a fairly good view of the legal situation in all Member States as regards the implementation of those Directives. While, by and large, all Directives are now transposed in all Member States, and the responsible Commission services have continued to make visible progress in 2009 to prioritise and accelerate the handling of open infringements (see above), there are still a number of areas where the application of Community law is not yet satisfactory and needs to be improved.

First and foremost, this is the case with the Working Time directive, where the law or legal and administrative practice in many Member States does not comply with jurisprudence or certain provisions of the Directive 2003/88/EC (in particular as regards on-call time, compensatory rest, multiple contracts, doctors in training, public sector workers and the individual opt-out). A very substantial action is needed in order to clarify the application of the Directive, to ensure effective conformity across the EU and to provide a response to the numerous complaints introduced by citizens or professional organisations.

Moreover, the implementation of Directive 96/71/EC concerning the posting of workers in the framework of cross-border service provision has raised some critical issues, given the variety of industrial relations systems, particularly in the light of recent case-law (Viking-Line, Laval, Rûffert and Commission vs. Luxembourg) which will be necessary to be closely followed. The analysis of the implementation of Directives 99/70/EC on fixed-term work and 97/81/EC on part-time work, both resulting from agreements between social partners, revealed a number of deficiencies which are being addressed via EU Pilot or administrative letters.

Finally, the current economic crisis has put to a severe test those legal provisions which aim at providing protection to workers in the event of major restructuring operations. This is the case in particular of the Directives on information and consultation of workers, collective dismissals, transfer of undertakings and the protection of employees in the case of insolvency.

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67 Decision setting up the Committee of Experts on Posting of Workers of 19 December 2008, OJ 2009 L8/26

It seems justified to inquire whether the objectives of such provisions have been effectively reached in 2010.

3.2.3. **Evaluation results**

Four implementation reports, currently under preparation, are expected to be adopted in 2010. Such reports may identify situations in Member States deserving further examination and eventually may justify the launch of infringements: a Commission Report on the implementation of Directive 94/33/EC (Young People at Work), of Directive 91/383/EC (Health and Safety of a-typical workers), of Directive 2003/72/EC (Employee Involvement in the European Cooperative Society) as well as of the Article 25 of Directive 2003/88/EC (working time of fishermen).

The Commission will continue its efforts to bring further clarity to the implementation, application and enforcement of the Directive 96/71/EC on posting of workers. It has launched a study on the legal aspects and another on the economic and social impact of the Directive in 2009 (results expected to be ready by end 2010, and will promote exchange of information and debate on the implementation of the Directive in the framework of the Expert Committee which was launched in line with the Commission Decision of 19 December 2008. It will also monitor closely the legal changes implemented in some member States in response to the recent Court rulings.

Actions undertaken on the basis of the contents of the implementation reports drafted following examination of the legal situation in the Member States after the 2004 enlargement, follow-up actions of clarification with respect to the *fixed term* Directive 99/70/EC, as well as *part time* Directive 97/81/EC will be continued through bilateral contacts (via EU-PILOT or administrative letters).

It is also the intention to proceed, in 2010, to further analysis and examination of a number of problems/issues identified in the context of Directive 2002/14/EC (information and consultation). Moreover, in the conclusions of the Communication on the review of the application of Directive 2002/14/EC (information and consultation of workers) in the EU68, and an accompanying Staff Working Document69, the Commission indicated that it intends to take further action aimed at facilitating correct enforcement of the Directive.

Knowledge by management and labour of their respective rights and obligations in the area of information and consultation is an indispensable prerequisite for the full and effective exercise of these rights in the workplace. Therefore the Commission also intends to undertake action geared to awareness-raising, as well as to promote exchange of best practices and to enhance capacity-building of all stakeholders, by way of seminars, training courses, studies and financial support for projects submitted by representatives of employers and employees.

In addition, in 2009, an expert working group was established to discuss a number of outstanding issues regarding the application of the insolvency Directive (Council Directive 80/987/EEC and its codified successor European Parliament and Council Directive

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68 COM (2008) 146 final, 17.3.2008

69 SEC (2008) 334

2008/94/EC) in transnational situations, to take into consideration the clarifications given by the ECJ in its judgment in the Holmquist case (C-310/08), as well as to address the issue of administrative cooperation required by the Directive. The protection to be provided to employees and retirees of insolvent companies where these are covered by complementary pensions deserves special attention and will be the subject of an evaluation study launched in 2009.

The Commission will strengthen preventive measures by providing technical assistance to the Member States in the process of transposition and implementation of the recently adopted Directive 2008/104/EC on temporary agency work. A group of governmental experts has been set up for this purpose. The Commission has also established a group of experts to assist Member States in the implementation process of the recast European Parliament and Council Directive 2009/38/EC on European Works Councils adopted on 23 April 2009.

3.2.4. **Summary**

With all the ongoing initiatives, including the establishment and running of several expert groups, the Commission has increased its capacity to analyse and identify problematic issues, pursue its activities of control of European legislation as well as to strengthen the range of preventive measures available.

This should further improve the implementation, application and enforcement in practice of the acquis in labour law, with a special focus on the critical areas identified above. However, the sensitive and often highly controversial nature of the issues at stake may hamper achieving effective progress.

It is expected that the launching of new procedures, including through EU-Pilot, may increase the workload considerably, which may require further prioritization.

3.3. Health and safety at work

3.3.1. **Current position**

3.3.1.1. Introduction

Health and safety at work is the most developed corpus of legislation in the field of employment and social affairs. Its application over the last 15 years contributed to, inter alia, a substantial reduction of the accidents at work and thus to an improvement of the quality of work.

3.3.1.2. Report of work done in 2009

Monitoring the application of health and safety at work legislation implies different activities at various levels such as initiating and follow-up of infringement procedures, management of complaints, involvement of committees and expert groups, drafting and adoption of practical implementation reports and non-binding good practices guides and initiating legal measures if necessary.

The monitoring of the conformity of transposition of EU legislation and the evaluation of its effective implementation continued during 2009, pursuant to Article 17 of the Treaty of the European Union. The treatment of infringement procedures continued and progress was made in several cases. Moreover, the progress in the implementation of the *acquis* on health and

safety at work by candidate and potential candidate countries was evaluated with particular emphasis as regards the modification of the Croatian law transposing the Framework Directive with a view to meeting accession criteria on chapter 19.

(1) Management of infringements:

Along the lines set out horizontally by the Commission for 2009, giving priority to the handling of Article 260 of the Treaty on the Functioning of the European Union (ex Article 228 of the EC Treaty) procedures and non communication procedures, efforts were stepped up in order to make considerable progress as regards the Article 260 procedures. In addition to this priority, work was focused on the priorities identified for the sector, e.g. the analysis of the conformity of the transposition of Framework Directive 89/391/EEC and of the 5 individual directives related to the highest risk sectors.

– Non-communication infringement cases:

Following the closure of all non-communication cases, in 2009 no new such cases were opened as no new directive was due for transposition in this year.

– Non-conformity infringement cases:

Given the persistent problems of non-conformity of the transposition of the framework directive 89/391/EEC and of its individual directives, many proceedings in progress have continued in 2009. Some of them, such as for example the cases against Sweden on Directive 92/57/EEC (construction sites) and Poland on the Framework Directive 89/391/EEC were closed further to the adoption of national legislative measures that brought into compliance the national legislation. In the case against France concerning the application of the provisions of Directive 89/391/EEC to RATP and SNCF, following the Court of Justice ruling in favour of the Commission70, the proceedings continued and a reasoned opinion ex Article 228 (now Article 260 TFUE) was sent. As a result, France modified its legislation in the beginning of 2010 and the case will be closed. In the case against Italy on Directive 92/57/EEC on construction sites, following the Court of Justice ruling in favour of the Commission71, a letter of formal notice ex Article 228 (now Article 260 TFUE) was sent to Italy, which modified its legislation in order to bring it in line with the Court's ruling. Consequently, the case could be closed in January 2010. In the case against Austria on Directive 92/57/EEC, a reasoned opinion was sent. In addition, infringement proceedings were opened against Ireland (Directive 92/57/EEC on construction sites), Spain (Directive 93/103/EEC on fishing vessels) as well as against UK on the conformity of the transposition of Directive 2003/18/EC on asbestos.

The analysis of the national measures transposing Directive 93/103/EEC (fishing vessels) continued and Italy (through the EU Pilot project) was asked to provide clarifications. Clarification was also requested on the transposition of Directive 92/29/EEC from France and the Netherlands (the latter through the EU Pilot project). This also applies to the UK regarding Directive 92/57/EEC, and Germany and the Netherlands as regards certain provisions of the Framework Directive 89/391/EEC.

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70 Case C-226/06, judgment of 5 June 2008.

71 Case C-504/06, judgment of 25 July 2008.

(2) Complaints management

The management of complaints continued concerns cases of application of national legislation transposing the health and safety directives that should be dealt with, at first instance, at national level. Some of the complaints revealed violations of Health and safety EU law and therefore infringements procedures have been launched.

In this context, as regards the complaint against Sweden in respect of the implementation of Directive 89/391/EEC, a reasoned opinion was prepared and was notified in January 2010.

Concerning the complaint against Denmark regarding several points of Annex IV to Directive 92/57/EEC, following the complementary letter of formal notice, a bilateral meeting was held with Denmark and it resulted from the meeting that the Danish authorities were committed to modify national legislation according to the concerns of the Commission.

Following the letter of formal notice sent to the UK in January 2009, concerning a complaint concerning the transposition of Article 3 of Directive 2003/18/EC, a bilateral meeting was held with the UK to allow exchange of views on the complex technical issues concerned.

In addition, during 2009 different correspondence was received (through CHAP since September 2009) drawing the attention of the Commission to the application of EU law, for example in Cyprus as regards the requirements regarding manual handling of loads laid down in Directive 90/269/EEC. In none of these cases circumstances were established which would give rise to infringement procedures.

(3) Practical Implementation Reports

The Commission has, in the Communication *Improving quality and productivity at work: Community strategy 2007-2012 on health and safety at work*72, undertaken to assess the implementation of the regulatory framework with a view to improving it. This is *inter alia* accomplished by presenting reports on the practical implementation of the health and safety at work directives. These reports are mainly based on the national reports supplied by the Member States and a study done by an independent expert, analysing the implementation of the directives in the economic sectors concerned. They are an important source of information as regards the practical implementation of the Directives and in order to decide on possible preventive action.

During 2009, two such reports were presented to the Council, the European Parliament, the European Economic and Social Committee and the Committee of Regions:

On 3 September 2009 the Commission adopted a report on the practical implementation of the provisions of the Health and Safety at Work Directives 92/91/EEC (mineral-extraction through drilling) and 92/104/EEC (surface and underground mineral extraction) (COM(2009)449).

In addition, on 29 October 2009 the Commission adopted a report on the practical implementation of the provisions of the Health and Safety at Work Directives 93/103/EEC (fishing vessels) and 92/29/EEC (medical treatment on board vessels) (COM(2009)599).

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72 COM(2007) 62 final.

(4) Management of the acquis through committees and experts groups

The Committee of Senior Labour Inspectors (SLIC) assists the Commission on problems relating to the enforcement of Community law on health and safety, and encourages its effective enforcement, notably by means of a closer cooperation between the national labour inspection services.

One mechanism to fulfil its tasks is the rapid exchange of inspection-related problems and solutions amongst the EU-27 Member States and EFTA countries. The Committee developed further its use of the Commission's CIRCA extranet to exchange information on fields of enforcement responsibility and practice, incidents with lifting machines and chemical substances.

(5) Information and risk awareness raising campaigns of Senior Labour Inspectors Committee (SLIC)

The European campaigns launched under the initiative of the Committee of Senior Labour Inspectors (SLIC)73 largely contribute to better compliance with EU legislation in that field. European campaigns are indeed an effective means by which the labour inspection services can cascade a common message to stakeholders. In 2009, the Committee published 2 reports evaluating pan-European campaigns on two work place hazards, asbestos and the manual handling of loads74, 75. For the latter, the inspectorates reached directly more than 10, 000 workplaces in 2 target sectors: construction and retail trade. A strength of such joint actions is the opportunity to share good practice solutions on risk management amongst stakeholders which can be promoted through new legislative proposals and guidance.

SLIC initiated a new campaign designed to enhance risk management of dangerous substances in small- and medium-sized enterprises. It concentrates on 4 workplace activities: motor vehicle repair, furniture making, bakeries and cleaning, all widespread activities which, if not properly controlled, pose risks of serious ill-health e.g. from respiratory and skin disorders.76

(6) Enlargement

During 2009, works continued as far as health and safety at work issues are concerned in EU candidate and potential candidate countries. A substantial amount of work was performed to bring Croatian national legislation into line with the Framework Directive, which involved detailed analysis of national legislation, organisation of bilateral meetings etc. In addition, a mission to Croatia was carried out in 2009 to evaluate the administrative capacities of the Labour Inspectorate with input from the SLIC. As an application for EU membership was received from Iceland, questions were prepared concerning Health and Safety at work. Replies were evaluated accordingly and an assessment was made on the situation in this area.

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73 Commission Decision 95/319/EC of 12 July 1995, OJ L 188, p. 11 (as amended).

74 http://osha.europa.eu/en/campaigns/asbestos

75 http://www.handlingloads.eu/en/site/

76 To be launched (21 January 2010)

As regards candidate and potential candidate countries, contributions were provided, twice in 2009, to the Annual Progress Reports as well as to bilateral meetings organised by the Commission on the progress made by these countries. Questions were prepared for Albania and Montenegro concerning health and safety at work, applications for TAIEX funding to organise study visits and workshops and a project under Instrument of Pre-Accession assistance were evaluated and assessment made on their eligibility. Participation was ensured in bilateral meetings with Croatia and Montenegro to cover the aspects of health and safety at work.

The overall goal of these activities is to ensure that the candidate and potential candidate countries make progress in transposition and effective implementation of the EU *acquis* on health and safety at work with a view to reaching the level of the EU Member States in this area and, in the future, to fulfil the EU accession criteria if and when requested to do so.

(7) Non-binding guides

In 2009, two practical non-binding guides were made available in 22 language versions – a non-binding Guide on good practices for implementing Directive 2002/44/EC (on vibrations at work) and a non-binding Guide on good practices for implementing Directive 2003/10/EC (on noise at work).

Such non-binding guides, several others being currently available, aim at facilitating the implementation of EU health and safety legislation. The guides contain practical information addressed to employers and workers, in an easily understandable way, to encourage a better application of the EU legislation at the workplace.

3.3.2. **Evaluation based on the current situation**

It is essential that the European Union *acquis* is implemented effectively in order to protect the lives and health of workers and to ensure that the companies operating within the large European market are placed on an equal footing.

Accidents at work and work-related diseases are a heavy burden in social and economic terms, and action to improve health and safety standards at work offers great potential gains not only to employers, but also to individuals and society as a whole.

The implementation of the EU directives, in the field of health and safety at work, is bearing fruit at European level. Between 2000 and 2007 a reduction trend of 32.6% in the incidence of fatal and 28.7% in non-fatal accidents at work in the EU-15 was observed according to the harmonised data on accidents at work that are collected in the framework of the European Statistics on Accidents at Work (ESAW)77. However, the latest statistics of 2007 show that around 3.8 million accidents at work resulting in more than three days of absence from work occurred in the EU-15.

3.3.3. **Evaluation results**

Priorities set for 2009 were largely met but it should be borne in mind that the work planning has to be constantly adapted to new priorities introduced during the year which has an impact

77 http://epp.eurostat.ec.europa.eu/cache/ITY_SDDS/en/hsw_acc_work_esms.htm

on the priorities set regarding the control and monitoring of the application of Community law.

While all health and safety at work Directives are transposed in all Member States and the Commission has made visible progress, in 2009, to accelerate the handling of open infringements and to go further with the priorities set, major efforts should still be deployed to progress with the priorities established.

As examples of progress obtained may be mentioned the legislative amendments adopted in Austria, France, Italy, Poland , Sweden and the commitments by some other Member States to amend the legislation with a view to bringing their national law in compliance with the EU directives. Consequently, some of the infringements could be closed in 2009.

Moreover, practical implementation reports were adopted in 2009 as regards Directives 93/103/EEC (fishing vessels) and 92/29/EEC (medical treatment on board vessels) and Directives 92/91/EEC (mineral-extraction through drilling) and 92/104/EEC (surface and underground mineral extraction)78.

Following the adoption of Directive 2007/30/EC harmonising the reporting requirements for the health and safety at work Directives, a common structure and questionnaire for future reports were prepared. During 2010, the Commission intends to prepare guidelines, which will give practical information with examples to help Member States prepare the reports in such a way that these provide adequate information for the Commission to assess the implementation of the EU *acquis* in the field of health and safety at work.

As previously mentioned, the analysis of the conformity of all the health and safety at work directives should continue to be indicated as a priority issue as an incorrect transposition could be a source of occupational accidents or diseases, with particular serious negative consequences in terms of human lives or physical integrity and/or important economic impact for the society and the concerned enterprises. Moreover, such analysis is also required due to the fact that often Member States are legislating in the fields covered by these Directives and there is a need to constantly follow-up the legislative developments that, sometimes, are not notified to the Commission.

As the analysis of the transposition of all provisions and annexes of the health and safety at work directives is a highly time-consuming task requiring highly specialised human resources (not only lawyers but also doctors, chemical engineers, mining engineers, etc.), a prioritisation was essential and the development of preventive actions was intensified such as the adoption of non-binding guidelines. In this context, also with a view to avoiding court proceedings, bilateral meetings with national authorities took place in 2009 on six occasions79. As a result of those meetings, amendments to national legislation have been foreseen to bring it into line with the *acquis.*

The analysis of the conformity of the transposition of Framework directive 89/391/EEC, which establishes the main principles of prevention of occupational risks that apply to all

78 COM(2009) 449 and COM (2009) 599.

79 Bilateral meetings with DK, CZ, EL, IE, IT and UK

sectors of activity, continues to be a major priority for 2010, in particular as regards the correct transposition in the 12 new Member States.

The Commission intends to continue in 2010 the analysis of the conformity of 5 individual directives related to the highest risk sectors: construction (directive 92/57/EEC), the maritime sector (directives 92/29/EEC and 93/103/EC) and extractive industries (directives 92/91/EEC and 92/104/EEC). In addition, it is also the intention in 2010 to further analyse the transposition of the Asbestos Directive 2003/18/EC as an exposure to asbestos is still a major concern for the protection of the workers' health.

These priorities are in line with the main objectives of the Community Strategy 2007-2012 on Health and safety at Work80 in particular those of reducing occupational accidents and diseases and guaranteeing the proper implementation of EU legislation.

As preventive action for 2010 is foreseen for instance the adoption by the Plenary of the ACSH of a practical non-binding guide on the construction sites Directive 92/57/EEC which will contribute decisively to the dissemination of good practices, being an assistance tool for better application of the EU legislation, with a view to improving application and consistency of the EU Directive among Member States.

A major priority for 2010 relates to the follow-up of the respect of the deadline for transposition of Directive 2006/25/EC (artificial optical radiation) in April 2010 and the resulting non-communication infringements.

3.3.4. **Summary**

The Commission has continued to develop several initiatives to strengthen the preventive measures with a view to significantly improving the level of effective and complete implementation, application and enforcement of the EU health and safety at work acquis. This has given successful results as for example the closing of all non-communication infringements or the reduction trend in the accidents at work.

The limits of the priorities fixed should however be highlighted as national legislation is constantly being adopted in the field of Directive 89/391/EEC and its individual directives, requesting the Commission to focus on the new changes that often are not officially communicated to it. This makes the conformity analysis a never ending exercise. On the other hand, the dialogue established with the national administrations determines the follow-up and calendar of the procedures. Moreover, complaints, petitions, Parliamentary questions or mail from the citizens in certain cases raise non-conformity issues that need to be urgently investigated, requesting an adaptation of the work plan.

Further to the Resolution of the European Parliament of 15 January 2008 on the Health and Safety Strategy 2007-201281, which expressly requests to the Commission to intensify its works on the monitoring of the transposition of the health and safety at work directives, progress in this area has been intensified and the prioritising approach above indicated as well

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as the preventive initiatives undertaken, should allow to deal with a workload which is constantly increasing and therefore requesting major efforts to adequately manage it.

3.4. Antidiscrimination and gender equality

3.4.1. Current position

3.4.1.1. Introduction

The legislative acquis in the field of gender equality and anti-discrimination is composed of 8 Directives, based mainly on the specific Treaty provisions: Article 157 TFEU (former Article 141 TEC) for gender equality and Article 19 TFEU (former Article 13 TEC) for antidiscrimination.

The number of infringement proceedings concerning this legislative domain was important owing to the combination of non-conformity and non-communication cases. In 2009, following an intensified dialogue with the MS, the number of infringement proceedings has substantially decreased, essentially due to the fact that many Member States have changed national law to comply with the Directives or have communicated their national measures to transpose the most recently adopted Directives. Subsequently, the number of cases decreased from more than 100 at the end of 2008 to 74 at the end of 2009. The handling and monitoring of all these cases remains nevertheless a challenging workload.

3.4.1.2. Report of work done in 2009

(8) New legislation in preparation

In the area of gender equality and anti-discrimination, four legislative proposals were under discussion:

– a proposal for a Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside employment,

– a proposal for a Directive implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC,

– a proposal for a Directive amending 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, and

– a proposal for a Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC.

The Council reached a political agreement on the adoption of the proposal on parental leave on 30 November.

On the same date, the Council reached political agreement on its first reading opinion on the proposal for a Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity.

The proposal for a Directive amending Directive 92/85/EEC is in the first reading procedure, with possibly a plenary vote in the European Parliament in autumn 2010.

Finally, concerning the proposal for a Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside employment, on April 2009 the European Parliament adopted a resolution on it, endorsing its main features (grounds covered and material scope), while proposing amendments in detail. Negotiations in Council progressed satisfactorily during 2009, essentially during the second half. While significant progress has been made in the attempt to clarify the scope, the division of competences, the disability provisions, and the implementation calendar, Member States still have strong concerns with regard to costs and legal authority.

(9) Monitoring of infringements

All Member States have transposed Directives 2000/43/EC, 2000/78/EC and 2002/73/EC. Two procedures for non communication of national measures to transpose Directive 2004/113/EC and seven for Directive 2006/54/EC remain open.

The work in 2009 to monitor national law can be summarized as follows:

– With regard to ensuring the conformity with art. 157 TFUE, the Commission sent a reasoned opinion to one Member State (FR), while for another one (IT) it was analysing the conformity of the new legislation sent to Commission, based on which a decision shall be made during 2010.

– Concerning Directive 2000/43/EC, two Member States received a reasoned opinion (NL and DE), and eleven cases were closed. At the end of 2009, twelve cases for incorrect transposition remained open.

– Concerning Directive 2000/78/EC, one Member State received a letter of formal notice (EL), three received reasoned opinions (IT, UK and DE) while seven cases were closed (DK, EE, FI, SK, MT, FR and AT).

– Directive 2006/54/EC had to be transposed by Member States by 15 August 2009 at the latest. Immediately after, the Commission took action against seven Member States (AT, BE, EE, IT, LU, PL and UK), which had not notified national laws to transpose the Directive.

– Concerning the cases for non communication of national measures to transpose Directive 2004/113/EC, two Member States have not yet notified their national measures to fully transpose the Directive (PL and UK). In both cases, the Commission has referred the matter to the Court of Justice. On the other hand, Cyprus, the Czech Republic, Estonia, Latvia and Greece notified transposition laws and the cases have therefore been closed.

– As regards the monitoring of the conformity of national measures transposing Directive 2002/73/EC, during 2009, five cases were closed, the Commission being satisfied with the amendments introduced or the explanations given (AT, FI, CY, EL and FR), while five Member States received a reasoned opinion (DE, PL, DK, LV and UK).

(10) Main actions taken to monitor the correct application of the law

On 29 July 2009, the Commission adopted the Report on the application of Directive 2002/73/EC82. The Report focuses on transposition problems, the impact of the Directive on national law and practice of the Member States, the enforcement of rights and obligations, and the role of equality bodies, social partners and NGOs.

One of the conclusions of the Report is that considering the far-reaching changes to legislation required in a number of Member States and the substantial progress most Member States have made in implementing its provisions, the transposition of Directive 2002/73/EC can generally be regarded as satisfactory. However, effort is still needed in some Member States to achieve full and correct transposition.

3.4.2. **Evaluation based on the current situation**

Considering that the legal acquis is transposed in all Member States, with the exception of seven procedures open for non communication of national measures to transpose the two most recently adopted Directives, the situation as far as transposition is concerned is satisfactory.

The monitoring of the transposition of the two Directives on antidiscrimination adopted in 2000 and of the gender equality Directive from 2002 gave rise to a high number of infringement cases, involving almost all Member States. This was due to two main factors: the high standard applied by the Commission in a field linked to human rights and the novelty and complexity of the legal texts, involving different areas of the legislative framework.

In the near future, it is expected that the number of cases open and the number of grievances will decrease substantially, due to amendments to national laws and to a better understanding of the overall legal framework.

3.4.3. **Evaluation results**

3.4.3.1. Priorities

The number of legislative proposals on the table and the high number of infringement cases open impose a prioritisation of the work in that field. On that basis, while not disregarding the overall application of the EU law in the field of gender equality and anti-discrimination, the main priorities for 2010 will be:

– Cases under Article 260 TFEU;

– Follow-up of the proceedings for non-communication of national measures to transpose Directives 2004/113/CE and 2006/54/EC.

– Monitoring of the conformity of national measures transposing Directive 2004/113/EC.

For the remaining cases which do not fall within one of the above categories, the treatment will take into consideration the date of the last Commission's decision, the stage of the procedure and the importance of the grievances raised.

82 COM(2009) 409 final

3.4.3.2. Planned action

In the area of gender equality and anti-discrimination, the negotiation of the legislative proposals on the table is a priority. The Commission will have to play its role in the procedures in order to facilitate adoption by the Council and by the two co-legislators.

Thus, as regard the proposal for a Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, the second reading will start in 2010, once the final text is transmitted to the European Parliament. As far as the proposal for a Directive amending Directive 92/85/EEC is concerned, the European Parliament has scheduled adoption of its first reading opinion on March 2010.

With regard to the management of infringements, in order to manage the remaining high number of infringement proceedings, it is envisaged to concentrate on the priorities set above, while making utmost efforts to treat the remaining cases in accordance with the internal rules.

Since the deadline for transposing two Directives (2004/113/EC and 2006/54/EC) expired recently and it is necessary to ensure that they are transposed in all Member States as soon as possible. The non communication proceedings will continue to be a top priority in this area.

Now that almost all Member States have transposed Directive 2004/113/EC, the monitoring of the conformity of national laws will start and is likely to lead to an increase in the number of open cases.

On the other hand, it is expected that more cases will be closed concerning Directives 2002/73, 2000/78/EC and 2000/43/EC, as many Member States are engaged in the review of their national law.

Finally, following the entry into force of the Lisbon Treaty, the Commission will also give special attention to complaints and petitions concerning the rights enshrined in the Charter in the area of gender equality and non discrimination.

3.4.4. **Summary**

The Commission will continue its practice of bilateral meetings with national authorities whenever this seems useful to better understand the complexities of the national legal framework.

The Commission will also try to anticipate future infringement proceedings by the setting-up of expert groups in order to discuss the implementation of the new Directives by Member States, as soon as they are adopted. This will be the case to prepare the transposition of the new Directive on Parental Leave.

In general, it is expected that national Equality Bodies will contribute to a reduction in the number of complaints concerning this area of EU law, in the areas in which they are competent (so far gender and race).

The Commission will continue to make use of problem resolution alternatives to infringement proceedings (EU Pilot, CHAP) but also external expertise (Equality Bodies, Network of Independent Legal Experts). These tools coupled with the prioritisation set above, should facilitate the management of the heavy workload which is not expected to decrease.

4. AGRICULTURE AND RURAL DEVELOPMENT

4.1. Current position

4.1.1. General introduction

Since 1962 the Common Agricultural Policy (CAP) has established a comprehensive legal framework for European agriculture aiming to achieve the objectives set out in the Treaty. As a fully integrated common policy it replaces a significant amount of national legislation. It has largely accomplished its objectives while alleviating the social impact of agricultural restructuring. As a corollary, farmers and administrations have to deal with a complex set of rules and measures contained in 1372 acts of secondary law currently in force. Most of those acts are Council or Commission Regulations that are "binding in their entirety and directly applicable in all Member States". Access to agricultural legislation has been improved by developments in IT tools. All EU legislation is now freely available via the EUR-Lex website. Consolidation and codification of legal texts both make the "acquis" more accessible to citizens and improve legal certainty.

The CAP is unique in the extent to which it is regulated and financed at EU level. Its common approach, in particular, to the single market, makes it possible to guarantee the functioning of an internal market of agricultural products. An EU framework ensures that rural development programs are carried out under common rules without creating unfair competitive advantages. Basic standards in the field, for example, of organic farming and labelling are settled on a common basis. This requires robust legislation, and effective financing and monitoring mechanisms to protect the public interest and ensure accountability.

Taking into account the significant volume of agricultural law and the 50 years history of the CAP (Stresa Conference dated July 1958), it may be considered as a quite stable "acquis" that, on the one hand, is subject to frequent technical modifications under the Comitology procedure, and on the other hand, undergoes on a regular basis, much more profound modifications. The last one of these, the 2003 reform, brought about radical change to the CAP, especially its income support policy. It established the single payment scheme and the single area payment scheme where direct income support for farmers is largely decoupled from production and introduced the cross-compliance system (see Council Regulation (EC) No 1782/200383 repealed by Regulation (EC) N° 73/2009). It also established comprehensive common rules for direct support in most sectors. The effect of these reforms has been reviewed in the "Health Check" 2008, on which basis the Council decided on adjustments in policy and budgetary priorities.

The policy is divided into two pillars: the first pillar consists of a framework for supporting the income of farmers through the payment of direct aid and a system for managing and

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83 Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001.

supporting agricultural markets. The second pillar of the CAP provides a framework to support the development of rural areas of the EU. The first pillar is 100% financed by the EU budget, whereas the second pillar is co-financed by the UE budget and those of the Member States. Beginning on 1st January 2007 the programmes for rural development have been implemented on the basis of a new strategic planning model based on a Community framework position and national strategic plans (see Council Regulation (EC) No 1698/200584).

To these two principal pillars could be added another important element of the policy consisting of the quality policy: notably four specific EU quality schemes have been introduced to develop geographical indications, organic farming, traditional specialities, and products from the outlying regions of the EU. These schemes identify to consumers products having specific qualities resulting from a particular origin and/or farming method.

Since the 2007 financial year the financing of the CAP is regulated by Regulation (EC) No 1290/200585 , which introduced two distinct funds. The first pillar is now financed by the European Agricultural Guarantee Fund (EAGF) and the second pillar (rural development) is financed by the European Agricultural Fund for Rural Development (EAFRD).

The implementation of the CAP is a joint responsibility of Member States and the Commission, referred to as shared management. While the Commission is responsible for the overall legal framework and for implementation of the budget, under the shared management concept, the responsibility for implementation at the level of final beneficiaries has been delegated to the Member States. The extent of the responsibilities of the Members States may in particular be considered very extensive as regards the implementation of the measures of the second pillar for which a "bottom up" approach has been followed that leaves to the Member States, regions and Local Action Groups much more latitude in adjusting the programmes to local needs.

Since the Green Paper of 1985, the CAP has been the subject of a continuing and regular process of reform. This policy also contributed significantly to the regulatory simplification process notably in 2007 - 2008 by the adoption of the single Common Market Organisation regulation. A common market organisation (CMO) in the agricultural sector governs 21

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84 Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) – See also Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and Commission Regulation (EC) No 1975/2006 of 7 December 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures.

85 Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy.

sectors which until 2007 were individual CMOs. It provides a single legal framework governing the domestic market, trade with third countries and rules regarding competition86.

4.1.2. **Report of work done in 2009**

4.1.2.1. New legislation

If 2008 ended with the successful outcome of the "Health check" reflection process on how to improve the efficiency of the Common Agricultural Policy in the future, 2009 has been characterised by a very active legislative activity dedicated to the formalisation of the political agreement reached.

Implementation of the "Health check"

The political agreement reached on 20 November 2008 on the "Health Check" has been formalised by the adoption of three Council Regulations (Regulations (EC) N° 72/2009, 73/2009 and 74/2009) and implementation rules through the Comitology procedure. The changes concern the main areas of the CAP: direct aid system, market instruments and rural development policy (new challenges). Among a range of measures, the Health check abolishes set-aside, provides for a gradual phasing-out of milk quotas leading up to their abolition in 2015 ("soft landing"), and converts market intervention into a genuine safety net.

The Health Check also had the effect that the rules for direct payments have been reviewed and simplified and led to an increased degree of modulation, whereby direct payments to farmers are reduced and the money transferred to the Rural Development Fund.

Reform of specific market instruments

As well as the legislative implementation of the Health Check quoted above, 2009 saw several other legislative initiatives adopted regarding specific sectors or horizontal rules. Concerning the latter, the single CMO provides a sound basis for grouping similar market management procedures applicable in different sectors in horizontal Commission Regulations. It offers the opportunity to reconsider and harmonise the different variations in so far as this is considered to be useful, thereby achieving a degree of simplification. In 2009 two important initiatives were taken:

– Rules on buying in, storage, and selling under public intervention for all eligible products have been summarised, and where feasible harmonised, in Commission Regulation (EU) No 1272/200987.

– Communications between Member States and the Commission on market management measures has been streamlined in one Commission Regulation (EC) No 792/200988 that

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86 Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organization of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation).

87 Commission Regulation (EU) No 1272/2009 of 11 December 2009 laying down common detailed rules for the implementation of Council Regulation (EC) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention.

provides the legal framework for the simultaneous creation and introduction of an IT tool for the purpose (ISAMM).

Besides simplification of CMO rules, the "*acquis"* concerning several sectors was modified to a greater or lesser extent in 2009.

In the wine sector, the single CMO project was continued. Regulation (EC) No 479/2008 on the common organisation of the market in wine was incorporated, as expected, in Council Regulation (EC) No 1234/2007 - the single CMO Regulation by Council Regulation (EC) No 491/2009.

Moreover, the adoption of three regulations completed the implementation of the wine reform:

- as regards the vineyard register, compulsory declarations and the collection of information to monitor the wine market, as well as the documents accompanying consignment of wine products and the registers to be kept; Commission Regulation (EC) No 436/200989 was adopted.

- as regards the categories of grapevine products and oenological practices; Commission Regulation (EC) No 606/200990 was adopted.

- as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products; Commission Regulation (EC) No 607/200991was adopted. The latter two items were subject to consultation of WTO partners under the Agreement on Technical Barriers to Trade (TBT).

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88 Commission Regulation (EC) No 792/2009 of 31 August 2009 laying down detailed rules for the Member States' notification to the Commission of information and documents in implementation of the common organisation of the markets, the direct payments' regime, the promotion of agricultural products and the regimes applicable to the outermost regions and the smaller Aegean islands.

89 Commission Regulation (EC) No 436/2009 of 26 May 2009 laying down detailed rules for the application of Council Regulation (EC) No 479/2008 as regards the vineyard register, compulsory declarations and the gathering of information to monitor the wine market, the documents accompanying consignments of wine products and the wine sector registers to be kept.

90 Commission Regulation (EC) No 606/2009 of 10 July 2009 laying down certain detailed rules for implementing Council Regulation (EC) No 479/2008 as regards the categories of grapevine products, oenological practices and the applicable restrictions

91 Commission regulation (EC) No 607/2009 of 14 July 2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products

Together with the first implementing regulation, Regulation (EC) No 555/200892, this quartet of regulations provides a stable and clear legal framework for the sector for the coming years. They will contribute to improving competitiveness, increase subsidiarity by enabling Member States to select the measures in their national support programmes most suited to their conditions. They also set out clear rules as regards PDOs, PGIs and TTs as well as on annual verification to be carried out by Member States to ensure the technical specifications are respected and on labelling and presentation of wine products. The national authorities carrying out assessments and checks have to be competent, objective and impartial. The authorization of wine-making practices will be simplified – in general taking over those recommended by the International Organisation of Vine and Wine (OIV). The analytical methods of the OIV will likewise be used for analysis in the European Union. The collection of information to monitor the sector has also been adequately provided for to ensure early detection of market changes and trends.

In the fruit and vegetable sector, the implementing rules for the School Fruit Scheme (SFS) laid down in Commission Regulation (EC) N°288/200993 were adopted. The scheme is operational as from the current school year 2009-2010. It aims to encourage healthy eating habits in young people, thus contributing to the campaign against obesity which has a serious impact on health. The SFS makes available €90 million of EU funds per year to provide fruit and vegetables to school children and this money is matched by national, private funds and in certain cases parental contributions (co-financing). 23 Member States out of 27 have opted to participate in 2009-2010, which is an excellent take-up. Moreover, the fruit juice Directive (2001/112/EC) has been amended by Directive 2009/106/EC94. Adaptation was needed to take account of technical progress and developments in relevant international standards, in particular the Codex Standard for fruit juices and nectars (Codex Stan 247-2005) which was adopted by the Codex Alimentarius Commission during its 28th session on 4- 9 July 2005 and the Code of Practice of the European Fruit juice Association (AIJN). A second amendment of this Directive is scheduled for 2010. Finally, for the smooth functioning of the "acquis" in the fruit and vegetable sector a recast of the implementing rules (Commission Regulation 1580/200795) which incorporated interpretative notes, was launched. Several issues are

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92 Commission Regulation (EC) No 555/2008 of 27 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 479/2008 on the common organisation of the market in wine as regards support programmes, trade with third countries, production potential and on controls in the wine sector

93 Commission Regulation (EC) No 288/2009 of 7 April 2009 laying down detailed rules for applying Council Regulation (EC) No 1234/2007 as regards Community aid for supplying fruit and vegetables, processed fruit and vegetables and banana products to children in educational establishments, in the framework of a School Fruit Scheme.

94 Commission Directive 2009/106/EC of 14 August 2009 amending Council Directive 2001/112/EC relating to fruit juices and certain similar products intended for human consumption.

95 Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector

addressed such as price reporting, the new crisis prevention and management tools for producer organisations.

In the animal products sector, various measures were adopted pursuant to the reforms introduced by the Health Check of the PAC and with a view to improving the effectiveness in the application of certain measures. For instance, Commission Regulation (CE) n° 149/200996 concerning the detailed rules of the arrangement of intervention on the skimmed milk powder market simplified certain provisions, integrated the new rule of content of proteinaceous matters decided by the Council, and adapted the rules of management of the invitations to tender in order to ensure the respect of the intervention ceiling decided under the Heath Check. Also the school milk programme has been modified by Commission Regulation (EC) No 966/2009 to enlarge the game of eligible products and increase its efficacy. In the field of meats, legislation was adopted in accordance with the Health Check, so to remedy certain crisis situations or pursuant to certain agreements with the third countries. For example, public intervention in the pigmeat sector was abolished pursuant to the Health Check (Article 4 (2) of Regulation (EC) n° 72/200997). This abolition seeks to simplify the "acquis" by the removal of an obsolete measure for this market which had not been applied since 1971. Also, Council Regulation (EC) No 1047/2009 adapted the legal base on marketing standards for poultry meat; it assures the correct coverage for certain poultry preparation (the modification of the implementing rules will be adopted in 2010).

Direct payments and cross compliance

An intense legislative activity took place in 2009, as a consequence of the agreement reached in 2008 on the Health Check of the Common Agricultural Policy, as well as in the context of the on-going simplification programme.

Council Regulation (EC) No 73/2009 adopted on 19 January 2009 provided the revised general legal framework for direct support schemes for farmers98 This Regulation was amended in November 200999 in order to introduce a number of technical adaptations and to

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96 Commission Regulation (EC) No 149/2009 of 20 February 2009 amending Regulation (EC) No 214/2001 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in skimmed milk powder.

97 Council Regulation (EC) No 72/2009 of 19 January 2009 on modifications to the Common Agricultural Policy by amending Regulations (EC) No 247/2006, (EC) No 320/2006, (EC) No 1405/2006, (EC) No 1234/2007, (EC) No 3/2008 and (EC) No 479/2008 and repealing Regulations (EEC) No 1883/78, (EEC) No 1254/89, (EEC) No 2247/89, (EEC) No 2055/93, (EC) No 1868/94, (EC) No 2596/97, (EC) No 1182/2005 and (EC) No 315/2007.

98 Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003.

99 Council Regulation (EC) No 1250/2009 of 30 November 2009 amending Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers.

allow Member States to decide specific support measures for farmers in the dairy sector before 1st January 2010.

The Commission's implementing rules were recast and simplified through the adoption of Commission Regulations (EC) No 1120/2009100, (EC) No 1121/2009101 and (EC) No 1122/2009102.

This recast and simplification included the deletion of obsolete provisions, e.g. those related to compulsory set-aside or to the establishment of the Single Payment Scheme in the EU-15, the introduction of transitional rules for energy crops and the voluntary set-aside scheme as well as the integration of the provisions on specific support under Article 68 of Regulation (EC) N°73/2009, previously introduced by Commission Regulation (EC) N° 639/2009103. The improvements for cross compliance included simplification of rules concerning checks and sanction as well as adaptation of the system of maintenance of permanent pasture to better reflect reality. The text and the structure of the implementing rules were also revised in order to improve their readability.

As regards in particular the provisions on specific support under Article 68, detailed rules are laid down for each of the measures listed in Article 68(1) of Regulation (EC) No 73/2009. Due to the diversity of choices offered for implementing specific support, the responsibility of ensuring consistency between specific support and other Community support measures or measures financed by state aids is left to the Member States. Provision is made in the implementing rules to prevent similar measures being financed twice under both specific support and other Community support schemes. Specific support measures must not compensate for complying with legal requirements. The timing and the content of the information to be notified to the Commission are specified. Member States must lay down eligibility criteria for specific support measures and ensure that the measures they implement are verifiable and controllable.

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100 Commission Regulation (EC) No 1120/2009 of 29 October 2009 laying down detailed rules for the implementation of the single payment scheme provided for in Title III of Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers**.**

101 Commission Regulation (EC) No 1121/2009 of 29 October 2009 laying down detailed rules for the application of Council Regulation (EC) No 73/2009 as regards the support schemes for farmers provided for in Titles IV and V thereof.

102 Commission Regulation (EC) No 1122/2009 of 29 October 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector provided for in Council Regulation (EC) No 479/2008.

103 Commission Regulation (EC) No 639/2009 of 22 July 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards specific support, repealed by Regulation (EC) No 1120/2009.

Rural development

The results of the 2008 political agreement on "Health Check" were formalised by Council Regulation (EC) No 74/2009104 amending Regulation (EC) No 1698/2005 and by Commission Regulation (EC) No 363/2009105 amending the implementing Regulation (EC) No 1974/2006. Increased modulation was part of the agreement and the corresponding funds are transferred to the Rural Development Fund (EAFRD) to be used for new challenges. These new challenges were identified to be related to climate change, renewable energies, water management, biodiversity, measures accompanying restructuring of the dairy sector and innovation linked to the four first challenges. A higher Community co-financing rate on increased modulation funds is available for these new challenges and also for the amounts from unspent funds from the 1st pillar (standard rate 75%, convergence regions 90%).

Another substantial change in 2009 was the introduction of the European Economic Recovery Package (EERP) responding to the financial and economic crisis. The Commission succeeded in establishing the legal framework to allow Member States to use the amount of EUR 1 020 million, by the adoption of Council Regulation (EC) N° 473/2009106, in line with the amendments introduced by Council Regulation (EC) No 74/2009 which enables Member States to use amounts resulting from increased compulsory modulation and unused funds generated under Council Regulation (EC) No 73/2009 on direct support schemes on operations related to the new challenges. Both these changes led to a need to revise all national strategy plans and rural development programmes, except national networks, in all Member States. 80 programmes were revised in 2009 and the remaining 7 programmes in January 2010 using the Comitology approach.

The implementing rules for controls on rural development, Commission Regulation (EC) No 1975/2006, was amended to clarify some provisions and to take into account recent amendments of the corresponding regulation providing for controls under the 1st pillar, Regulation (EC) No 796/2004, to which there are lot of cross-references.

Quality policy

Quality

Quality being one of the EU's strengths to compete on a global market and respond to consumer demand, the Commission decided to launch a reflection process to improve

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104 Council Regulation (EC) No 74/2009 of 19 January 2009 amending Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)

105 Commission Regulation (EC) No 363/2009 of 4 May 2009 amending Regulation (EC) No 1974/2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)

106 Council Regulation (EC) No 473/2009 of 25 May 2009 amending Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and Regulation (EC) No 1290/2005 on the financing of the common agricultural policy

European quality policy. In order to be in a position to do so, the Commission wished to first have the benefit of being appraised of the opinion of stakeholders. For that reason, the Commission released, on 15 October 2008, a "*Green Paper on Agricultural Product Quality Policy: product standards, farming requirements and quality schemes*" (COM (2008) 641 final), opening a public consultation exercise until 31.12.2008.

More than 500 contributions received from stakeholders during this public consultation on quality policy were analysed in detail and provided the basis for the Commission Communication on agricultural product quality policy adopted in May 2009 ((COM(2009)234)). The Communication lays down strategic orientations for a coherent and comprehensive food quality policy, aimed at improving the communication between farmers and consumers on the quality of agricultural products.

The Communication is based also on the outcomes of the High Level Conference on Quality held in Prague in March 2009 and the Impact Assessment exercise carried out in 2009. The Impact Assessment accompanying the Communication was the result of a comprehensive reflection and analysis exercise leading to identify for each field (*production requirements and marketing standards, EU quality schemes and certification schemes*) covered by the Green Paper and the subsequent Communication the following elements: the policy context, the underlying causes of problems, the policy's objectives and the policy options envisaged and those retained.

The Communication announces a series of actions of different kinds (including guidelines and possible legislative proposals) to be taken by the Commission in respect of existing EU quality schemes, quality certification schemes and marketing standards.

Following the Communication, new Impact Assessment exercises (including the establishment of an Impact Assessment Inter Service Group) commenced at the end of 2009, in order to have the prospect of legislative proposals in the second semester of 2010.

Moreover, in 2009, the "Standing Committee on Protected Geographical Indications (PGI) and Protected Designations of Origin" (PDO) (Art. 15 of Regulation (EC) No 510/2006) and the "Standing Committee on Traditional Specialities Guaranteed" (TSG) (Art. 18 of Regulation (EC) No 509/2006) gave favourable opinions respectively on a number of Draft Commission Regulations entering names in the Register of PDOs-PGIs and of Draft Commission Regulations entering names in the Register of TSGs.

Organic

The Community organic farming legislation underwent a profound revision process based on the European Action Plan for Organic Food and Farming (COM (2004) 415 final). A milestone of this process is the new Council Regulation (EC) No 834/2007 on organic production and labelling of organic products107, supplemented by implementing regulations

107 Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91.

adopted in 2008 (Regulations (EC) No 889/2008108 on production, labelling and control and Regulation (EC) No 1235/2008109 on import of organic products). These Regulations replace the old Regulation (EEC) No 2092/91 as from 1 January 2009 onwards. They were further developed in 2009 with the adoption of amending Regulation (EC° N° 710/2009110, establishing common rules for organic aquaculture and seaweed production.

4.1.2.2. Preventive measures and actions taken to control the correct application of the law

In the field of prevention the Commission continues to be active as the following actions demonstrate.

Meetings with the Member States on a bilateral basis in the context of Comitology

The Commission makes use of the management and regulatory committees, advisory, permanent and temporary groups of experts to promote better implementation and identifying and addressing potential problems as early as possible.

In order to contribute to the smooth application of sectoral regulations, bilateral meetings were organised regularly with Member States. Where needed, missions to MS capitals to receive a global view of procedures and practices at national level were also organised. "Bilaterals" with MS provided the competent services of the Commission with the opportunity to deal positively with some recurrent problems encountered by MS in the drafting of applications as well as in the interpretation of a number of legislative provisions. The Commission also provided practical suggestions to improve the quality of applications, for instance in the quality sector, for registration and amendments. This contributed to reducing time-consuming formal exchanges concerning Commission requests for additional information, in particular in the agricultural quality policy sector.

In that same sector, as the supervision of obligations of Member States under Regulation (EC) No 510/2006 has been identified as an important issue in need of attention, in 2009 the Committee meetings provided the opportunity to keep Member States informed on the developments in the implementation of the EU legislation relevant to checks. In particular, the official food and feed control Regulation (EC) No 882/2004 was presented in the Committees. The monitoring requirements for PDO/PGI/TSG and the link with Regulation (EC) No 882/2004 were also presented to the MANCP Network (representatives of the CA of Member States). The integration of PDO/PGI/TSG monitoring provisions in the MANCP and Annual

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108 Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control.

109 Commission Regulation (EC) No 1235/2008 of 8 December 2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries.

110 Commission Regulation (EC) No 710/2009 of 5 August 2009 amending Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007, as regards laying down detailed rules on organic aquaculture animal and seaweed production

Report was discussed.

The accreditation requirements and the state of play of the implementation of Regulation (EC) No 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products were also presented in the Committees.

The Commission services informed the MS regarding the interpretative note (No 2009-01) on administrative protection of registered names by the competent monitoring authorities of the Member States concerning names registered under Regulation (EC) No 510/2006. It applies *mutatis mutandis* also to Regulation (EC) No 509/2006 on TSG.

In the spirit drinks sector, guidelines relating to Articles 9, 10 et al of Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks were provided to Member States in the Spirit Drinks Committee and to the stakeholders in the Advisory Group on Spirit Drinks with a view in particular to ensure consistent implementation of the rules throughout the EU and prevent deceptive and misleading practices.

Moreover, a register of interpretative notes on agricultural law (called RIPAC) has existed for a long time and new interpretative notes are regularly being created and put in that register which is accessible for the Member States. The notes are usually drawn up as a result of a written or oral question posed by a Member State.

Technical standards Directive (Directive 98/34/EC)

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 and Turkey to give each other and the Commission prior notification of all draft rules containing technical standards or rules in order to avoid creating new barriers to trade in the internal market. As such, this directive can be considered as an ideal preventive instrument enabling the filtering of any national technical rule that could jeopardize the functioning of the internal market.

In this context, in 2009 the relevant departments of DG AGRI were formally consulted on 94 notifications relating to the agricultural sector. Examination of these draft texts subsequently led to the issuing of five comments and five detailed opinions.

Furthermore, concerning the obligatory indication of origin for olive oil in Italy the Commission issued a "blockage" on a notified draft national measure intended to replace a decree which is the subject of on-going infringement proceedings. The notified measure was therefore subject to both a detailed opinion and a blocking decision by the Commission until 1st May 2009. The services were subsequently notified of a new decree by the Italian authorities on 11th November which appears satisfactory.

Simplification

The Commission strategy for simplifying the regulatory environment [COM(2005)535] set out an ongoing simplification programme of measures to be adopted between 2005 and 2008 with a view to improving the quality and effectiveness of the "acquis". As far as the

agricultural sector is concerned, the Communication on Simplification and Better Regulation for the Common Agricultural Policy [COM(2005)509] set out an ambitious programme for a significant simplification of the CAP. The Communication: "A simplified CAP for Europe - a success for all **(**COM(2009) 128 final) takes stock and looks at what has been accomplished. It highlights the activities that have been carried out since 2005, and gives indications of the resulting reduction in the administrative burden for farmers and administrations. The 2005 Communication led to the creation of the rolling Common Agricultural Policy Simplification Action Plan, which is used to identify, plan and monitor the implementation of simplification projects within the agricultural sector. Launched at the end of 2006, it has evolved from 20 to around 62 projects; 46 projects have already been implemented. (removal of the obligation to have a licence for beef exports without export refunds, end of the obligation for a farmer to have a plot of land at his disposal for at least 10 months in order to apply for direct payments, for imports, licence requirements were reduced from 500 to 65 and for exports, only 43 licence requirements remain, etc. On technical aspects, it is interesting to mention that in order to increase the transparency of EU law, which is an essential element of the better lawmaking strategy that the Institutions are implementing, Council Regulations (EC) No 1128/2009 and 1139/2009 repealed 33 Council acts that had become obsolete, whereas almost 300 Commission acts that equally had become defunct were removed from the "acquis". The adoption of the single CMO replaces 21 individual common market organisations with one, reducing the number of articles from around 1080 to around 350 and repealing 86 Council acts. At the end of 2009, the Commission's services presented a Staff Working Document SEC(2009)1601, on the assessment of 39 simplification suggestions submitted at the Agricultural Council of April 2009. The document provides an assessment of every simplification suggestion and, where possible, presents a solution to the problem raised. Some of the solutions have already been incorporated in the new implementing regulations for direct payments.

Organic farming legislation – monitoring guidelines

Regarding the implementation of the Community rules regarding organic products, the new legislative framework clearly delimitates competences between the Commission and the Member States. In particular regarding checks, the responsibility lies with the Member States. They are logically placed under the responsibility of the Official Food and Feed Control (OFFC) established by Council Regulation (EC) No 882/2004. To foster more efficient monitoring systems, a first document of monitoring guidelines was presented by the Commission to the Member States with a view to disseminate knowledge and appropriate guidance to the competent authorities, and possibly the monitoring bodies, clarifying the relationship between the monitoring requirements deriving the OFFC and those deriving from the organic regulations. This will also help the Commission in its supervisory role.

Clearance of accounts

EAGF and EAFRD expenditure is implemented under shared management through a comprehensive management and control system based on four levels consisting of111:

111 For more explanations on the management of the agricultural budget and its audit tools, see: http://ec.europa.eu/agriculture/fin/clearance/factsheet_en.pdf.

– A compulsory administrative structure at the level of the Member States: management and control of expenditure is entrusted to dedicated paying agencies, which prior to their commencement of operations must be accredited by the Member States on the basis of a comprehensive set of accreditation criteria laid down in Community law;

– Detailed systems for ex-ante controls and dissuasive sanctions: These systems are to be applied by the paying agencies and contain some common features and special rules tailored to the specificities of each aid regime. The systems generally provide for exhaustive ex-ante administrative controls of 100% of the aid applications, cross-checks with other databases where this is considered appropriate as well as pre-payment on-the-spot checks of a sample of transactions ranging between 1% and 100%, depending on the risk associated with the regime in question. If the on-the-spot checks reveal a high number of irregularities, additional checks must be carried out.

In this context, by far the most important system is the IACS (Integrated Administration and Control System). To the extent possible, the IACS is also used to manage and control rural development measures relating to parcels or livestock.

– Ex-post checks: in addition to the ex-ante controls, all aid measures other than direct payments covered by the IACS are subject to ex-post checks under either Council Regulation (EC) No 485/2008 or, for rural development measures, Commission Regulation (EC) No 1975/2006. Moreover, the paying agencies' annual accounts and the functioning of their internal control procedures are verified and certified on an ex-post basis by the certification bodies.

– Clearance of accounts: the clearance of accounts through the Commission consists of both an annual financial clearance and a multi-annual conformity clearance.

Taken together, these four levels are designed to ensure the legality and regularity of transactions at the level of the final beneficiaries. In the current context of the report on the application of Community law, the conformity clearance mechanism is particularly worth mentioning as it pertains to the correct application of the legislation establishing the common agricultural policy.

Indeed, while the financial clearance covers the integrality, accuracy and veracity of the paying agencies' accounts, the conformity clearance relates to the legality and regularity of the underlying transactions. It is designed to exclude from Community financing expenditure which has not been executed in compliance with Community rules, thus shielding the Community budget from expenditure that should not be charged to it (financial corrections). In contrast, it is not a mechanism by which irregular payments to beneficiaries are recovered, which according to the principle of shared management is the sole responsibility of Member States. Financial corrections are determined on the basis of the nature and gravity of the infringement and the financial damage caused to the Community. Where possible, the amount is calculated on the basis of the loss actually caused or on the basis of extrapolation. Where this is not possible, flat-rates are used which take account of the severity of the deficiencies in the national monitoring systems in order to reflect the financial risk for the Community. Where undue payments are or can be identified as a result of the conformity clearance procedures, Member States are required to follow them up by recovery actions against the

final beneficiaries. However, even where this is not possible because the financial corrections only relate to deficiencies in the Member States' management and monitoring systems, financial corrections are an important means to improve these systems and, thus, to prevent or detect and recover irregular payments to final beneficiaries. The conformity clearance thereby contributes to the legality and regularity of the transactions at the level of the final beneficiaries.

In 2009, the Commission adopted two conformity clearance decisions:

– *Ad hoc* Decision 30: Commission decision No 2009/253/EC of 19 March 2009 excluding EUR 214.2 million from Community financing.

– *Ad hoc* Decision 31: Commission decision No 2009/721/EC of 24 September 2009 excluding EUR 128.9 million from Community financing.

In 2009, the Commission also adopted Decision C(2009)810 final of 13 February 2009 excluding from Community financing, in respect of 5 Member States, sums lost as result of irregularities, which it was considered, the Member States had not acted with due diligence in recovering.

Moreover, in 2009, the Commission carried out 187 on-the-spot missions in the Member States and launched 138 desk checks.

While the financial consequences will only be determined at the end of the conformity clearance procedures, the results of the audits are already known. Most of the audits performed in 2009 have not revealed any deficiencies in the monitoring systems which would suggest that those systems are ineffective in determining the eligibility of claims or preventing irregularities112. The main exception concerns direct payments for Bulgaria and Romania because of the serious deficiencies in their respective IACS and the ensuing high error rates. However, for both Member States, action plans have been developed for the period 2009-2011 and were accepted by the Commission in July 2009. In parallel, DG AGRI is protecting the EU financial interests through conformity clearance procedures which are expected to result in significant financial corrections.

4.1.2.3. Management of the "acquis" through committees and experts groups

In the legal context prevailing in 2009, before the Commission adopts legal acts in the area of the Common Agricultural Policy, based on powers conferred upon it by the Council, it normally has to consult with Member State representatives and may also consult with experts coming from non-governmental organisations.

In the case of consultations with the Member States representatives (Comitology) the Commission proposes the draft measure to a committees established by Council legislation and which are composed of representatives of the EU Member States. Committees give their opinion to almost every implementing act drafted by the Commission. This process gives

112 For a more detailed description of the conformity clearance activities, see DG AGRI's 2009 Annual Activity Report.

multiple possibilities for consultation on different solutions for the implementation of agricultural law. It also has the effect that Member States are reminded of their duty to comply with Community law. Comitology has a long tradition in the agricultural sector, especially in the system of the management of the agricultural markets but comitology also applies to the implementation of rural development and direct payments. In relation to the CAP, the management committee procedure is the type of procedure that applies almost exclusively and only in very few cases is the regulatory procedure applied with or without scrutiny by the EP.

In 2009, 164 meetings of 14 management and regulatory committees presented the opportunity to discuss the implementation of CAP legislation with the representatives of the Member States. It should be noted that as of 1st January 2008 the application of the "single CMO Regulation" (EC) No 1234/2007 was gradually phased in to the extent that the previously existing sector-based management committees for the common organisation of the markets were replaced step by step by one single management committee for the Common Organisation of Agricultural Markets (cf. Article 195 of that Regulation). The transition was finalised in October 2008. The "single CMO-committee" replaced 19 sectoral management committees.

The Commission therefore cooperates with Member States in a sophisticated manner which presents the opportunity to discuss and prepare the implementation of common rules and to prevent or solve problems related to their application at an early stage.

In addition the Commission administrates around 70 expert and Civil Society Dialogue groups dedicated to agriculture policies. These groups are not only composed of national administration experts but also by agricultural organisations, academics and independent experts. A major proportion of these groups are advisory groups where the Commission consults on measures with stakeholders such as producers, exporters, importers, wholesalers, retailers, nature preservation NGOs, consumers and other concerned parties.

In 2009 the Commission was assisted by a number of advisory and working groups, as well as permanent and temporary groups of experts (in total 112) with a view to better adapting policies and implementing rules to the real situation. Above all, these groups provide the Commission with agricultural markets data and current production circumstances

4.1.2.4. Enquiries, problems and complaints management

The examination of complaints from citizens and companies and internally detected cases gave grounds for the Commission to intervene with the Member States on the basis of Article 258 TFEU (ex 226 TEC) in the various fields of the Common Agricultural Policy. In several cases the Commission referred questions relating to the application of Community law to Member States using the EU Pilot system. In 2009, 31 cases were dealt in EU Pilot system and concerned different sectors of the CAP.

Particular attention was drawn to the correct application of the Community legislation in the field of direct payments, organic production and quality policy. The cases concerned inter alia undue reduction of agro-environmental measures in certain Länder in Germany, delayed payment of direct support in Portugal, insufficiencies of control systems for organic production in Italy and in Portugal.

Furthermore 2009 saw the entrance in operation of the new database, called CHAP (Complaints handling – Accueil des Plaignants), for registering and managing enquiries and

complaints about the application of Community law by Member States. In 2009, DG AGRI dealt with 33 CHAP files as responsible service (and was associated service for 8 files).

4.1.2.5. Petitions

In 2009 the Commission received 8 petitions related to agriculture which covered a wide range of issues. Three petitions to keep the ban on blending red and white wine to produce rosé (from an Italian petitioner and a petitioner resident in France and Spanish, French and Italian confederations of wine growers), on changes to packaging regulations and the introduction of standard quantities in Germany, on denomination of fruit preserves in Germany, on the Polish authorities' alleged disregard of the provisions underlying the Sectoral Operational Programme 'Restructuring and modernisation of the food sector and rural development 2004-2006' and on the on eligibility for EU rural development subsidies for mixed fruit orchards in Germany.

4.1.2.6. Management of infringements

In the area of agriculture and rural development, monitoring the application of Community law under the Article 258 TFUE (ex Article 226 TEC) procedure concentrates on two main objectives: removing barriers to the free movement of agricultural produce and ensuring that the more specific mechanisms of agricultural regulations are applied effectively and correctly.

In respect of removing of barriers to the free movement of agricultural products, in 2009 the Commission issued a reasoned opinion against the Czech Republic for the use of the sales designation "Pomazánkové máslo" (EN butter spread) for a dairy product wich does not comply with the requirements laid down in the Annex XV to Council Regulation (EC) No 1234/2007. In view of the persistent refusal of the Czech authorities to amend the legislation so as to put an end to this infringement, a reasoned opinion was issued.

In the context of ensuring that the specific mechanisms of the agricultural regulations are properly applied in the Member States, specific attention continued to be paid in 2009 to the application of the milk quota regime. Particular attention was devoted to its application in new Member States. Furthermore, the Commission also examined the compatibility of certain national rules on the obligatory indication of origin for olive oil in Italy.

Within the framework of the initiative to promote transparency on all funding deriving from the Community budget, the Commission gave particular attention to the enforcement of the Community requirements concerning the publication of details of the beneficiaries of CAP payments made from the agricultural funds (EAGF and EAFRD). A new EU law provided a uniform framework for the publication of details of the beneficiaries of CAP payments and the amount of the sums received. Detailed implementing rules have been set in Commission Regulation (EC) N° 259/2008 obliging Member States to provide on a single website a search tool allowing the users to search by beneficiaries by name, municipality, amounts of subsidies received from the agricultural funds or a combination thereof and to extract all the corresponding information as a single set of data. The availability of the information is limited to two years from the date of their initial publication.

The first publication was to be made by 30 September 2008 (for EAFRD payments made between 01/01/2007 and 15/10/2007) and the next publication was the date of 30 April 2009 for the payments made under the EAGF and the EAFRD for the financial year 2008. All the Member states published the information within the deadlines except Germany that justified

its failure on account of legal proceedings by beneficiaries opposed to publication. The Commission took the necessary steps to convince Germany to comply with the rules with the initial result that Germany finally proceeded with publication on 16 June 2009. Nevertheless, the publication was still not complete as it did not cover the whole territory of the Federal Republic of Germany and the Commission had to reinforce its measures to force Germany to fully comply with the rules. As a result of this action, Germany published the required information for the whole of its territory. While Member States were on the whole providing the information as requested by the Regulation, it has to be pointed out that there were some shortcomings as regards either the content or the form of the information provided, this applying both to publication under EAFRD as under EAGF. Hence the Commission has kept a close monitoring of the situation and wrote reminding letters to Member States asking for the necessary changes whenever deemed necessary.

In the context of the monitoring of the correct implementation of the new Community organic farming legislation, the Commission insisted with to two Member States on remedying deficiencies identified in their monitoring systems. The problems were solved by the competent authorities within a reasonable period and the performance of their supervisory systems was subsequently improved.

Particular attention has been paid to the treatment of instances of non-compliance with Court judgments. In 2009, this resulted in following the progress made by Portugal to implement a judgment of the Court in which the Court declared that, by levying charges on beneficiaries during the programming period 1994-1999 which were neither voluntary nor optional and which did not constitute remuneration for services rendered by the administration, 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 4253/88, as amended by Council Regulation (EEC) No 2082/93113 . The Commission considered that by limiting, for administrative reasons, the reimbursement of the illegal charges to beneficiaries introducing a request within the final deadline of one month, Portugal did not fulfil its obligation to implement the Court's judgment correctly in view of the principles of effectiveness and proportionality. For this reason the Commission opened Article 260 TFEU (ex 228 EC) infringement proceedings against Portugal in 2007. Portugal presented a plan programming the reimbursement of the amounts resulting from the charges illegally collected from the beneficiaries, the execution of which has been followed by the Commission.

Furthermore the Commission continued monitoring the application of the so-called "Breakfast directives", which lay down particular compositional and labelling requirements for products including honey, chocolate, jams and fruit juices114. In line with the other priorities defined

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113 Judgement of 5 October 2006 in case C- 84/04, Commission v. Portuguese Republic, Rec 2006, p.I-9843.

114 The list of products is not exhaustive. The products referred to above due to their nature and constant consumption require particular supervision of the application of the following directives: Council Directive 2001/110/EC of 20 December 2001 relating to honey , Directive 2000/36/EC of the European Parliament and of the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption**,**Council Directive 2001/113/EC of 20 December 2001 relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption and Council Directive

in the communication "Europe of results", the Commission monitored the transposition of one agricultural directive. Following the adoption of the Council Directive 2007/61/EC115, which provided for the deadline for transposition of 31st August 2008, the Commission, taking account of its priorities, closely scrutinised the communication of the national transposition measures. In October 2008 the Commission opened infringement proceedings against Belgium, the Czech Republic, Greece, Italy, Cyprus, Luxembourg, Portugal and Romania for non-communication of national transposition measures of Council Directive 2007/61/EC. These cases were closed because the Member States concerned communicated national transposition measures, with the exception of Italy. In June 2009 the Commission issued a reasoned opinion to the Italian government, following the failure of the Italian Government to comply with the letter of formal notice. Consequently, Italy communicated national transposition measures, which enabled the Commission to close the infringement procedure against Italy. The Commission, therefore, managed to ensure full transposition of Council Directive 2007/61/EC by all Member States within one year from the date of deadline for communication of national transposition measures set by the Directive.

More specifically, concerning chocolate (Directive 2000/36/EC), the Commission decided to refer Italy to the Court of Justice for failing to amend its legislation on the labelling of chocolate products. Infringement proceedings were opened against Italy because the Commission considered that the indication "pure chocolate" cannot guarantee accurate and impartial information for the consumer. In fact, this system of labelling creates a situation in which chocolate containing vegetable fats other than cocoa butter may be perceived by the consumer as being a lower-quality product than "pure chocolate" – which contains fat exclusively in the form of cocoa butter. But in its judgment of 16 January 2003 in Case C-14/00 *Commission v Italian Republic* the Court of Justice considered that the addition to cocoa and chocolate products of vegetable fats other than cocoa butter did not entail substantial alteration of their composition or nature. In order to comply with the mechanism introduced by Directive 2000/36/EC for providing the consumer with neutral and objective information, the Italian rules should refer either to the absence of vegetable fats other than cocoa butter or to the sole presence of the fat concerned, namely cocoa butter.

4.2. Evaluation

4.2.1. General evaluation

Taking into account the volume of Community law currently in force in the agricultural sector, the "acquis" in the agricultural sector may be considered as globally stable and manageable subject to technical up-dating or clarification effected through Comitology (see above). This updating is not generally expected to be controversial or difficult to implement due to the well-established and well-understood framework in which this will take place and in the light of previous experience of the relatively smooth adoption and timely entry into effect of this type of measure.

2001/112/EC of 20 December 2001 relating to fruit juices and certain similar products intended for human consumption.

115 Council Directive 2007/61/EC of 26 September 2007 amending Directive 2001/114/EC relating to certain partly or wholly dehydrated preserved milk for human consumption.

In the agricultural sector it may be considered that preparatory working contacts between experts, review of problems arising and multilateral and/or bilateral exchange of information constitute proportionate and sufficient means to ensure correct implementation. Furthermore, besides its role in the adoption of implementing rules, the Management Committees, which meet regularly, are a privileged forum for the exchange of information and best practise between MS and the Commission.

In any case, as already explained, the agricultural sector makes use of the clearance of accounts mechanisms to monitor through its audits the application of secondary agricultural legislation and in particular the management and control systems thereof.

4.2.2. **Sector based remarks**

4.2.2.1. Market instruments

As regards the functioning of this sector-based "acquis", no major problems were encountered in 2009 as regard the application of the existing rules. The "acquis" can be considered as stable providing a generally satisfactory situation.

The simplification of horizontal regulations contributed to the aim of harmonised application and interpretation of Community law in all Member States. The discussions in the Committee on legal and technical issues and on the annual report on physical checks contributed to realising these aims as well.

In line with the priorities defined in the 26th report to EP for agricultural sector, the priorities indicated in the wine sector were realised namely by adopting the implementing regulations of the reform. The grubbing-up scheme in the wine sector met with considerable success in 2008/09 and in 2009/10. Only half the demand could be satisfied by the available budget. The national support programmes budgets were also almost completely allocated, indicating the attainment of many of the objectives set out.

Member States fully used the possibility provided in the wine reform in 2008/2009 to establish their national support programmes with the measures necessary for the modification of their own wine sector. The budget execution reached 94% of the available funds for 2009.

4.2.2.2. Direct payments and cross compliance

Direct payments scheme

The "acquis" in the direct payments sector is stable and its application by the Member States in 2009 was generally satisfactory. However, a few specific implementing issues have raised questions for Member States, for example regarding the assessment of the eligibility of certain marginal areas.

The legislation defines the agricultural area eligible for payments under the single payment scheme (SPS) and the single area payment scheme (SAPS) as well as what is considered agricultural activity. Following the principle of decoupling introduced by previous reforms, no production is required on the eligible hectares. This has led to certain grey zones where it can be difficult for both farmers and national authorities to determine in practice whether the area in question is actually agricultural or whether the character and main purposes of the area are rather to be considered nature, recreation or forest.

To help Member States face this challenge and also in reply to a request raised by the Member States in the scope of the simplification exercise, the issue of eligibility is being examined in the Management Committee for Direct Payments. It takes the form of a number of presentations by the Member States and discussion sessions to allow for an exchange of views and experiences as regards challenging situations as well as the best practices and methods to deal with such situations. In support of the discussions and to provide a more complete picture, the Member States have provided written descriptions of their practical approach to the issue. The discussions will be finalised in the first half of 2010.

During the year 2009, the Commission services have worked in close cooperation with Member States to ensure the correct application of the rules governing the specific support (Articles 68 to72 of Regulation (EC) No 73/2009). Article 68 includes a range of measures for which there is on the one hand a potential overlapping with possible measures under other instruments of the CAP and on the other hand there is the need of ensuring the consistency with those measures and/or the related requirements. Consequently, Member States had the obligation to notify to the Commission the measures they were intending to apply under this provision as from 2010. The Commission services examined these notifications and, where appropriate, sent observations to the Member States in order to ensure a correct application of the EU legislation. Those notified measures which are subject to a Commission's approval are assessed by the Commission services with a view to their approval by the Commission. This work will be continued in 2010.

Cross compliance

Regarding cross compliance, which was identified as a priority in the 25th and 26th report to the EP on monitoring the application of Community law, the main effort during 2009 was an extensive exercise of simplification of the system of management and monitoring. The Commission has carefully assessed the simplification proposals made by Member States and accepted the majority of them (11 out of the 15 concerning cross compliance). The accepted proposals had to be translated into legislative or quasi-legislative initiatives and the Commission started the work without delay. In this respect a first set of amendments of Commission Regulation (EC) No 796/2004 were adopted as early as November 2009 in the framework of the recast of this Regulation (now Commission Regulation (EC) No 1122/2009 in order to improve checks and sanction rules as well as to adapt the system of maintenance of permanent pasture to better reflect reality. A second set of amendments of the same Commission Regulation is being finalised in early 2010 with the Management Committee for Direct Payments in order to better take into account the certification schemes in the monitoring system and to better make use of specific monitoring systems. Certain simplification initiatives concern Working Documents which are being modified accordingly.

The European Court of Auditors issued also in 2008 a report on cross compliance116 recommending *inter alia* that Member States better define obligations at farm level and recommends further streamlining of the functioning of the system of cross compliance. The Commission has followed up on this report, apart from the simplification proposals referred to above by organising discussions in an experts group with Member States with the purpose of helping them better to define obligations at farm level under cross compliance. The outcome

116 Special Report 8/2008.

of these discussions is a Working Document for national authorities providing guidelines on the definition of obligations at farm level.

4.2.2.3. Rural development

All programmes are up and running and have been updated in the context of Health Check and EERP. However, experience has shown that there have been substantial delays in the accreditation of some measures in a number of programmes and these measures have started to be applied only towards the end of 2009, i.e. two and half years since the programming period started. Otherwise, the experience is not enough to base clear conclusions on the possible problems.

4.2.2.4. Quality policy

Quality

Whilst Community agricultural product quality legislation could be described as a fairly stable "acquis" characterised by a globally satisfactory situation, nonetheless, the Communication has clearly shown the need for a more coherent overall food quality policy.

Moreover, the existing EU quality schemes (geographical indications and traditional specialities) and measures are in need of amendment to make it easier for farmers, producers and consumers to understand the various schemes and labelling terms.

Organic

The overall application of the organic production rules may be considered as stabilised and on the whole satisfactory. The entry into force on 1st January 2009 of the new set of rules has not created particular difficulties as most of the new legislation is directly inspired by the previous one. Difficulties in the accreditation of control bodies at the beginning of the year were solved by the relevant competent authorities of the Member States, under close monitoring exercised by the Commission.

4.2.2.5. Technical standards directive (Directive 98/34/EC)

Following the information available to the Commission the functioning of Directive 98/34/EC in the agricultural sector appears to be satisfactory. In 2009 there were, for example, no infringement procedures launched against the Member States for not following detailed opinions.

4.3. Evaluation results

4.3.1. Priorities and action planed 2010

Legislative and management priorities and action programming 2010

As a general matter, one of the main priorities for the Commission as regards legislative activity in the agricultural sector will be to implement the important changes introduced by the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) and in particular the extension of the ordinary legislative procedure (co-decision) to agriculture and the adoption of new rules on the Commission's delegated and implementing powers (Comitology). The TFEU contains two provisions (Articles 290 and

291 TFUE) which entail modifications of the existing Comitology procedures, which govern a wide range of decisions and measures which are particularly important for the management of agricultural markets and policy. Pursuing the adoption of the Commission Communication of 09/12/2009 on the Implementation of Article 290 TFUE (COM (2009) 673 final), the Commission will align progressively agricultural legislation with the new mechanisms of delegated acts and implementing acts.

Market instruments

Beyond the ongoing pursuit of legal and operational simplification, including ,the simplification of the voluntary labeling system of beef and beef products117, the continuation of efforts to achieve simplification of the hops regime by eliminating the burdensome requirements to register cultivation contracts which requires a modification of the Council single CMO regulation N° 1234/2007 as well as further work in the field of licences and trade mechanisms, the Commission will continue to work on the improvement of the "acquis" in order to be ready to adapt to the challenges it faces notably regarding the animal products sector where the ongoing work of the Milk High Level Group should lead to proposals as well as the modification of the implementing rules as regards the marketing standards for poultry meat118. As concerns the wine sector, the following actions are foreseen: to continue to monitor the implementation of the wine reform: the results of the national support programmes, the grubbing-up scheme, and progress towards closing, to the extent possible, the illegal plantings files, to make changes in the regulations on these programmes where necessary, to address the low prices of wine and the continuing very high stock levels in the wine sector and finally to encourage the sales of the remaining stocks of wine alcohol in intervention.

As the codification/recast of Council Regulation (EEC) No 1601/91 laying down general rules on the definition; description and presentation of aromatized wines, aromatized wine based drinks and aromatized wine product cocktails initiated in 2007 was not finally adopted in the co-decision procedure, the outcome was that a new proposal should be prepared by the Commission. This proposal is foreseen for the 3rd quarter of 2010.

As regards horizontal rules, revision of existing horizontal Regulations will be initiated in the field of Tariff Rate Quotas, Licences, and Export Refunds / Trade Mechanisms.

The financial and economic situation in Member States and globally are having an impact on agricultural products. An additional priority for the moment is to monitor the market situation for each of the products. Price volatility, in particular in the milk sector, requires close market monitoring and quick reactions by using the existing market measures as reviewed under the "Health check".

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117 Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97.

118 Commission Regulation (EC) No 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat, *OJ L 157, 17.6.2008, p. 46–87.*

Direct payments and cross compliance

The proper application of the newly revised legislation in the context of the Health check has required the adoption of detailed implementing rules, particularly for Regulations (EC) N°73/2009 and 74/2009. New implementing regulations have included recasts of Commission Regulations (EC) No 795/2004, 796/2004 and 1973/2004 to establish the implementing rules of Regulation (EC) No 73/2009 needed for 2009 and a cleaning up of obsolete rules as well as implementing rules needed as from 2010 (especially regarding Articles 68 to 72 of Regulation (EC) No 73/2009). Moreover, the Commission continues providing advice to Member States regarding the implementation of these regulations. Finally the simplification proposals concerning the Council Regulations (EC) N°73/2009 and 1698/2005 will be dealt with under the Lisbon Treaty procedures in the course of 2010.

Rural development

The implementing rules for controls in rural development, Regulation (EC) No 1975/2006, will be recast in order to clarify and simplify it and to take into account changes made to Regulation (EC) No 796/2004 which has now been recast by Regulation (EC) No 1122/2009 and to which there are cross-references.

Regulation (EC) No 1975/2006 already sets out an application deadline for payment claims for area-related measures. This deadline is in accordance with that one set for the first pillar and aligns the system with IACS. In order to guarantee better cash flow for the beneficiaries and to further streamline the checks of area and animal-related measures under the first and second pillar and to guarantee the quality of checks, a payment deadline for these measures is proposed to be set in Council Regulation (EC) No 1698/2005.

Quality policy

Quality

The Communication on agricultural product quality policy, adopted in May 2009, sets out strategic orientations offering a new framework for the subject and commits the Commission to a number of actions, such as developing guidelines for agriculture product quality schemes; preparing the ground for possible legislative initiatives on geographical indications, traditional specialities guaranteed, and marketing standards, including optional reserved terms; investigating the potential for using the CEN standard setting body; improving the recognition of EU quality schemes in non-EU countries.

The Communication has thus opened the way to EU initiatives such as the provision of guidelines and legislative proposals, the latter also requiring the carrying-out of specific impact Assessments.

Moreover, the efforts made in accelerating the rate of reaching the final decision on applications - while ensuring the respect of sectoral EC legislation - will continue. The scrutiny of third-country applications will contribute to the finalisation of international agreements on the protection of geographical indications. The assessment of the Food Quality legislations of candidate countries and associated countries against EC legislation will continue.

Organic

The objectives for 2010 are to finalise the revision and the extension of the organic legislation with the adoption of a new logo for organic products and with the inclusion of the definition of organic wine-making rules.

Clearance of accounts

For 2010, the annual work plan foresees 120 conformity audits with missions and several desk checks of which the number is estimated to be around 30 based on last years' experience. For the conformity audits, the work program is based on a central risk analysis in which all the Directorate auditors were actively involved.

39 audits are planned of various market measures including the sugar restructuring fund, Article 69/68, wine, POSEI and fruit and vegetable operational funds.

22 audits will take place for area aids of which 2 each to BG, RO and GR all of which have action plans in place for the IACS. 11 cross-compliance audits will take place. For non area coupled aids, 9 audits will be carried out covering animal premium schemes, Article 69 and entitlements.

36 audits will be carried out on Rural Development measures of which 15 cover Axes 1 and 3 and measures with flat rate support and 14 cover Axis 2 focusing on the "Agro-environment" and "Natural Handicaps" measures. Furthermore there will be a reinforced follow-up (7 audits) in certain Member States of their control statistics due to the high error rates reported for Axis 2 measures under Rural Development. 3 audits will follow-up outstanding irregularities cases.

Enforcement priorities

As already mentioned, in the area of agriculture and rural development, monitoring the application of Community law under the Article 258 TFEU (ex Article 226 TEC) procedure concentrates on two main objectives: removing barriers to the free movement of agricultural products and ensuring that the more specific mechanisms of agricultural regulations are applied effectively and correctly.

In the use of the infringement procedure, priority will be granted to cases which raise issues concerning the compatibility of Member States' legislative, regulatory or administrative measures with Community agricultural rules and to cases where Member States concerned refrain from applying the common rules referred to above, thereby jeopardizing the effectiveness of important mechanisms of the common agricultural policy, particularly regarding the 1st pillar.

For the years 2010 and 2011, the Commission will in particular be vigilant in pursuing infringements of the type described in the previous paragraph challenging the application of

the CMO's reform in the fruit and vegetable and wine sectors and those which would affect the application of the direct payment regime , and in particular "cross compliance"119.

4.4. Summary

Taking into account the significant volume of agricultural law and its 50 years history, it may be considered as a quite stable "acquis" that, on the one hand, is subject to frequent technical modifications under the Comitology procedure, and on the other hand, undergoes, on a regular basis, much more profound modifications. The last one of these was the 2003 reform that was subject to the "Health check" process. The policy is divided into two pillars: the first pillar consists of a framework for supporting the income of farmers through the payment of direct aid and a system for managing and supporting agricultural markets. The second pillar of the CAP provides a framework to support the development of rural areas of the Community.

The implementation of the CAP is a joint responsibility of the Member States and the Commission, known as shared management under which the responsibility for implementation at the level of the final beneficiaries has been delegated to the Member States. In the agricultural sector, preparatory working contacts between experts, review of problems arising and multilateral and/or bilateral exchange of information all help to ensure correct implementation. Furthermore, the Management Committees, which meet regularly, are a privileged forum for the exchange of information and best practice between the Member States and the Commission.

The detailed overview of the implementation of EU law in the agricultural sector shows that it can generally be considered as satisfactory while any problem with the implementation of the rules in the Member States is closely followed through the audit mechanisms and clearance of accounts procedure which acts as a direct incentive to Member States to comply with EU law.

Still, the agricultural "acquis" is regularly subject to reforms and/or modifications in order to adapt the CAP to its new challenges. In 2009, the main challenges that prompted action from the Commission as regards this "acquis" consisted of the adoption of the legislative acts for the implementation of the "Health check" with a view to updating and adapting the 2003 reform, the proposals by the Commission of legislative acts in response to the general financial and economic crisis ("recovery package") as well as their implementation and the improvement of transparency of CAP payments to beneficiaries as well as the deepening of simplification.

Nevertheless deficiencies and infringements in application of Community law by Member States in the agricultural sector occur and can be dealt with through infringement proceedings. The use of these proceedings concentrates on two main objectives: removing barriers to the free movement of agricultural products and ensuring that the more specific mechanisms of agricultural regulations are applied effectively and correctly.

In the use of infringement proceedings, priority will be afforded to cases which raise issues concerning the compatibility of Member States' legislative, regulatory or administrative measures with Community agricultural rules and to cases where the Member States concerned

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119 The use of the infringement procedure will be favoured in cases where the absence of financial consequences of the infringement would not allow for recourse to the clearance of accounts procedure.

refrain from applying these common rules, thereby jeopardizing the effectiveness of important mechanisms of the common agricultural policy, particularly regarding the 1st pillar.

For the years 2010 and 2011, the Commission will in particular be vigilant in pursuing infringements of the type described in the previous paragraph challenging the application of recently reformed important CMO's (fruit and vegetable and wine sectors) and those which would affect the application of the direct payment regime, and in particular "cross compliance"120.

In the agricultural sector, the Commission will make an intensive use of the clearance of accounts procedure to convince Member States to adapt their legislation in cases where an infringement could be detected through conformity audit mechanisms.

5. ENERGY , MOBILITY AND TRANSPORT

5.1. ENERGY - Internal electricity and gas market

5.1.1. Current position

5.1.1.1. General introduction

Relevant legislations for the internal electricity and gas market are Directives 2003/54 and 55, of 26 June 2003 concerning common rules for the internal market in electricity and gas, respectively, Directive 2005/89 of 18 January 2006, concerning measures to safeguard security of electricity supply and infrastructure investment, Regulation 1228/2003 of 26 June 2003, on conditions for access to the network for cross-border exchanges in electricity, and Regulation 1775/2005 of 28 September 2005 on conditions for access to the natural gas transmission networks.

5.1.1.2. Report of work done in 2009

Enquiries, problems and complaints

Several complaints were received in 2009. Problems reported mainly refer to the malfunctioning of cross-border trade, the preferential treatment of national suppliers and network access in the electricity sector. In the gas sector, problems were reported as regards the access to the gas network and generally the malfunctioning of the gas market.

Very little progress was registered in 2009 in the regulated market: few Member States reduced the scope of their legislation to households and SME while more than half of the Member States still have regulated prices for household and business customers which raise doubts with respect to the compliance with the electricity and gas Directive. Therefore, new infringement cases were started in 2009. These measures may have a negative impact on the

120 The use of infringement proceedings will be favoured in cases where the absence of financial consequences of the infringement would not allow for recourse to the clearance of accounts procedure.

proper functioning of the internal energy market. The European Court of Justice has given its judgment in the Federutility case (C-265/08) which has allowed further clarifications on the issue of regulated prices.

Management of infringements

In order to complete the internal electricity and gas market and prepare the ground for the implementation of the third package, it is essential that the rules of the current Directives are implemented correctly. In June 2009, the European Commission initiated infringement procedures against 25 Member States for electricity and against 21 Member States for gas. The key violations identified were: lack of transparency, insufficient coordination efforts by transmission system operators to make maximum interconnection capacity available, absence of regional cooperation, lack of enforcement action by the competent authorities in Member States and the lack of adequate dispute settlement procedures for consumers.

In October 2009, the Commission launched further infringement proceedings against two Member States on gas transit and storage.

As regards Directive 2005/89, in 2009 all Member States notified complete transposition and all open infringement cases for non communication started in 2008 were closed.

New legislation

On 14 July 2009, a third package of legislative measures was adopted, including two Directives replacing the electricity and gas Directives, two Regulations replacing the electricity and gas Regulations and a Regulation establishing an Agency for the Cooperation of Energy Regulators (ACER). The third package entered into force on 3 September 2009. The two Directives have to be transposed into national law until 3 March 2011. The gas and the electricity Regulations shall apply from 3 March 2011. The Regulation on ACER is applicable since 3 September 2009 with the exception of the chapter on its tasks which applies from 3 March 2011.

5.1.2. **Evaluation of the current position**

In 2009 a great deal of effort was put into enhancing competition on the wholesale market; significant progress was made through the regional initiatives, which focused on improving congestion management allocation and calculation, harmonising transparency and integrating market balancing in the electricity sector and concentrated on new interconnection capacity, access to pipeline capacity, transparency, interoperability and security of supply in the gas sector.

In the context of developing gas and electricity infrastructure significant initiatives were taken: the European Energy Programme for Recovery (EEPR) was adopted to help securing and speeding up investments in the energy sector, and thereby has a direct impact on the EU economy and employment. It made a sum of EUR 2.365 billion available for gas and electricity interconnection projects.

However in spite of some encouraging results and the benefits of the liberalisation process, the full potential of liberalisation has not yet been realised. While the situation in more mature markets is demonstrating the potential benefits of energy market liberalisation, there are still a number of areas and Member States where significant obstacles to the efficient functioning of the electricity and gas market persist. A major concern is the incorrect implementation of

European electricity and gas legislation. For this reason, during 2009 the Commission has taken actions to ensure the correct implementation of EU legislation at national level through the application of infringement procedures in particular as regards the electricity and gas regulations and Annexes to the electricity and gas directives. The Commission will closely supervise the transposition of the third liberalisation package by the Member States. It has published several interpretative notes facilitating its correct implementation by the Member States.

5.1.3. **Evaluation results**

Infringement proceedings initiated in the gas and electricity sector have been successfully carried out and will be continued in 2010. In 2009 the European Court of Justice censured Sweden and Belgium for having incorrectly implemented the provisions concerning the competences of the national regulatory authorities with regard to network electricity tariffs; Belgium was also censured for having failed to designate a gas TSO.

The third energy package responds to most of the problems identified in the failure of application of the second package and an action plan to facilitate the transposition by Member State of the third energy package is under preparation.

5.1.4. **Sector summary**

While the situation in more mature markets is demonstrating the potential benefits of energy market liberalisation, there are still a number of areas and Member States where significant obstacles to the efficient functioning of the electricity and gas market persist. The need for new legislation was evident and led to the adoption of the third energy package.

The Commission's efforts concentrated and will continue concentrating on an efficient implementation of the existing and new legislation in both electricity and gas sectors, by combining three actions:

- Remedial action: Continue to pursue infringement procedures so as to ensure proper implementation of the electricity and gas Directives and Regulations in the main areas where failures were registered such as: penalties, transparency and capacity allocation of networks; third party access and consumer protection, all in both sectors. This action will continue in 2010 for both sectors.

- Preventive action: In the light of the adoption of the third energy package prepare an action plan in order to facilitate its transposition by Member States. This action will also be undertaken in 2010.

5.2. ENERGY - Coal and Oil

5.2.1. **Current position**

5.2.1.1. General introduction

With regard to the legislation in the domains of coal and oil, the largest part of the Commission's work in EU law management in 2009 consisted of the preparatory tasks and negotiations which lead to the adoption by the Council of Directive 2009/119/EC (Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products; OJ L 265, 9.10.2009, p. 9).

Although Directive 2009/119/EC repeals Directive 73/238/EEC, Directive 2006/67/EC and Decision 68/416/EEC it does so only with effect from 31 December 2012. Therefore currently applicable legislation still include Council Directive 2006/67 (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 – Codified version ; OJ L 217, 8.8.2006, p. 8), Council Directive 73/238/EEC of 24 July 1973 on measures to mitigate the effects of difficulties in the supply of crude oil and petroleum products (OJ L 228, 16.08.1973, p1-2) as well as Council Decision 68/416/EEC of 20 December 1968 on the conclusion and implementation of individual agreements between Governments relating to the obligation of Member States to maintain minimum stocks of crude oil and /or petroleum products (OJ L 308, 23.12.1968, p.19).

In 2009, tasks were also executed in relation to Directive 94/22 (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 prospection, exploration and production of hydrocarbons; OJ L 164, 30.6.1994, p. 3).

As regards coal, regular monitoring of the coal sector and market continued as foreseen in the applicable legislation (namely Regulation 405/2003) and information on import price indexes as well as coal import, production and consumption volumes were collected, analyzed and discussed with stakeholders through the National Coal Experts committee and in the annual Coal Dialogue.

The half-yearly price indexes and annual market report were published in 2009 as foreseen. In line with SER2, the issue of indigenous coal production has been introduced in discussions with stakeholders in view of analyzing possible policy initiatives for making the best use of EU's coal resources.

5.2.1.2. Report of work done in 2009

Infringements

With respect to Directive 94/22, Commission services continued to welcome publication demands received from Member States pursuant to the provisions of the Directive but also followed the implementation of these provisions by the Member States. Infringements procedures were pursued in 2009: as regards the obligation of Member States to duly notify competent authorities and on the basis also of other grievances, Commission services maintained contact with Belgium, following the issuance in 2008 of a letter of formal notice and of a reasoned opinion; in a file concerning Poland, which had also reached the stage of the reasoned opinion in 2008 and where the Commission asked Poland to correct its procedures for granting rights over oil and gas resources, contacts were also maintained in 2009 ; however, no decision in favour of a referral to the Court of Justice had yet been taken for any of the 2 files by the end of the year.

As regards Directive 2006/67, compliance became more and more actively monitored during expert meetings of the Oil Supply Group; the overall situation in 2009 with respect to oil stock levels required under the Directive can be on considered as acceptable in spite of some situations of non-compliance that were expected to remain occasional. In the context of the legislative review and of improved national stock levels, the Commission decided to close the case of the Belgian oil stocks, without prejudice to the earlier ECJ decision in favour of the Commission (case C-510/07).

New legislation

The March 2007 European Council underlined the need to enhance the security of supply for the EU and highlighted the need to review EU oil stocks mechanisms.

Consequently and with respect to oil, the activities of the unit were focused in 2009 on the collaboration with the Council and adoption of the new oil stocks directive; the Commission proposal of late 2008 was examined and modified in the Council under the Czech Presidency and a political agreement was reached by the Council in June.

The new legislation was subsequently adopted in September as Directive 2009/119. The legislation foresees a transition period until 31/12/2012 by which date all Member States shall have to ensure compliance with the Directive and the currently applicable Directive 2006/67 will – effectively - be repealed. Directive 2009/119 will significantly improve the system of emergency oil stocks by bringing EU rules much closer to IEA practices and providing better assurances of the availability and verifiability of the stocks. The legislation also reinforces the roles of the EU in handling possible supply disruptions and entrusts the Commission with suitable roles on behalf of the EU. Finally, the legislation also foresees improved reporting on the levels of oil stocks in the EU, including commercial ones.

5.2.2. **Evaluation of the current position**

Work has started on amending the current oil stocks reporting procedures and instruments in cooperation with Eurostat and the IEA to provide for the use of a single reporting tool by the end of the transition period. Furthermore, a specific analysis of the feasibility of increasing the frequency of commercial oil stocks reporting to weekly has been launched in mid-2009, and should conclude in 2010.

Besides the attention paid to emergency preparedness in oil and petroleum products supplies, a study has been completed in cooperation with external consultants on the competitive aspects of EU's petroleum products market and sector. While the study has not identified specific failures of competition in the field in the EU, it highlighted the importance of continued investments in refining and of regular monitoring and improvements of the transparency of operations in the production, sale and distribution of petroleum products in the EU.

In oil upstream, compliance with Directive 94/22 on hydrocarbon licensing can be regarded as acceptable despite two ongoing infringement processes which were pursued in 2009 with respect to the inadequate application of specific provisions of the directive or for non-conformity of the national transposition measures. Some 40 publications of notices from Member States were arranged in 2009 under the provisions of the directive.

5.2.3. **Evaluation results**

The Commission's resources will need to remain concentrated on the implementation of the new oil stocks legislation, both at EU level and at the level of Member States.

The main tasks that will deserve attention and follow-up in 2010 will be:

– the revision of the Monthly Oil Stock (MOS) questionnaire to serve reporting: this questionnaire needs some update/streamlining in order to be suitable for the purposes of the new Directive; on the other hand, using MOS, whose data are already available through

EMOS, would mean that no specific new reporting instruments/procedures would need to be established by ENER services;

– an appraisal concerning the reporting frequency of commercial stocks; the reporting frequency for commercial stocks was changed from weekly to monthly in the final version of the directive ; this implies as much as possible that data available through MOS should also be suitable and sufficient to ensure the implementation of the relevant article of the directive ; COM should also complete the intended assessment of the possibilities for weekly reporting in the EU;

– the examination of further Emergency Planning methodologies/procedures, given the more active and central role given by the new Directive to the Commission in case of supply disruptions;

– the preparation of an electronic tool to allow systematic consultations within the Oil Study Coordination Group;

– the examination of methodologies and standards for reviewing emergency preparedness and stockholdings of/in Member States.

5.2.4. **Sector summary**

Analysis of the current system for the security of supply in oil and petrol revealed some weaknesses that justified the review of the existing legislation.

The newly adopted Directive will constitute a new stepping stone towards security of supply improvements in the EU and, for the countries concerned, will more effectively encourage compliances to both the EU stockholding system and the IEA system. The new Directive will replace the current three pieces of EU legislation on emergency stocks and pays special attention to the provisions addressing the availability of stocks, the administrative arrangements needed for proper stocks management and the rules setting up EU crisis mechanisms that will be complementary to the IEA rules. Simultaneously, the new provisions should contribute to simplify some of the Member States' administrative procedures.

The Commission's efforts are consequently focussed on ensuring a proper implementation of the new legislation by:

– using to the fullest extent and improving all the necessary reporting tools;

– preparing actively its reinforced role in the coordination of emergency procedures as well as concerning the reviews of emergency preparedness, and related stockholding, of the Member States.

5.3. ENERGY - Renewable energy sources

5.3.1. **Current position**

5.3.1.1. General introduction

Main pieces of Community acquis are:

– Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity from renewable energy sources in the internal electricity market

– Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport.

– Directive 2009/28/EC of the European Parliament and of the Council of 5 June 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.

5.3.1.2. Report on the work done in 2009

Following the publication of the renewable energy progress report in April 2009 (COM(2009)192) the Commission sent six letters asking Member States to provide explanations on the insufficient measures taken to reach the 2010 targets under Directive 2011/77/EC. new infringement cases under Directive 2001/77/EC

Complaints continued to be received and one of these has resulted in the Commission initiating infringement proceedings. Ten Member States failed to submit reports in accordance with the requirements of Directive 2003/30/EC. Thus the Commission also launched infringements for non reporting against these Member States.

Overall, currently 15 cases are still open as infringements (in NIF) and 4 cases as complaints (in CHAP).

Directive 2009/28/EC entered into force on June 25th 2009. To facilitate Member States' implementation of Directive 2009/28/EC (required by December 5th 2010), the Commission has published a template for the renewable energy national action plans (C(2009)5174) and has, in 2010, produced a number of Communications and guidelines on implementing certain aspects of the Directive related to biofuels sustainability scheme121. The Commission has also launched several analytical studies to provide information that will help Member States take action to remove barriers to the growth of renewable energy, as required by the Directive.

5.3.2. **Evaluation of the current position**

When preparing the new renewable energy framework (establishing particularly the 2020 targets) of Directive 2009/28/EC, the Commission insisted that it would continue to enforce rigorously the existing framework and the 2010 targets. The infringement cases launched for failure to submit reports will thus continue to be pursued.

The new legal framework of Directive 2009/28/EC will eventually replace Directives 2001/77/EC and 2003/30/EC which have been partially repealed as of April 1st 2010. The Commission is firmly committed to close monitoring and enforcement of this Directive.

The need to pursue Member States for non reporting and the inflow of complaints received suggests that several Member States are *not* implementing the relevant Directives in a complete or appropriate manner. Continued failures of this nature would eventually put at risk

121 OJ C 160, 19.6.2010, p. 1-7; OJ C 160, 19.6.2010, p. 8-16; OJ L151, 17.6.2010, p. 19-41

the 2020 targets and thus the Community's whole energy and climate strategy. Continued close monitoring and enforcement action by the Commission is therefore warranted.

5.3.3. **Evaluation results**

5.3.3.1. Priorities

Strong and rapid measures to encourage Member States to properly implement and apply the acquis continue to be needed.

5.3.3.2. Planned action

During 2010, the Commission will publish the Renewable Energy Progress report, required under Directives 2003/30/EC and 2001/77/EC, assessing the measures taken by Member States and the progress done in increasing their shares of renewable energy in electricity and transport.

The reporting requirements and implementation of Directive 2009/28/EC will be closely monitored in the course of 2010.

The Commission continues to do its utmost to assist Member States in implementing the Directive. In addition to the national action plan template published in 2009, in 2010 a range of communications, guidance notes and studies will be produced to help ensure Member States implement the Directive fully and appropriately. Steps have also been taken to launch a "Concerted Action" project in the framework of the Intelligent Energy for Europe Programme. It is expected that this project will begin by fall 2010.

Member States' reporting requirements for 2010 include submission of "forecast documents" and national renewable energy action plans. The Commission will thoroughly evaluate all these reports and take action against those Member States that fail to provide credible roadmaps or to take adequate measures for reaching their 2020 targets under the renewable energy acquis.

5.3.4. **Sector summary**

The Commission continues to enforce the existing and the new *acquis* on renewable energy. The Commission's progress reports over the years, the non reporting of several Member States and the complaints received from industry stakeholders all indicate that there continue to be problems hampering the development of renewable energy and failures to take sufficient measures, in accordance with the *acquis*. Removing barriers and encouraging the growth of renewable energy by the Commission will continue to be an important priority of the Commission, as renewable energy development is a crucial and integral element of the Community's whole energy and climate strategy. In 2010 it will continue to monitor and help Member States in implementing the *acquis*, notably the new Directive 2009/28/EC.

5.4. ENERGY - Energy efficiency of products

5.4.1. Current Position

5.4.1.1. General Introduction

The main pieces of legislation in this field are the following: (i) Directive 2009/125/EC of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-using products; (ii) Directive 92/75/EEC of 22 September 1992 on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances, and (iii) Decision 2006/1005 on the coordination of energy-efficiency labelling programmes for office equipment in the EU and USA ("Energy Star").

5.4.1.2. Report of work done in 2009

The work covered four distinct areas:

On eco-design, the recast of framework Directive 2005/32 was adopted as Directive 2009/125122. Furthermore eight detailed measures to implement the Directives were adopted in 2009 as regards:

- simple set-top boxes (Commission Regulation (EC) No 107/2009123).
- non-directional household lamps (Commission Regulation (EC) No 244/2009124); and
- fluorescent lamps without integrated ballast, for high intensity discharge lamps and for ballasts and luminaires able to operate such l amps (Commission Regulation (EC) No 245/2009125);
- efficiency of external power supplies (Commission Regulation (EC) No 278/2009126);
- electric motors (Commission Regulation (EC) No 640/2009127);
- glandless standalone circulators and glandless circulators integrated in products (Commission Regulation (EC) No 641/2009128);
- televisions (Commission Regulation (EC) No 642/2009129); and
- household refrigerating appliances (Commission Regulation (EC) No 643/2009130).

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122 OJ L285 of 21.10.2009, p.10

123 OJ L36 of 5.2.2009, p.8

124 OJ L76 of 24.3.2009, p.3

125 OJ L76 of 24.3.2009, p.17

126 OJ L93 of 7.4.2009, p.3

127 OJ L191 of 23.7.2009, p.26

128 OJ L191 of 23.7.2009, p.35

129 OJ L191 of 23.7.2009, p.42

The energy savings that will accrue from these detailed eight measures, which are directly applicable in Member States, is estimated to be 306 TWh per annum by 2020. In addition to the adoption of legislative requirements there was on-going work such as preparatory studies, impact assessments, stakeholder meetings for the preparation of additional implementing measures for some 20 product groups.

On labelling, the recasting of Framework Directive 92/75 made good progress through the co-decision process. The measure aims at extending the scope to include labelling of commercial and industrial products, as well as simplifying the legislation and ensuring a uniform implementation on the internal market by using (directly applicable) Regulations instead of Directives. It is expected that full agreement of the recast will be reached early in 2010.

On requirements on the labelling of tyres with respect to fuel efficiency and other essential parameters were adopted as Regulation 1222/2009131. This measure will contribute significantly to a market shift towards more energy-efficient tyres.

On 'Energy Star', specifications for the granting of the Energy State qualifications were revised to cover the legislative initiatives taken upgraded for office equipment (Commission Decisions 2009/347/EC132, 2009/489/EC133, and 2009/789/EC134).

5.4.2. **Evaluation of the current position**

The activities carried out in 2009 resulted in the adoption of a significant number of legislative acts together with considerable development of legislative proposals for additional legislative activity in 2010. In addition, when adopted in 2010, a new framework Directive will extend the scope of ecodesign to energy-related products.

5.4.3. **Evaluation results**

5.4.3.1. Priorities

The twin priorities will be to ensure the enforcement of the existing legislation as well as adopting further implementing measures to extend the scope of measures to products not already covered by ecodesign and labelling requirements.

5.4.3.2. Planned action

Work will be concentrated on the development and, where appropriate, adoption of implementing acts or voluntary agreements for air conditioners, personal computers, imaging equipment, complex set-top boxes, fans, pumps, water heaters, boilers, dishwashers, washing machines and commercial refrigerators.

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130 OJ L191 of 23.7.2009, p.53

131 OJ L 342 of 22.12.2009, p.46

132 OJ L106 of 28.4.2009, p.25

133 OJ L161 of 24.6.2006, p.16

134 OJ L282 of 29.10.2009, p.23

5.4.4. **Sector summary**

In the context of the Second Strategic Energy Review adopted in November 2008, the Commission's activities in the field of energy efficiency of products are concentrated in the enforcement of the existing *acquis* and in the imminent adoption of the legislative proposal on energy labelling. It is also anticipated that the Commission will adopt several implementing measures under Directive 2009/125/EC and the new labelling Directive addressing such products as washing machines, dishwashers and air conditioners.

5.5. ENERGY - Energy performance of buildings

5.5.1. **Current position**

5.5.1.1. General introduction

The main piece of the EU *acquis* is Directive 2002/91/EC of the European Parliament and of the Council of 16 December on the energy performance of buildings. A Commission proposal to recast this Directive was adopted in November 2008 (COM (2008) 780 final).

5.5.1.2. Report on the work done in 2009

The main achievement in the field of energy efficiency in the building sector was the reaching of a first reading agreement on the proposal for a recast of the Directive on the energy performance of buildings (hereafter: "EPBD") as a part of the Commission's Second Strategic Energy Review 'Securing our Energy Future' of November 2008. The proposal intended to simplify and strengthen the provisions of the EPBD and thus to increase the energy efficiency of Europe's building stock, to tackle climate change and to contribute to an increased security of energy supply. The first reading agreement was reached on 17 November 2009 in less than one year of negotiation time with the co-legislators. The final adoption of the recast Directive took place on 19 May 2010, after an agreement was found on the changes to be introduced to adjust to the requirements of the Lisbon Treaty.

Implementation efforts regarding the existing Directive continued in 2009 with another meeting of the 'Concerted Action' in Berlin in June 2009, hence continuing the work done in 2007 and 2008. This instrument is intended to promote dialogue and exchange of best practice. Being an active forum of national authorities from 29 countries, it focuses on finding common approaches to the most effective implementation of this piece of EU legislation. In the meantime, Concerted Action is being replicated in other policy areas - such as energy services and renewable energy sources - as it has proven to be a successful instrument.

This effort in dissemination and consultation was continued with the launch of the 'Build up' Platform (www.buildup.eu) as an initiative to increase awareness of all parties in the building chain.

Infringement proceedings continued, with 11 open cases at the end of 2009. Out of these cases, only two concern Member States which have not completed the transposition of the EPBD. The two Member States concerned have been condemned for this by the Court of Justice of the European Union by judgments in January 2008 and October 2009.

The EPBD allowed Member States to delay the transposition of the provisions regarding the energy performance certificates and the inspections of boilers and air-conditioning systems until 4 January 2009 under certain conditions. In 2009 the Commission started the

examination of the notified national measures transposing these provisions. So far, two further non-conformity cases have been initiated.

5.5.2. **Evaluation of the current position**

The Commission's ambitious recast proposal that strengthens the current legislation has been successfully negotiated and concluded very speedily. The text of the recast Directive will ensure consistency as it does not interrupt Member States' efforts in implementing the existing Directive of 2002. The Commission has also made considerable progress in enforcing its existing legislation.

5.5.3. **Evaluation results**

Attention will focus on the enforcement of the existing legislation and the preparation of the subsequent implementation of the new Directive. Moreover, the Commission will in 2010 be developing a methodology framework to assist Member States in setting cost-optimal minimum performance requirements, as well as adopting a voluntary certification scheme for the energy performance of non-residential buildings.

5.6. ENERGY - Energy end-use efficiency and energy services

5.6.1. **Current position**

5.6.1.1. General introduction

The main piece of the EU *acquis* in this field is Directive 2006/32/EC of the European Parliament and the Council of 5 April 2006 on energy end-use efficiency and energy services.

5.6.1.2. Report on the work done in 2009

With regard to energy end-use efficiency and energy services, the efforts on the implementation of the existing legislation were continued. The focus was on the development of a methodology and indicators for energy savings. For that purpose the Commission organised two Energy Demand Management Committee meetings, two expert working groups and a number of bilateral meetings and other exchanges with relevant Member States. The work has led to the development of a set of indicators and formulas for measurement and verification of final energy savings.

The Commission also communicated its detailed assessment of National Energy Efficiency Action Plans (NEEAPs) in a Staff Working Document (SEC(2009)889) indicating good practices, strong points and weaknesses of different NEEAPs, and providing some observations and recommendations on how these NEEAPs should be strengthened in the future. Follow-up on the implementation of NEEAPs is carried out through regular exchanges supported and facilitated by the Commission in the framework of the Concerted Action on Directive 2006/32/EC.

Regarding transposition of the Directive, the Commission started infringement proceedings for non-communication. In early 2009 the Commission sent reasoned opinions to 20 Member States concerning non-communication of full transposition of Directive 2006/32/EC. In order to have a better insight on how the transposition had been made in each case, the Commission sent a questionnaire to all Member States and engaged on regular bilateral discussions with those Member States not having completed the transposition of the Directive.

By the end of 2009, the number of Member States which did not communicate full transposition was reduced to eight.

5.6.2. **Evaluation of the current position**

Despite significant efforts, consensus between the EU Member States on harmonisation of methodologies for measurement and verification of energy savings on the basis of the Annex IV of Directive 2006/32/EC could not be reached. As such, the Commission came to the conclusion that the methodology for the measurement of verification of energy savings should be extended beyond the current scope of Directive 2006/32/EC to all energy savings including measurement of the progress in Member States towards the strategic objective of 20% by 2020.

Concerning the establishment of the Second NEEAPs, the key issue is related to reporting on already achieved energy savings. As indicated in various Communications from the Commission, the NEEAPs should become a central tool for Member States as regards planning and reporting on national measures and achieved energy savings. This has been already confirmed in recent parallel EU legislation: e.g. the recast Energy Performance of Buildings Directive refers to NEEAPs as the main reporting tool. In 2010 the Commission will propose a common template for the second NEEAP, due in 2011, which will extend the scope of reporting beyond the scope of energy savings as currently defined by Directive 2006/32/EC.

In order to speed up and improve the quality of transposition of Directive 2006/32/EC, the Commission will intensify its bilateral communication with the EU Member States, and also to assess the conformity of the notified legislation with the Directive.

5.6.3. **Evaluation results**

5.6.3.1. Priorities

Primary attention will be paid to the enforcement of the existing legislation and the scoping work on how to strengthen the current EU framework legislation on energy savings.

5.6.3.2. Planned Action

Efforts will be concentrated in making sure that Member States are taking appropriate measures to transpose the provisions of the Directive 2006/32/EC into national law and that they are applied and enforced effectively. In parallel to that, the Commission will investigate possible strengthening of this legislation including investigating on the creation of a suitable legal basis for the 20% strategic objective for primary energy savings by 2020.

In relation to the measurement and verification of energy savings, the Commission intends to present a recommendation on a common methodology and related indicators. In order to facilitate the establishment of the second NEEAPs due in 2011, the Commission will develop a common template and provide guidance on the reporting needs.

5.7. ENERGY - Combined heat and power generation (CHP, cogeneration)

5.7.1. Current position

5.7.1.1. General introduction

The main piece of legislation is Directive 2004/8/EC of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market, complemented by two Commission Decisions, one on harmonised efficiency reference values for the separate production of electricity and heat (2007/74/EC) and the other one containing detailed guidelines for the calculation of electricity from cogeneration (2008/952/EC).

5.7.1.2. Report on the work done in 2009

The adoption of the guidelines has allowed the Commission to step up its efforts on enforcing the implementation of the Directive. Member States now dispose of all elements necessary for a complete transposition of EU law. In this context, most of the work done during 2009 with regard to cogeneration was focused on such transposition.

Two committee meetings were held to discuss the current progress on the implementation of the Directive and on the reporting obligations. Discussions have started on how to increase the role of cogeneration in the future European Energy Efficiency Plan. Particular attention was given to the analysis of CHP national potential, and a template has been circulated to facilitate the submission of data and information on the national potential for cogeneration on the basis of Article 6 and Annex IV of the cogeneration Directive 2004/8/EC.

Infringements procedures were opened in 2009 against some Member States for failure to implement the Directive's provisions (non-communication of transposition and no submission of the reports required).

5.7.2. Evaluation of the current position

In general, the situation regarding cogeneration is evolving positively. Many Member States have been completing the transposition of the Directive and are providing the missing information. However, some Member States still encounter difficulties in meeting their obligations.

5.7.3. Evaluation results

5.7.3.1. Priorities

Primary attention will be given to achieving full transposition of the Directive in all Member States. This should allow the removal of existing barriers and the achievement of national potentials, and in general the further development of cogeneration in the EU.

5.7.3.2. Planned action

The Commission will continue its efforts with regard to the follow-up and enforcement of the existing legislation, including an analysis of conformity of the notified legislation.

The Commission will review the reference values for the separate production of electricity and heat.

The Commission will also prepare a report on the implementation of the Directive and present, if appropriate, further proposals to foster cogeneration, in relation to the future Energy Efficiency Action Plan.

5.7.4. Sector summary

Monitoring of the implementation continues. Infringement procedures have been opened to support this objective.

The reference values for the separate production of electricity and heat will be reviewed.

A report on the implementation of the Directive will be prepared and further proposals to foster cogeneration will be indicated if appropriate.

5.8. ENERGY - Nuclear Energy

5.8.1. Current position

5.8.1.1. General introduction

Most of the activities of DG ENER in the nuclear field are based on Chapter 3 (Health and Safety) and Chapter 7 (Safeguards) of the Euratom Treaty and on the acquis derived thereof.

The Lisbon Treaty, which entered into force on 1 December 2009, amends the Euratom Treaty by its Protocol No 2. The Euratom provisions continue to have their full legal effect and Euratom keeps its own legal personality outside the framework of the EU. The amendments are only intended to adapt the Euratom Treaty to the new rules laid down in the Lisbon Treaty, in particular in the institutional and financial fields. According to the Lisbon Treaty, Articles 141 to 143 of the Euratom Treaty shall be replaced by references to Articles 258 to 260 respectively of the TFEU defining the infringement procedures.

5.8.1.2. Report of work done in 2009

Management of the acquis, in particular through committees and expert groups:

The Group of Experts (GoE) provided for in Article 31 met twice in June and November 2009. The main topic was the revision and recast of the Euratom Basic Safety Standards Directive. The Group developed a complete and advanced draft Directive text. The adoption of the Opinion of the Article 31 Group of Experts on this Directive is expected in February 2010. In 2009, the Group adopted an Opinion on a Draft Proposal for a Council Regulation establishing a Community system for Registration of carriers of radioactive material135.

The European High Level Group on nuclear safety and waste management or European Nuclear Safety Regulators Group (HLG or ENSREG)136: met 4 times during 2009. In

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135 The text of the opinion is available at http://ec.europa.eu/energy/nuclear/radiation_protection/doc/art31/2009_11_3_opinion_on_transport_regulation.pdf

136 More information on the ENSREG activity is available on the dedicated website www.ensreg.eu

particular, ENSREG made a valuable contribution to the preparation of the Nuclear Safety Directive. The Group's members provided the Commission with their comments on the draft Directive proposal, a consensus being reached on a number of key aspects raised.

In July 2009, in line with the Group's founding Commission Decision, ENSREG submitted to the Commission its first Activity Report. According to the procedure established in the mentioned Decision, the Commission has transmitted the Report to the European Parliament and to the Council. The Report presents the Group's discussions and recommendations covering nuclear safety, waste management and transparency aspects137.

The European Nuclear Energy Forum (ENEF)138 is conceived as a platform to promote a broad discussion among all relevant stakeholders on the opportunities and risks of nuclear energy.

In 2009, the fourth ENEF plenary meeting held in Prague on 28 and 29 May 2009, gathered more than 250 high-ranking participants from all relevant stakeholders to discuss on risks, opportunities and transparency issues of nuclear energy. At the Prague meeting, the ENEF has been dedicated more particularly to nuclear safety, nuclear waste policies, and possible initiatives on training and education as well as in the area of transparency. ENEF has also completed a paper providing a roadmap towards the successful implementation of geological disposal in the EU.

Chapter 7 (Safeguards) of the Euratom Treaty: The Commission continued to satisfy itself that in the territories of the Member States nuclear materials were not diverted from their intended use as declared by the users and that the international safeguards obligations assumed by Euratom were complied with. In 2009 the efforts made by the IAEA and the Commission following the entry into force of the Additional Protocol in 2004, were crowned by the application of Integrated Safeguards across the EU's non-nuclear weapons states.

In particular is to be mentioned the adoption of the Commission Recommendation 2009/120/Euratom of 11 February 2009 on the implementation of a nuclear material accountancy and control system by operators of nuclear installations139.

During 2009, Bulgaria and the Czech Republic acceded to INFCIRC/193, the trilateral safeguards agreement between the Euratom Community, the IAEA and the EU's non-nuclear weapons states. The only remaining Member State not yet to accede, Romania, modified its domestic legislation to remove the impediment which had prevented its accession, thereby clearing the way for its accession during first half 2010.

Regulation (Euratom) No 302/2005 set a deadline of March 2010 for operators of nuclear facilities to make their regular reports of nuclear material holdings and transactions in a manner which complies fully with the requirements set out therein. The great majority of

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137 The full text of the Report was published under the Europa website and is available at http://ec.europa.eu/energy/nuclear/ensreg/doc/2009_ensreg_report.pdf.

138 Detailed information on the ENEF activity is available at http://ec.europa.eu/energy/nuclear/forum/forum_en.htm

139 OJ L 41, 12.2.2009, p. 17–23

operators, by the end of 2009 had already taken the necessary steps to comply, and DG ENER is closely monitoring the remaining operators.

Management of the acquis (incl. enquiries, problems and complaints)

The submission of draft texts under Article 33 Euratom Treaty allows the Commission to make appropriate recommendations or remarks before the finalisation of the national procedure for the adoption of transposition measures, so that possible instances of non-compliance can be identified even before the texts are adopted. In 2009, we dealt with 12 notifications under Article 33. Most of them concerned still the implementation of Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel. Likewise, other notifications aim at updating Member States' legislation transposing previous Euratom Directives, e.g BSS and HASS Directives.

Under Article 35 of the Euratom Treaty, Commission services conducted 8 verification missions. The purpose was to provide an independent assessment on the adequacy of facilities intended to monitor levels of radioactivity in the environment. All verifications started with a preliminary audit of the monitoring and inspection activities carried out by the relevant national authorities and of the legal framework in force.

Eleven opinions were adopted by the Commission in accordance with Article 37 of the Euratom Treaty, concerning plans for the disposal of radioactive material.

In 2009, the Council adopted Regulation (EC) No 1048/2009 amending Regulation (EC) No 733/2008 on the conditions governing imports of agricultural products originating in third countries as a consequence of the accident at the Chernobyl nuclear power station140. The Community system for checking compliance with the EC maximum permitted levels of radio-caesium in imported agricultural products is now extended for another period of ten years until 31 March 2020.

Articles 41/43 Euratom Treaty notification procedure on nuclear investments: 10 notifications were received in 2009. 8 Viewpoints of the Commission under Article 43 Euratom Treaty have been issued. To be mentioned is in particular its opinion on the project of Slovenské Elektrárne to complete Units 3 and 4 of Mochovce Nuclear Power Plant in the Slovak Republic, which focuses in particular on the safety and security aspects.

Article 103 is part of the Euratom Treaty Chapter on external relations. It establishes a procedure for the preliminary examination of the compatibility with the Euratom Treaty of draft agreements or contracts which are about to be concluded, within the scope of the Euratom Treaty, between a Member State and a third party. In 2009, 16 notifications pursuant to Article 103 Euratom were dealt with.

In February 2009 the Commission has been notified under Article 103 Euratom Treaty of the draft Agreement between the Government of Romania and the Government of the Hashemite Kingdom of Jordan on the development of the peaceful uses of nuclear energy. Article XIII of the notified draft agreement impeded the free movement of nuclear materials and equipment within the Community provided for in Title II, Chapter 9 of the Euratom Treaty. Therefore,

140 OJ L 290, 6.11.2009, p. 4–4

on 25 of March 2009 the Commission adopted a Decision141 in the form of letter addressed to Romanian authorities raising objections to the conclusion of the notified draft agreement. In January 2010, Romania sent the new notification taking fully account of the Commission's objections. Having examined the new draft agreement no element was found to impede the application of the Euratom Treaty in the meaning of its Article 103.

Management of infringements

Concerning the **complaints management**, the new application CHAP was launched on 28 September 2009. There were two new complaints received in 2009 concerning the measures taken by the National Authority of Romania as to the interdiction of the salt imports from the Ukraine.

In 2009, Directorate H opened a large number of infringements cases (21) for non-communication of final transposing measures concerning the implementation of Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel. Letters of formal notice were communicated to 19 Member States. At this moment, most of the concerned Member States have already notified their pieces and their cases have been closed, except two.

Likewise, long-standing cases have been closed in 2009. Thus, for instance, considering the reply from the Portuguese authorities in line with the recommendations issued by the Commission and recognizing the sustainable improvements made in recovering and monitoring the former uranium mines areas in the framework of the ongoing national monitoring programme, the infringement case against Portugal was closed.

Negotiations were satisfactorily concluded with the **Sellafield (UK)** operators in view of rectifying the shortcomings which originated the warning the Commission issued on 15 February 2007 (Decision 2006/626/Euratom), in accordance with Article 83 of the Treaty (failure of the operator of a nuclear installation to satisfactorily fulfil its obligations). On this basis, the 2006 decision was repealed by Commission decision of 3 August 2009. As a consequence the case before the Court of Justice was closed in 2009.

Monitoring of the safeguards situation continued in the case of a Commission Directive based on Article 82 Euratom Treaty, concerning another installation on the Sellafield site. To this end, a detailed work programme to improve the situation was prepared by the United Kingdom, under close scrutiny by the Commission, which is to be adopted in the first half of 2010. If progress continues to be satisfactory, the suspension of the Commision decision to seize the Court of Justice can be upheld.

Petitions

During 2009, Directorate H dealt with 10 petitions in total. For all petitions, an adequate answer was provided; however the European Parliament's Petitions Committee did not analyse all answers yet and could therefore not accept the closure of these cases. Hence, most petitions take several years before being formally closed.

New legislation.

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141 C(2009)2061 final

The *Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations*142 (Nuclear Safety Directive), adopted with the agreement of all the 27 EU Member States following widespread support from the European Parliament, creates a solid and flexible legal framework that defines basic obligations and principles governing nuclear safety throughout the EU. The Directive builds on work that Member States have carried out already and transposes into Community law as a binding legislation the nuclear safety requirements of the Convention on Nuclear Safety and of the Safety Fundamentals established by the International Atomic Energy Agency (IAEA).

The underlying principles on which the Directive is built are: national responsibility for nuclear safety and continuous improvement of nuclear safety. In line with these basic principles, the Directive requires Member States to establish and maintain a national legislative, regulatory and organisational framework governing the safety of nuclear installations. It also aims to reinforce the role and the independence of the competent national regulatory authorities by building on their competencies and acknowledging the fundamental prerequisite that only independent and strong regulators can guarantee the safe operation of nuclear installations in the EU. The prime responsibility of licence holders for nuclear safety is explicitly recognised.

Commission Decision on financing for the decommissioning programmes for Ignalina, Bohunice and Kozloduy (C(2009)7614): The Commission adopted the yearly financial Community contribution to the decommissioning assistance programmes for Bohunice, Ignalina and Kozloduy for 2009. The basis for the Decision is the 2003 Treaty of Accession, in particular Protocol no. 4 “on the Ignalina Nuclear Power Plant in Lithuania” and no. 9 "on unit 1 and unit 2 of the Bohunice V1 nuclear power plant in Slovakia"; as well as the Act of Accession of Bulgaria and Romania, in particular Article 30 of the Protocol thereto. The Protocols foresee additional assistance, following on from previous programmes until 2006, in the period from 2007 till 2013 (2009 for Bulgaria). Council Regulations (EC) 1990/2006 and (Euratom) 549/2007 specify the additional assistance to Lithuania and Slovakia. The Decision covers the 2009 commitment of € 255 million in total for all three funds.

Also it has to be mentioned that Lithuania has closed the Ignalina power plant on 31 December 2009 in accordance with "Protocol No 4 on the Ignalina nuclear power plant in Lithuania" according to the "Act concerning the conditions of accession of … the Republic of Lithuania ….".143 This was the last plant to be closed following the Accession Treaty.

A new proposal for a Council Regulation for the extension of financial EU decommissioning support to Bulgaria (COM(2009)581 final) was elaborated and adopted by the Commission on 27 October 2009. This concerns the decommissioning of units 1 to 4 of the Kozloduy Nuclear Power Plant and for the mitigation of the economical consequences. Financial support for the decommissioning in Bulgaria was limited to December 2009. For Lithuania and Slovakia, being in a comparable situation regarding decommissioning, Ignalina and Bohunice, financial support for decommissioning had already been safeguarded up to the end of 2013. The new Commission proposal covers a sum of € 300 million for the time period 2010 – 2013. The

142 OJ L 172, 2.7.2009, p. 18–22

143 OJ L 236, 25.9.2003, p. 33, 933

adoption of the Council Regulation is foreseen for the first half of 2010 to guarantee the seamless continuation of safe decommissioning.

Co-sponsoring of the IAEA Basic Safety Standards**:** The Commission has taken a very active part in the revision of the international standards.

Negotiating mandate for a revised Euratom–Canada cooperation agreement: The Council adopted on 27 July 2009 a Decision issuing directives to the Commission for the re-negotiation of the Agreement between the European Atomic Energy Agency Community (Euratom) and the Government of Canada for cooperation in the peaceful uses of atomic energy144. The initial Agreement between Euratom and Canada for cooperation in the peaceful uses of atomic energy was signed in 1959 and, due to the continuous development of nuclear trade between the Parties, has been amended five times.

In order to enhance mutual cooperation with the Russian Federation by providing a stable legal framework for political and industrial relations in this field, the Commission adopted in April 2009 a proposal for a revised mandate for negotiations with the Russian Federation, aiming at a broad cooperation agreement in the peaceful uses of nuclear energy, covering not only nuclear trade but also nuclear safety, waste management, safeguards and physical protection, nuclear liability etc, and thus replacing the negotiating directives for a nuclear trade agreement adopted by the Council in 2003. Following discussions, the Council adopted the new mandate on 22 December 2009145.

The Commission adopted in March 2009 a Communication on nuclear non-proliferation (COM 2009) 143 final), detailing how the EU could strengthen its contribution to international efforts to reduce the risk of nuclear proliferation while providing emerging nuclear countries assurances of fuel supplies. The Communication suggests extended cooperation with key nuclear countries and active Commission involvement in the development of an international system to guarantee nuclear fuel for countries willing to develop nuclear energy without having their own nuclear fuel cycle facilities.

Preventive measures being taken in relation to newly adopted new legislation

The most important measures concerning the implementation of Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel were adopted in 2008 (e.g. Decision on the standard document, Recommendation establishing criteria for the export to third countries) before the expiry of the Member States' deadline for implementation.

To complete this legislation and in accordance with the Directive provisions, on 7 July 2009 the Commission established recommendations to the concerned competent authorities of the Member States for a secure and effective system of transmission of documents and information relating to the provisions of such Directive. The Commission Recommendation 2009/527/Euratom was published in the Official Journal146.

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144 The final document is not public.

145 The document is not public.

146 OJ L 177 of 8 July 2009, pp. 5-6.

Implementation of EU energy policy priorities

The priorities in the field of energy were defined as follows: "Actions having a significant impact on the fight against climate change and ensuring secure and competitive energy supplies".

The implementation of the Euratom acquis generally benefits both objectives: It regulates the use of an energy source which has virtually no carbon emissions and which contributes substantially to the security of supply.

The Strategic Energy Technology Plan of the EU is the technology related "implementation tool" to meet the ambitious 3x20 Energy Policy Target. The SET Plan recommends to launch European Industrial Initiatives to develop and bring to the market innovative low carbon energy technologies. The Nuclear Initiative under the SET Plan is fostering the long term sustainable contribution of nuclear energy to the low carbon energy mix, by proposing the building of prototype fast breeder reactors and closed fuel cycle. The first prototypes are foreseen to start operation in 2020. This is directly related to one of the axis of actions of the Sustainable Nuclear Energy Technology Platform, the two other ones being connected with the plant lifetime management and waste management of existing installations, and with the production of nuclear heat via cogeneration and the potential of High Temperature Reactors.

5.8.2. **Evaluation of the current situation**

a) The current situation for the control of the existing acquis is stable. Whereas in 2008 the focus was on resolving existing infringements cases, in 2009 it shifted to the management of the cases resulting from the expiry of the Member States' deadline for implementation of Council Directive 2006/117/Euratom. This priority task looks at the time manageable. At the end of 2009, only two Member States had not fully transposed the Directive.

b) Prioritisation was not fully applied yet, as the cases could all be managed in the normal timeframe and fell roughly under the same level of priority, i.e. normal.

5.8.3. **Evaluation Results**

5.8.3.1. Priorities and Planned Actions

Assisting Member States to comply with their legal obligation for a timely and correct transposition of the Nuclear Safety Directive. Depending on the transposition problematic aspects identified by the Member States, the organisation of a specific workshop could be envisaged during the first half of 2010 to build a common understanding on how to proceed.

5.8.4. **Summary by Sector**

Given the renewed and growing interest in nuclear energy, in the nuclear sector the Commission is called to accompany the expected massive development with an advanced legal framework for nuclear energy based on the Euratom Treaty that maintains and improves the high standard of regulation achieved in the EU Member States. Our priority must be to be up-to-date concerning the legislation for the protection of the health and for nuclear security and to fully use our competences in the field of nuclear safety. As main achievement to be mentioned is the adoption of the Nuclear Safety Directive.

The key action in the near future, for which a lot of work was already achieved during 2009, is therefore the proposal for a Council Directive (Euratom) on safe management of radioactive waste and spent fuel. The Commission proposal is expected to be adopted during 2010. In 2010 it could be adopted by the Council and will then have to be carefully implemented.

On the other hand, the recast of the Basic Safety Standards, for which a Commission proposal is expected during the course of 2010, will consolidate the legislation in the field and set modern, unified standards for the protection of the health of the citizens in the EU.

5.9. MOBILITY and TRANSPORT - Passengers' rights

5.9.1. Current position

5.9.1.1. General introduction

Since the 2001 White Paper, where the Commission announced the establishment of passengers' rights in all modes of transport and its intention to place users at the heart of transport policy, four Regulations entered into force by the end of 2009, in the sectors of aviation and rail transport:

- Regulation (EC) N° 889/2002, Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents
- Regulation (EC) 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;
- Regulation (EC) Nº 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air;
- Regulation (EC) Nº 1370/2007 on public passenger transport services by rail and by road, applicable as from December 2009
- Regulation (EC) Nº 1371/2007 on rail passengers' rights and obligations, applicable as from December 2009.

The overall regulatory background on air passenger rights also includes other legislation, for example: Regulation 1008/2008, on common rules for the operation of air services in the Community; Directive 96/67, which defines the conditions for access to the ground-handling market at European airports, and therefore could be used as leverage to improve the quality of baggage handling in order to prevent baggage damage or mishandling; and Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC.

5.9.1.2. Report on the work done

The Commission continued its efforts to guarantee the correct implementation of the provisions protecting passengers' rights in the following modes of transport:

Rail Transport

Regulation (EC) Nº 1370/2007 on public passenger transport services by rail and by road and Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October

2007 on rail passengers' rights and obligations147 have entered into force on 3 December 2009.

Member States were also due to transpose Directive 2007/58/EC from 4 June 2009 and Directive 2007/59/EC from 4 December 2009.

Maritime and inland waterways Transport

On 4 December 2008, the Commission proposed a Draft Regulation on passenger rights in maritime and inland waterway transport. Negotiations on the proposal in EP (positive first reading in April 2009) and Council (political agreement in October 2009) are ongoing.

On 21 January 2009 the European Commission adopted a Communication and an action plan on the establishment of a European maritime transport space without barriers designed to harmonise and simplify administrative procedures. The action plan contains short and medium term measures as well as recommendations to the Member States.

For the short term, the Commission attached a legislative proposal to streamline reporting formalities for ships arriving at or leaving European ports. It launched a simplification of customs procedures for transporting goods exclusively between European ports and started the drafting of guidelines to simplify the veterinary and phytosanitary controls.

At medium term, the Commission will examine possible means to simplify administrative formalities for intra-EU shipping routes including a stop in a third country, improve electronic data transmission and single windows. It will also assess the possibility to harmonise rules for intermodal transport of dangerous goods containing a maritime leg.

At last, the Commission recommended that Member States co-ordinate the various administrative inspections in ports, facilitate administrative communication by using a shared neighbouring language or English, create a regulatory framework to facilitate "pilot exemption certificates" and if possible dedicate area for intra-EU transport in ports.

Progress has been made for the three short term actions identified in the action plan.

Work on the draft began in April 2009. The Council and the European Parliament reached a first reading agreement on the directive aimed at streamlining the formalities when entering and exiting ports (COM 2009(11) final) on 6 July 2010.

The Commission adopted on 2 March 2010 a Regulation revising the implementing provisions of the Customs Code in order to grant the presumption status to EU vessels operating in the European maritime transport area without barriers.

General guidance procedures for checks on live animals and animal products arriving at EU points of entry which have full veterinary clearance for the EU market were issued on 4 November 2009 as a follow-up of the Commission action plan for the establishment of a European Maritime Transport Space without Barriers.

Coach and Bus Transport

147 OJ L 315, 3.12.2007, p. 14–41.

On 4 December 2008, the Commission proposed a Draft Regulation on passenger rights in bus and coach transport. Negotiations on the proposal in PE (positive first reading in April 2009) and Council (political agreement in December 2009) are ongoing.

Air Transport

- Regarding Passengers with reduced mobility (PRM). Following the stakeholders conference organised in January 2008 to ensure a successful full application of Regulation (EC) Nº 1107/2006 and to make each category of operators aware of the specific needs and constraints of the stakeholders concerned, a meeting with all the National Enforcement Bodies (NEBs) has been organized in Brussels on 23 November 2009 to have a comprehensive exchange of views about the application of the Regulation in Member States.

In 2009, 2 studies on the application of Regulation 1107/2006 were launched in order to prepare the report to the European Parliament and to the Council foreseen in 2010. One of these studies will make a general assessment of the application of the Regulation, the other will focused on the current regime of sanctions and penalties in force in Member States in case of infringements of the Regulation.

- Regarding Passengers rights in case of denied boarding, delays and cancellations, the Commission kept working towards a homogeneous application of Regulation (EC) No 261/2004 in all the Member States; it followed up the use of the standard complaint form and the respect of the common understanding between NEB and between NEB and air companies. The Commission has been constantly in contact with Member States to ensure the good application of all legal developments in the matter, as the recent case law from the European Court of Justice (rulings C-402/07 and C-432/07, Sturgeon and Others and follow up of the case C-549/07, Wallentin-Hermann).
- Regarding issues related to the lost luggage (covered by Regulation (EC) No 889/2002) a report was delivered in July 2009 which has shown that although for the first time in the most recent years a decrease of lost luggage has been detected at international level, the problem still remains extremely serious (the number of lost luggage has declined by 20%, from 42 millions in 2007 to 33 millions in 2008).

5.9.2. **Evaluation of the current position**

The Commission works actively to promote the enforcement of the current regime of protection of passenger rights by monitoring national authorities. Meetings and workshops are organized on a regular basis with stakeholders and complaints received are analysed. In addition, the Commission monitors studies and consultations to have a better view of the opinion of the public on these matters.

However, the outcome of these actions show that full implementation and enforcement of the regulations protecting passenger rights is not yet sufficiently ensured in all situations and Member States and further efforts are requested both by national authorities and by airlines.

5.9.3. **Evaluation results**

5.9.3.1. Air transport

In December 2009, the Commission services launched a Public consultation on the set of regulations covering Air Passenger Rights.

The outcome of this consultation will be used by the Commission in 2010 to assess the implementation of the legislation covering air passengers' rights. The results of the consultation will be presented at a stakeholder conference early in 2010. The Commission will summarise the answers and publish the results and main conclusions of the consultation on its website. A Communication should be adopted in 2010.

5.9.3.2. Rail Transport

The Commission will launch an information campaign (starting in spring 2010) with the aim of informing all EU passengers on the rights that they will enjoy pursuant to the (EC) legislation on passengers' rights. In particular the campaign will highlight the EU rail passenger rights which derive from Regulation 1371/2007 (entry into force as from 3 December 2009). This will be done involving both the industry (in particular, rail operators and their business associations) and consumers' associations.

The Commission will establish close contacts with the NEB ("National Enforcement Bodies") once such Authorities are designated by all the Member States in order to ensure an effective enforcement of rail passengers' rights as established by the Regulation. The first meeting of the Commission with the NEBs from the rail sector took place at the end of January 2010.

5.9.3.3. Maritime and inland waterways Transport

The Council reached a political agreement in view of a Common Position on the Commission proposal on 9 October 2009. Negotiations with the EP in second reading will be held under the Spanish Presidency.

5.9.3.4. Coach and Bus Transport

The Council has intensified the reading of the proposal in the second half of the Swedish Presidency.

One of the Commission's objectives is to maintain a definition of the scope as wide as possible to take into account the needs of the population, in particular disabled persons and persons with reduced mobility. The objective is to at least preserve the application of some basic rights of the Regulation not only to long distance bus and coach service but also to local services and, therefore, to avoid the total exclusion of urban, suburban and regional bus and coach transport services (requested by a number of Member States in the Transport Council held in June 2009).

5.9.4. **Sector summary**

The priority remains guaranteeing the full application of passenger rights.

The Community legislative framework offers a more and more effective regime of protection to passengers within the EU. The main objectives for 2010 are to harmonise and to strengthen the passenger rights for all modes of transport and to define a comprehensive and coherent policy offering all passengers easily comprehensible and enforceable rights.

5.10. MOBILITY and TRANSPORT - Inland Waterway Transport

5.10.1. Current position

5.10.1.1. General introduction.

Inland waterway transport plays an important role for the transport of goods in Europe. More than 37 000 kilometres of waterways connect hundreds of cities and industrial regions. Some 20 out of 27 Member States have inland waterways, 12 of which have an interconnected waterway networks. The potential for increasing the modal share of inland waterway transport is, however, significant. Compared to other modes of transport which are often confronted with congestion and capacity problems, inland waterway transport is characterized by its reliability, its low environmental impact and its major capacity for increased exploitation.

The main pieces of Community acquis in this field are the following:

- Directive 2006/87/EC of the European Parliament and of the Council of 12 December 2006 laying down technical requirements for inland waterway vessels, as amended. It establishes harmonised conditions for issuing technical certificates for inland waterway vessels. It is aimed at increasing the safety of passengers and freight transport by inland waterway in Europe. This Directive repealed and replaced Directive 82/714 as from 30th December 2008;

- Directive 2005/44/EC on harmonised river information services (RIS) on inland waterways in the Community. It established a framework for the deployment and use of RIS in the Community and for the establishment and further development of technical requirements and specifications for harmonised and interoperable RIS. It defines further the minimum requirements to be fulfilled by Member States to enable the setting-up of RIS.

5.10.1.2. Report on the work done in 2009

In 2009, the Community acquis was further developed.

A follow-up of the transposition of Directive 2005/44 was performed and continuous monitoring of the implementation of the Directive was ensured via frequent meetings with Member States' authorities and stakeholders, expert group meetings and conformity checks. A Commission Regulation defining technical specifications was discussed and amendments of existing Commission Regulations defining technical specifications were prepared. The process of ensuring the proper implementation of the Directive in 2010 and beyond will continue along the same line.

The technical Annexes to Directive 2006/87/EC laying down technical requirements for inland waterway vessels continued to be further aligned with legislation agreed in the framework of the Central Commission for Navigation on the Rhine. For this purpose 3 meetings of the Joint meeting of experts from EU MS and the Central Commission for Navigation on the Rhine were held. One amending Directive was adopted (Commission's Directive 2009/46).

For the proper implementation of the Directive, regular communication with Member States is maintained. Workshops have been attended in Member States and a number of questions from citizens and inspection bodies were answered. Good cooperation with the International River Commissions and the UN-ECE on technical requirements for inland waterway vessels was kept.

5.10.2. **Evaluation of the current position**

The situation keeps evolving, and an increased workload is foreseen due to necessary legislative developments. Four infringement procedures were launched (United Kingdom, Poland, Luxembourg and Germany) due to the fact that the transposition deadline for new directives has elapsed.

5.10.3. **Evaluation results**

As in the past, priority will be given to strengthening the competitive position of the inland waterway transport in the transport system and to facilitate its integration into the intermodal logistics chain.

One amending Directive will have to be prepared since agreement has been reached on several subjects in the technical working party and will be launched after a positive advice of the Committee. A Corrigendum for several languages needs to be prepared and launched. The procedure for the recognition of classification societies has to be completed. A study has been launched and a consultant has been selected. The results are expected the first quarter of 2010. The relation with the River Commissions, and especially the shared secretary of the Joint Working Group, should be reflected upon. The description of the role of the classification societies needs reviewing. The role of classification societies in inland shipping is changing and seems not to be adequately covered by descriptions in the Annexes. Therefore, a seminar with all parties involved needs to be organised. Another project will be a seminar on the interpretation of requirements in the annexes of directive 2006/87 EC. This was already the subject of the seminar in 2008 in Budapest to prepare Inspection Bodies from Member States. The Directive is been in force since the end of 2008 and experiences from inspection bodies with difficulties in interpreting the requirements are appearing. This requires again a Joint Seminar of Inspection Bodies from the MS of the Danube Commission, the CCNR and the EU.

The above mentioned activities in the Maritime sector are carried out by an agency that also audits maritime organisations and inspection bodies. These task are more operational and do not fit in adequately in the work of the Commission. This and the relation with River Commissions require attention in the near future.

Infringement procedures have been launched against Member States not having transposed the newest Directives and in particular the Directives 2006/87 and 2008/87. Specific follow up will be needed in particular in connection with national additional requirements and derogations allowed by the Directive.

5.10.4. **Sector summary**

With a view to strengthening the competitive position of the inland waterway transport in the transport system, and to facilitate its integration into the intermodal logistic, the Commission will reinforce its administrative capacity in order to keep developing the harmonisation of additional technical requirements on zone 1 and 2, on the one hand, and to monitor the individual implementation of Directive 2006/87, as amended, on the other hand.

5.11. MOBILITY and TRANSPORT - Logistics and co-modality

5.11.1. Current position

5.11.1.1. General introduction.

The 2006 White paper revision introduced the concept of co-modality. According to this new concept each mode of transport shall be looked individually and in combinations in an integrated logistics chain to achieve a complementary and efficient use of modes in an optimal European transport system. In 2007 the EC Communication "Boosting the efficiency, integration and sustainability of freight transport in Europe" was adopted. The aim of this document was to improve the efficiency and sustainability of freight transport in Europe by promoting and encouraging the performance of multimodal transport as a drive for a competitive and sustainable freight transport system in Europe.

The main pieces of Community acquis in this field are the following:

- Council Directive 96/53 on the maximum authorised weights and dimensions for heavy goods vehicles and buses circulating within the Community. It introduced common standards for the vehicles' weights and dimensions in order to eliminate the differences between standards in force in the Member States which had an adverse effect on the conditions of competition and constituted an obstacle to traffic between Member States.

- Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States. It has established certain rules designed to encourage the development of combined transport as it is contributing towards road traffic safety, reduced congestion, energy savings, and hence a better quality of life.

5.11.1.2. Report on the work done in 2009

Community acquis in the field is generally stable. The two Directives have been completely transposed, and no infringement procedures have been started until now. However, the necessity of some adaptations and improvements was examined. A preliminary analysis of the need for launching an Impact assessment of possible improvements and updates of Directive 92/106 with a view to further facilitate and foster the development of combined transport has thus been carried out.

5.11.2. Evaluation of the current position

Council Directive 96/53 on the maximum authorised weights and dimensions for heavy goods vehicles and buses circulating within the Community has been in place for more than 12 years already. The Directive established common standards for the vehicles weights and dimensions to permit their improved use by creating a balance between their rational and economical use in traffic between MS. Several opportunities for a better performance of road haulage by an increased efficiency of the heavy goods vehicles are studied in line with the co-modality concept for better use of the strengths of each transport mode, and combining them to build seamless, door-to-door transport chains. A study and several workshops have been performed in 2008 to investigate the feasibility for possible amendment of Directive 96/53 in order to increase the efficiency of heavy goods vehicles. A new study has been launched at the beginning of 2010 that will assess the technical effects in terms of road safety and

infrastructure effects, as well as the economic effects of operating the various types of larger and heavier vehicles.

Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States introduced certain provisions fostering the development of combined transport. Many of these provisions are however nowadays partially outdated. Improvements and updates of the Directive in this respect are therefore considered in order to better achieve the desired competitiveness and market share of combined transport. An Impact assessment for possible updates of Directive 92/106/EEC is envisaged.

5.11.3. **Evaluation results**

Community acquis is generally stable although some adaptations and improvements are examined. A new study will continue to investigate the feasibility for possible amendment of Directive 96/53 and an Impact assessment will evaluate the effect of possible adaptations to Directive 92/106 in order to better achieve the objectives of these legislative acts.

5.11.4. **Sector summary**

The Commission will continue to study the necessities and possibilities of further development of the existing legislation, in order to facilitate and promote the use of multimodal transport as a drive for a competitive and sustainable freight transport system in Europe.

5.12. MOBILITY and TRANSPORT - Inland Transport

5.12.1. **Current position**

Road Transport

In road transport the control of the application of Community law centred on the correct implementation by member States of the social rules, including working time (Directive

2006/22/EC148 and Directive 2002/15/EC149) as well as of the EU road charging legislation (Directive 1999/62/EC as amended by Directive 2006/38/EC150).

As regards the transposition of Directive 2006/22/EC the Commission pursued infringement proceedings against two Member States whose failure to implement the Directive had been declared by the Court in 2008. The Member States in question at last communicated their transposition in the course of the year and the cases could be closed. However, new cases were opened against seven Member States whose transposition was found to raise questions in relation to conformity with the provisions of the Directive.

As regards working time in road transport, the Commission continued the control of implementation concerning Directive 2002/15151. In the case of six Member States the transposition measures had to be considered not to be in conformity leading to infringement proceedings. All but two cases have been assessed in-depth and could be closed. One of the still pending cases is awaiting the entry into force of the amending legislation rectifying the transposition error.

Directive 2002/15 provides for a biannual report on the implementation of the Directive in the Member States which is to be submitted to the Commission. Against eight Member States failing to do so the Commission had initiated infringement proceedings the previous year and all cases could be closed in 2009.

In 2008 the Commission had adopted a proposal to modify Directive 2002/15/EC. The aim of this proposal was four-fold: to clearly put false self-employed drivers in the category of mobile workers, to exclude genuine self-employed drivers from the directive, to make the enforcement more harmonised and to clarify the night time provisions. Discussion of the proposal continued in the EU institutions in 2009.

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148 Directive 2006/22/EC of 15 March 2006 determines the minimum level of enforcement required to ensure compliance with the rules set out in Regulation (EC) nº 561/2006 (driving times and rest periods) and Regulation (EEC) 3821/85 (tachograph)

149 Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 080 , 23.3.2002, p. 35)

150 Directive 2006/38/EC of the European Parliament and of the Council of 17 May 2006 amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures (OJ L 157, 9.6.2006, p.8)

151 Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 080 , 23.3.2002, p. 35)

In 2009 the Commission closed another two infringement proceedings concerning the non-conformity of national measures with Directive 1999/62/EC on road infrastructure charging thus having successfully ended its transposition check of Directive 2006/38/EC amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures. The Commission continued its case against one Member State whose road charging system for passenger cars the Commission was assessed to be incompatible with Article 12 TEC. The Member Sate took rectification measures to better comply with its Treaty obligations.

As regards Directive 96/26/EC152 on the admission to the occupation the Commission pursued further infringement cases against two Member States for incorrect application of the Directive's provision. Both cases could be successfully brought to an end.

In the case of two Member States the rules on penalties to be imposed for infringements pursuant to Regulation 561/2006 gave rise to infringement proceedings. These Member States had failed to implement a penalty system corresponding to the provision of the Regulation. Both Member States complied once the Commission had initiated the proceedings and the cases were closed.

The incorrect application of the rules on market access for international road haulage as laid down in Regulation (EC) No 881/92 was subject of two cases against one Member State. After the authorities had rectified their administrative practice the cases could be closed.

Rail Transport

In the rail sector, Member States had to transpose the Directives of the first railway package (91/440/EEC as amended, 95/18/EC as amended and 2001/14/EC) by 15 March 2003 or upon accession in the case of the new Member States. The first railway package defines basic requirements such as the independence of the essential functions of an infrastructure manager from rail operators, the charging scheme for infrastructure charges, the setting up of rail regulatory bodies. On this basis, it provides for the opening of the rail freight market to all EU-licensed operators, from 2003 on the Trans European Rail Freight Network, from 1 January 2006 for all international rail freight transport and from 1 January 2007 for all rail freight transport.

The Commission adopted on 3 May 2006 a report on the implementation of the 1st railway package (COM(2006) 189 final) which contained important findings on the state of implementation in the Member States and announced the criteria that the Commission would apply for controlling implementation in each individual member state, in particular on the issue of independence of essential functions.

In order to complement the general findings of the report with concrete data from Member States, and to evaluate whether these Directives had been correctly and completely transposed into Member States' law and regulations, DG TREN sent out questionnaires to Member States

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152 Council Directive 96/26/EC of 29 April 1996 on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations (OJ L 124, 23.5.1996, p. 1–10)

in June and November 2007. After analysing the replies to these questionnaires, the Commission sent letters of formal notice to 24 Member States on 27 June 2008.

After sending these letters, the Commission services met with representatives from all 24 Member States to discuss possibilities to remedy the shortcomings identified in these letters. On the basis of these meetings, the replies of Member States to the letters and formal notice, and after changes have been made in some Member States, the Commission sent reasoned opinions to 21 Member States on 6 October 2009. These reasoned opinions contained in many cases a reduced number of infringements in relation to the letters of formal notice.

Directive 2004/49/EC on safety on the Community's railways requires the safety authority and the investigating body to be independent from railway undertakings. In Belgium, the Board of directors and the members of the national safety authority may work at the traditional railway undertaking. The same applies to the person responsible for the investigating body. Naturally, this violates the obligation of independence set out in the Directive. The Commission has therefore addressed a supplementary letter of formal notice to Belgium.

Directive 2001/16/EC on the interoperability of the trans-European conventional rail system provides that Member States may not hinder the use of rolling stock certified in other Member States, in accordance with the rules on mutual recognition. Poland requires the presence of two people on board a type of locomotive exploited by a new operator, in spite of the fact that the same type of locomotive is already certified in other Member States as requiring only one driver. Moreover, only one driver is required for all other locomotives operating in the Polish railway network. The Commission has thus sent a letter of formal notice to Poland for violation of the provisions on mutual recognition of rolling stock set out in Directive 2001/16/EC and for violation of the safety rules of Directive 2004/49/CE.

Road Safety

The legislation on road safety covers the driving licence, the initial qualification and periodic training of professional drivers, roadworthiness testing, the compulsory use of safety belts, the registration of vehicle documents and the safety of tunnels and the safety of road infrastructure.

In the road safety sector, most past infringement proceedings, which were open for non communication of the transposition of Directives, have been closed in 2009. Two proceedings are currently open but are expected to be closed in the next weeks. One relates to the non-communication of the transposition of an amendment to Directive 91/439/EEC153 on driving licences introduced by Directive 2008/65/EC154, which needed to be transposed by 30

153 Council Directive 91/439/EEC of 29 July 1991 on driving licences, OJ L 237, 24.8.1991, p. 1–24

154 Commission Directive 2008/65/EC of 27 June 2008 amending Directive 91/439/EEC on driving licences, OJ L 168, 28.6.2008, p. 36–37

September 2008. The remaining one concerns the application of Directive 2000/30/EC of 6 June 2000 on the technical roadside inspection.155

Transport of dangerous goods

The transport of dangerous goods is regulated by Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods. This Directive brings into force three international agreements156 on the land transport of dangerous goods and extends the application of those rules to national transport. These rules are updated every two years; the next update will be in 2011. There are limited possibilities for Member States to apply derogations from the dangerous goods rules for local transport or small quantities. These derogations are checked and updated regularly157.

The application of the dangerous goods rules is checked through the uniform procedures for checks directive which requires Member States to perform ad-hoc checks on dangerous goods road vehicles158 and report on their findings annually. The dangerous goods legislation also regulates the placing on the market and safe use of transportable pressure equipment through the Transportable Pressure Equipment Directive (TPED)159 . The technical provisions of this TPED Directive have become somewhat outdated and the Directive is currently being revised

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155 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, L203, 10.8.2000, p.1-8

156 European Agreement concerning the International Carriage of Dangerous Goods by Road, concluded at Geneva on 30 September 1957 (ADR), Regulations concerning the International Carriage of Dangerous Goods by Rail, appearing as Appendix C to the Convention concerning International Carriage by Rail (COTIF)

concluded at Vilnius on 3 June 1999 (RID) and the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways, concluded at Geneva on 26 May 2000 (ADN).

157 Commission decision was adopted to update the list of national derogations included in the annexes to Directive 2008/68/EC (*OJ L 71, 17.3.2009, p. 23–58).*

158 Council Directive 95/50/EC of 6 October 1995 on uniform procedures for checks on the transport of dangerous goods by road (OJ L *249, 17.10.1995, p. 35–40*)

159 Council Directive 1999/36/EC of 29 April 1999 on transportable pressure equipment (OJ L 138, 1.6.1999, p.20.)

both to update the technical requirements and to strengthen the market surveillance measures160.

The Commission is assisted in the maintenance of the dangerous goods legislation by its regulatory committee which meets every 6 months.

5.12.2. **Evaluation**

Road Transport

The reported year marked the successful completion of the revision of the Community's road transport legislation with the adoption of three new regulations consolidating and amending the legislation currently in force. Regulation (EC) No 1071/2009161 establishes common rules that road transport operators have to fulfil in order to be allowed to engage in the profession. Regulation (EC) No 1072/2009162 governs the rules for the access to the international road haulage market and in particular also the rules on cabotage. Finally, Regulation (EC) No 1073/2009163 lays down the rules for carrying out international passenger transport services by road. The new rules will apply as from December 2011 with the exception of the cabotage rules which become applicable in May 2010.

As far as the enforcement of social rules and working time in road transport are concerned, the Commission assessed in detail the application of the working time rules in the Member States, in particular as regards the possible inclusion of self-employed in the scope of Directive 2002/15/EC. The assessment showed that the grounds for the inclusion of genuine self-employed drivers in the working time were not sufficient as the policy objectives (including road safety) pursued by the legislation in respect of this category of drivers were already sufficiently ensured by other applicable rules, namely Regulation (EC) 561/2006 on driving time and rest periods and Regulation (EEC) 3821/85 on the recording equipment (tachograph). In addition, any enforcement of working time rules concerning genuine self-employed drivers appeared to be ineffective, and out of proportion with the high cost related to it. Therefore, the Commission proposed that this specific category of drivers should remain excluded from the scope of the Directive. Discussion of the proposal continued in the EU institutions in 2009.

Rail Transport

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160 Proposal for a Directive of the European Parliament and of the Council on transportable pressure equipment (COM(2009) 482) of 18 September 2009

161 Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p.51)

162 Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p.72)

163 Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 (OJ L 300, 14.11.2009, p.88)

In the railway sector the reasoned opinions sent to 24 Member States for incorrect transposition of the first railway package targeted three main shortcomings: 1) the lack of independence of the infrastructure manager in relation to railway operators, 2) insufficient implementation of the rules of the Directive on track access charging, such as the absence of a performance regime to improve the performance of the railway network and the lack of incentives of the infrastructure manager to reduce costs and charges and 3) the failure to set up an independent regulatory body with strong powers to monitor competition in the railway sector and rule on complaints.

Road Safety

As far as the road safety sector is concerned, the main problem remains the late notification of the transposition of Directives. This is why efforts will continue to be undertaken, in bilateral and multilateral meetings, to remind the Member States at an early stage of their transposition obligations within the agreed deadlines. This will concern the Directives, which still need to be transposed, namely Directive 2008/96/EC on road infrastructure safety management and Directive 2006/126/EC on driving licences (the so-called third driving licence Directive).

Apart from the infringement procedures, the Commission is requested to take position on the very numerous petitions on road safety addressed by citizens to the European Parliament. These petitions mainly concern the non recognition of driving licences and road traffic laws of the Member States.

Transport of dangerous goods

The main priority of publishing a proposal for a revised TPED Directive in 2009 was achieved.

The transposition of Directive 2008/68/EC was not fully completed by the deadline of 1 July 2009. It is likely that between 5 and 10 infringement cases will have to be opened during the course of 2010.

5.12.3. **Evaluation results**

Road Transport

For the road transport sector, following the adoption of the road package, in May 2010 new amended rules will become applicable in two areas: road cabotage and driving times and rest periods for passenger transport. In both areas the Commission will closely monitor the application of the new rules by Member States and assist Member States' authorities as well as operators in correctly applying these new regimes.

In addition, as regards the road transport Directives special attention will be given in these three areas:

- Directive 2002/15, on the organisation of working time of persons performing mobile road transport activities, as a consequence of the proposed modification of the night time provisions;

- Directive 2006/22, determining the minimum level of enforcement for the European provisions on driving times and rest periods, and on the use of the tachograph. After all Member States having notified their implementation measures work will concentrate on

checking the conformity of Member States' transposition; in addition transposition of Commission Directives 2009/4/EC and 2009/5/EC amending Directive 2006/22 will commence;

- Directive 2006/38 amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures. The control of the correct application of the new rules which had to be transposed by June 2008 will continue.

Rail Transport

In the rail sector and on the basis of the replies by Member States to the reasoned opinions the Commission will consider how to move forward in 2010.

On the basis of the replies to the letters of formal notice notified to Belgium and Poland, the Commission will consider whether a reasoned opinion should be sent to these Member States.

Transport of Dangerous Goods

The main activity for 2010 is to build on the progress made in 2009 and work towards the adoption by the European Parliament and the Council of the new TPED directive. A second priority is to ensure the correct transposition of Directive 2008/68/EC by opening infringement cases where necessary.

5.12.4. **Summary by sector**

Road Transport

The revision of the market access rules for the transport of goods and passengers by road has been finished in 2009. The majority of the new rules will become applicable in 2011. By then the regulatory framework of the road transport sector will be modernised and streamlined. The Commission will continue to control the implementation and application of the social rules, in close cooperation with the Member States. In the area of road charging the Commission has proposed an amendment to the "Eurovignette" Directive currently in force allowing for the inclusion of external costs in infrastructure charging. In parallel, the control of the implementation of the rules presently in force will continue.

Rail Transport

In the rail sector and on the basis of the replies of Member States to the reasoned opinions (1st railway package), and information on legislative changes or commitments, the Commission will consider how to move forward in 2010 in order to bring about compliance with the EU directives.

Transport of Dangerous Goods Sector

The main priority for 2010 is the adoption of the new directive on transportable pressure equipment. This is expected in summer 2010 for full implementation by 1 July 2011. The Commission will continue its participation in international meetings (UNECE – OTIF) to ensure EU coordination on the rules regarding the safe transport of dangerous goods.

5.13. MOBILITY and TRANSPORT - Air Transport

5.13.1. Current position

5.13.1.1. General introduction

Internal market and air transport agreements

Two main lines of actions can be highlighted: one focusing on the EU internal market, the second on the external relations in aviation. The sector is essentially ruled by Treaty, Court judgements, regulations, international agreements and acts adopted through comitology.

The first one related to the correct application of Regulation 1008/2008 on Air Services, and more specifically on the careful monitoring of provisions related to public services, licences, ownership and control and price transparency.

The sector covers areas such as the implementation measures necessary following the so-called 'Open skies' judgements of 5 November 2002 where the Court identified a number of breaches of Community law in existing bilateral agreements between certain Member States and the United States of America. Existing bilateral agreements are being corrected either at individual Member State level in the context of Regulation 847/2004 on the negotiation and implementation of air services agreement between Member States and third countries, or at Community level through the so-called 'horizontal agreements' negotiated by the European Commission. A horizontal agreement with a third country amends, through a single tool, all existing bilateral agreements of EU member States with that third country.

Single Sky and modernisation of air traffic control

The sector is mainly dealing with the implementation of the following legal instruments: the framework Regulation (EC) N° 549/2004, the service provision Regulation (EC) N° 550/2004, the airspace Regulation (EC) N° 551/2004, the interoperability Regulation (EC) N° 552/2004, as amended by Regulation (EC) No 1070/2009 of 21.10.2009, referred to as the "second Single European Sky package", which constituted a major achievement of the air transport policy in 2009.

In order to implement the basic regulations, a number of implementing rules, mainly Commission regulations (15) have been adopted. Only one Directive, Directive 2006/23/EC on air traffic controllers licence is part of the legislative package.

Infrastructures and airports

This sector first implements, or supervises the implementation of the "action plan for airport capacity, efficiency and safety" that the Commission adopted in 2007 to increase the output of the existing infrastructures and to optimize the planning of new infrastructures, whilst raising safety standards at highest levels and enhancing the environmental compatibility of airports. Within this context, the sector notably set up and supervises the Community Observatory on airport capacity.

The sector also involves the implementation of the following legal regulatory instruments:

- Council Regulation (EEC) N° 95/93 of 18 January 1993 on common rules for the allocation of slot at Community airports;

- Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports;

- Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges;

- Some of the requirements of Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (now recast in Regulation (EC) No 1008/2008).

Aviation security

Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishes common rules in the field of civil aviation security. This Regulation is complemented by detailed implementing rules taking the form of several Commission Regulations and a Commission Decision. A list of applicable legislation is contained in the Annex. In particular, the rules require Member States to establish and implement a national civil aviation security programme complemented by a quality control programme in order to ensure the application of the common standards. Member States also have to designate a single appropriate authority responsible for the coordination and the monitoring of the implementation of its national civil aviation security programme and ensure the availability of sufficient resources to monitor compliance. Regulation (EC) No 2320/2002 also requires from the Commission to carry out inspections of national administrations and a suitable sample of airports in all Member States.

5.13.1.2. Report on the work done in 2009

Internal market and air services agreements

Regulation 1008/2008 of 24 September 2008 on common rules for the operation of air services in the Community (recast) entered into force on 1st November 2008. According to the Regulation, Member States must respect several obligations and the Commission has the power to carry on investigations in case if unjustified access restriction.

The Commission produced guidelines to improve the implementation of the Regulation and organised partnership with Member States in order to avoid infringement cases in this area. In order to harmonise the different practices of the Member States, a meeting of the national authorities was organised in June 2009. In addition, databases have been updated. For example, for public services obligations, a functional mailbox has been created for the transmission of Member States requests and the European Commission checked their conformity before publication. A complete inventory of public service obligations in force was set up, published on Europa and updated regularly. There were 257 public services routes at the end of 2009. For licences, a new database of all existing operating licences in the EU was set up and accessible by all EU Member States.

With respect to international agreements, the Committee established by Regulation 847/2004 met once in 2009. This committee is assessing the acceptance by third countries of Community clauses on a number of Community law matters (designation, environment, etc.). In 2009, the cooperation between the Commission and the Member States was reflected in the fact that Member States brought 22 bilateral agreements into conformity with Community law, notably with key partners such as Japan.

Air safety

The European Commission completed in 2009 the impact assessment related to amendment of Directive 94/56/EC on accident investigation, which resulted in the adoption, on 29 October, of a Commission proposal of amendment to Directive 94/56/EC. Following analysis of a number of policy options ("Do Nothing", "Voluntary Cooperation", "European Accident Investigation Agency") the Commission proposes a new Regulation which should replace the current and old Directive 94/56/EC. The main objectives of the new Regulation are to: enhance the investigating capacity of the EU and independence of accident investigation; clarify the role of EASA in accident investigation; strengthen implementation of safety recommendations; alleviating potential tensions between accident investigation and judicial proceedings, while maintaining separation and independence of investigation.

A public consultation on the imposition by the Commission of fines and periodic penalty payments in case of non-compliance with aviation safety rules by entities certified by EASA was launched on 7 December 2009. The aim is to gather suggestions for the preparation of a Commission Regulation on this topic, as mandated by Article 25 of Regulation (EC) No 216/2008. The objective of this legal text is to improve the Community enforcement powers as regards entities which are not acting under the direct oversight of the Member States and to give a more flexible answer to a breach of the rules, compared to the withdrawal of a certificate.

In September 2009, EASA and the European Commission presented to the Agency's Management Board a common position setting out priorities in the areas of rulemaking for the extension of the Agency's responsibilities in the areas of Flight Crew Licensing, Air Operations and Third Country Operators ("first extension") as well as in the field of Air Traffic Management/Navigation Services and Aerodromes ("second extension"). The principles guiding the common position are prioritization, simplification and that safety considerations should form the primary basis for any changes to existing rules.

In the field of continuing airworthiness, the European Commission prepared and finalised with the competent committee a draft Commission Regulation amending Regulation (EC) No 2042/2003 on continuing airworthiness of aircraft. This draft regulation is based on 6 technical opinions issued by the European Aviation Safety Agency in 2005, 2006, 2007 and 2008 and its final adoption was done at the beginning of 2010.

The transposition of Directive 2008/49/EC regarding the conduct of ramp inspections on aircraft using Community airports was followed in 2009 as regards 16 Member States but at the end of 2009 only 3 infringement procedures remained open due to the efforts of the Commission services.

The implementation of Directive 2004/36/EC (SAFA) by Member States is satisfactory and in constant improvement, mainly due to a number of supporting activities carried out by the Commission and EASA: in 2009 the SAFA steering committee met three times, it was the first full year of implementation of Regulation (EC) No 351/2008 on targeting (with the issuance by EASA of 6 lists for prioritized inspections), EASA adopted and published detailed guidance material on SAFA procedures, as mandated under Directive 2008/48/EC, and initiated standardisation audits to competent authorities (4 Member States were visited).

The Commission has worked together with the European Aviation Safety Agency to ensure a correct and harmonised implementation of the *acquis* under the scope of the Agency with

special attention to those safety areas which revealed problematic. As explained above, the Agency carried out in 2009 a record number of inspection visits – 100 –, which allowed the Commission to identify a number of significant non-compliances to the safety rules and to request urgent action from the Member States concerned.

On 11 January 2010, the Commission presented a report on the application of Regulation (EC) No 2111/2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community over the past three years. The application of the EC list has demonstrated that it is a successful tool to contribute to ensuring a high level of safety in the Community. Furthermore, the report recommends to promote the exchange of verifiable and reliable information at the international level with a view to reaching common decisions on the safety of air carriers at international level and closer cooperation with ICAO with a view to better coordinating efforts to grant technical assistance to those States where it is mostly needed.

The Commission has treated in 2009 an important number of derogations and exemptions from the provisions of Regulations (EEC) No 3922/91 (22 cases notified, grouped and conducting to 10 draft decisions - 4 adopted) and (EC) No 216/2008 (around 50 cases notified and assessed) notified by Member States. This has been possible partially due to the grouping of some cases as well as to the support provided by the European Aviation Safety Agency. The control of such cases is essential for the harmonised implementation of the common rules.

The measures to prohibit or to restrict the operation of an unsafe airline in Europe have continued to be applied. Three updates (Regulations (EC) No 298/2009, 619/2009 and 1144/2009) of the list of air carriers subject to an operating ban in the EU have been conducted with the assistance of EASA and of the competent committee. In total, during 2009, more than 450 air carriers were examined, including a number of EU ones; concerning the latter, the competent national authorities took the necessary actions required by the Commission.

The Air Safety Committee on Regulation (EC) No 216/2008 met 3 times in 2009 with the following objectives: analysing and adopting amendments to current legislation in the fields of airworthiness (leading to the adoption of two Regulations amending Regulations (EC) No 216/2008 and 1702/2003); discussing on interpretation issues related to current legislation; discussing on the strategy for rulemaking activities conducted by EASA.

No formal complaints were registered in 2009 by the European Commission but a number of queries related to the implementation of the *acquis* in the fields of air safety (mainly related to Flight Time limitations, to harmonisation in the field of pilot licences and to transboundary private flights) and environmental (especially concerning noise around airports) requirements were treated.

19 infringement cases were dealt with during 2009 by the European Commission, out of which 14 where closed successfully. Most of them related to the delay in transposing Directive 2008/49/EC regarding the conduct of ramp inspections on aircraft using Community airports.

One letter of formal notice was sent regarding implementation of the Directive on accident investigation linked to the need to ensure appropriate access of technical investigating bodies to the evidences of an accident.

One case related to mutual recognition of environmental certificates issued by the Agency was successfully closed after acceptance by the Member State concerned to comply with the mandate enshrined in Regulation (EC) No 216/2008.

The Commission dealt with one petition in relation to the establishment of minimum space for seating in commercial aircraft and contributed to a petition concerning the impact of noise and atmospheric pollution on the health of residents in the vicinity of one airport. These are recurrent topics coming from the Parliament

Single Sky and modernisation of air traffic control

The Single Sky Committee (Article 5 of 549/2004) and the Industry Consultation Body (Article 6 of 549/2004) met five times each in 2009 to assist the Commission in developing the implementing rules and in following-up the practical implementation of existing legislation by Member States and relevant stakeholders.

This work led in 2009 to the adoption of:

- 2 Regulations of the Parliament and the Council, No 1070/2009 amending the four basic regulations and No 1108/2009 amending the EASA Regulation;

- 4 Commission Regulations (on data link, automatic systems for exchange of flight data, Mode S, and quality of aeronautical data),

- 2 Commission Communications on the implementation of article 4 of Reg. (EC) No 552/2004.

The legal instruments are completed by support from the European Aviation Safety Agency, the SESAR Joint Undertaking, and the Eurocontrol organisation. On the basis of a framework contract concluded end of 2009, the Eurocontrol CRCO (Central Route Charges Office) is for instance used for the reporting obligations under the charging Regulation (EC) N° 1794/2006; the ESSIP (European Single Sly Implementation Plan) is used for the reporting obligations under Article 12 of the framework Regulation (EC) N° 549/2004 and under Article 8 of Regulation 2150/2005 on the flexible use of airspace.

Annual reports on the SES implementation in 2008

In application of Article 12 of Regulation (EC) No 549/2004 and Article 7 of Commission Regulation (EC) No 2150/2005, Member States have the obligation to submit to the Commission annual reports on the implementation of the actions taken pursuant to these regulations.

The first reporting exercise covered an 18 month period (1 July 2007 - 31 December 2008) in order to allow the SES reporting cycle to follow a calendar year from 2009 onwards. The 27 Member States as well as Norway and Switzerland were invited by a Commission letter of 5 November 2008 to provide their reports on the basis of a template. The reports were consolidated and analysed in a general Report on the SES Legislation Implementation prepared by Eurocontrol.

After having assessed the individual reports, the Commission addressed a letter to each Member State in December 2009 highlighting progresses and shortcomings. All the Member States were asked to provide clarification as regards remaining concerns.

Overall this exercise has been deemed very useful to assess the exact stage of implementation of the SES legislation at national level as well as to raise awareness of the Member States on the importance given to this matter by the Commission.

Infringement procedures

Commission has pursued five infringement procedures against four member States.

One case is a "non-conformity" infringement procedure against Greece (referral to the Court) for non-compliance with basic Single Sky legislation, in particular for the absence of establishment of an effective and independent national supervisory authority.

The four other cases are "non-communication" infringement procedures against Greece, Luxembourg, Finland and the Czech Republic for the absence of communication of the national measures transposing Directive 2006/23 on a Community air traffic controller licence (reasoned opinion).

Three cases (two "non-communication" cases against Spain and United Kingdom and one complaint from a citizen against Spain) have been closed following the notification of the national measures transposing Directive 2006/23.

Infrastructures and airports

As regards the Action Plan for airport capacity, efficiency and safety:

The Community Observatory on airport capacity inaugurated on 4 November 2008 has produced its first results in 2009 (works on the slot allocation process, on airport capacity assessment methodologies, on the development of intermodality at airports; launch of the inventory of European airport infrastructures). This work will be used to advise the Commission on the implementation of the action plan.

Measures aiming at enhancing the consistency between airport slots and flight plans have been enshrined in the draft Air Traffic Flow Management Regulation, which has been approved by the "Single Sky Committee" in December and will be adopted by the Commission early 2010. In parallel, preliminary work started on the cartography of the European airport network and on the integrated air/rail ticketing.

As regards the implementation of Community law:

Efforts to ensure the proper implementation of Directive 96/67/EC were continued, and the situation at several airports was assessed in depth. As a result, 2 reasoned opinion and 5 letters of formal notice were prepared. At the same time, a study on the implementation of the Directive was completed. It focuses notably on the situation in the Newest Member States. In spite of these efforts, new complaints were made to the Commission. An impact assessment for a possible revision of the Directive was launched to identify if there is a need to revise the directive and if so, how.

Concerning the Regulation on airport slots, the Commission responded to the unprecedented scope of the economic crisis by a proposal aiming at a temporary suspension of the "use it or lose it" rule. This short-time measure enabled air carriers to keep same slots for the summer season 2010 as attributed to them for the summer season 2009 and hence allowed for an

immediate relief for the aviation industry. As for the complaints management, 3 cases were closed.

As regards the enhancement of economic regulation:

Where they are applied in a discriminatory or un-transparent manner, airport charges can add to inefficiencies and distortions in the European Union's aviation market. With this in mind, a Directive on airport charges was adopted by the Council and European Parliament on 11 March 2009. The Directive lays down minimum requirements in the calculation and levying of airport charges at all airports with more than 5 million passenger movements per year, in addition to the largest airport in each Member State.

Concerning conformity of passenger departure taxes with European law, the unit dealt with one case in the Member States during the year. This complaint is ongoing.

Concerning conformity of airport charges with European law, the unit dealt with one complaint during the year. This complaint is ongoing.

Aviation security

During the year 2009, the Commission continued to fulfil its monitoring obligations and conducted inspections (including follow-up inspections) of 9 national administrations and 23 airports.

Three letters of formal notice were sent following inspections of national administrations. Most cases relate to an insufficient frequency and scope of national quality control activities resulting from a lack of resources to monitor compliance nationally. Two infringement cases were closed following rectification of the identified shortcomings. Four infringement cases are currently still open and being closely followed. In two cases, several informal contacts with the Member States have already taken place in order to assist them in a swift rectification of deficiencies and good progress has been observed.

In order to encourage a reduction in the number and severity of deficiencies identified during Commission inspections the following measures have been taken in 2009:

- Continued implementation of a peer-review system with an increased active participation of national auditors from all Member States in Commission inspections.
- The Commission regularly informed the Member States of non-compliances found during inspections in the Regulatory Committee on aviation security, which met 6 times during 2009. These updates on non-compliances identified during inspections help Member States to identify critical areas where deficiencies occur repeatedly.
- Detailed implementing rules complementing Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 were developed in close cooperation with all stakeholders. These new implementing rules will enter into force together with Regulation (EC) No 300/2008 in April 2010 thus replacing Regulation (EC) 2320/2002 and all current implementing rules. This major revision will improve clarity and consistency, thus paving the way for an even higher compliance level.

5.13.2. **Evaluation of the current situation**

Internal market and air services agreements

The situation in this field is acceptable ad evolving according to the priorities.

The rules governing the EU internal market have been updated in 2008 with Regulation 1008/2008. A lot of work has been carried out to ensure the proper application of Community law on key subjects such as public services, licences, ownership and control and price transparency, but more needs to be carried out on price transparency.

Much has been achieved in external relations since the Open skies judgement. Thus far, 841 bilateral agreements with 103 countries have been corrected either though Member States efforts under Regulation 847/2004 or through the horizontal agreements negotiated by the European Commission (42 horizontal agreements).

In December 2009, a comprehensive agreement was signed with Canada: It represents a milestone in terms of international aviation both on the market access and regulatory convergence angles. Progress was achieved towards the EU-US 2nd stage with three rounds of negotiations in 2009. In terms of neighbourhood policy, global negotiations with Ukraine made significant progress in 2009 and negotiations started with Georgia and continued with Israel, Lebanon and Jordan.

Air safety

Overall, transposition of the *acquis* in the fields of air safety and environmental requirements is good at present, especially since the completion of the adoption process for the remaining three Member States is imminent and does not prevent the actual implementation of the relevant rules.

Concerning the day to day implementation of the legislation, the situation could be considered preoccupying in a limited number of Member States concerning mainly the requirements related to air operations and continuing airworthiness. This has been identified and corrective actions have been requested.

Some potential difficulties have also been reported concerning the implementation of Directive 94/56/EC on the investigation of civil aviation accidents and incidents in relation with the access of the technical investigators to all the information held by the judiciary.

In other cases, the degree of harmonisation seems insufficient (for example, in the fields of air operations, pilot licensing, or noise) to cover all cases and respond to all questions raised by stakeholders.

The consequences of the non compliances with regard to technical safety requirements under the scope of EASA are the decline of the safety level, which can be corrected through appropriate measures ranging from action plans to revocation of certificates or even withdrawal of the mutual recognition or fines imposed by Member States. In case of persistency, an infringement procedure against the Member State concerned can also be initiated. The Commission is closely following any such potential safety threat but no formal infringement procedure has been required up to now.

Concerning the Directive related to accident investigation, the quality of the final report on air accidents mandated under this Directive might be lower if the technical investigators don't have access to all the information held by the judiciary. As a consequence, the objective of the Directive (i.e. prevent future accidents based on lessons learned from previous ones) could not be fully met in some cases.

The main explanation of the cases related to technical safety requirements are linked with the insufficient capacity of national competent authorities to oversee the entities under their responsibility, either due to lack of adequate number or qualified staff or to deficient procedures. In some cases, the entities themselves are circumventing EU rules either due to incorrect understanding or on purpose, for administrative or commercial reasons.

Concerning the Directive related to accident investigation, both the inadequate transposition and the power held by the judiciary can explain the difficulties.

The national competent authorities are always the ultimate body responsible for overseeing the entities under their jurisdiction as well as for taking the necessary corrective actions. The Commission and EASA should be able to detect some type of deficiencies with the different tools for oversight on their hands (inspections, ramp checks, complaints, etc) and when identifying cases of concern, get in contact with the competent authorities and take any actions necessary in order to put an end to the potential breach, as explained under paragraph b) above.

In some cases, the need to clarify or amend the EU rules is identified.

As a general principle, as soon as the general safety is at stake, any corrective action shall be taken without delay and be considered as first priority. The following actions are proposed by Commission:

- The existing tools and procedures in place within commission for identifying and managing potential safety threats linked with the inappropriate application of the *acquis* explained above have been improved recently in coordination with EASA and should be maintained.

  Keeping or even increasing the number of officials dealing with such cases is essential in order to preserve the current results and the pressure on the industry and authorities concerned.

- Some improvements on EASA standardisation visits could be reflected on the amendment of Regulation (EC) No 736/2006 (EASA standardization inspections).

- In order to complete the current strategy, a European Aviation Safety Programme, to be carried out by EASA, was launched. It should be adopted by mid 2010 and describe the regulations and activities at European level aimed at improving safety. Also, EASA will produce a European Aviation Safety Plan which will become an action plan at European level.

- TREN F3 has prepared in 2009 a draft Regulation regarding the imposition of fines and periodic penalty payments in case of non-compliance with aviation safety rules by entities certified by EASA and launched a dedicated consultation therein. The adoption of the final text should take place by mid 2010.

- The necessary actions linked with the Directive on accident investigation are less linked to an imminent safety threat but have already been taken though the adoption by the Commission of a legislative proposal aimed at substituting such Directive (see above).

In the fields of air operations and pilot licensing the situation should improve with the upcoming adoption of new harmonised rules. This is foreseen between 2010 and 2012, with the assistance of EASA

Single Sky and modernisation of air traffic control

Analysis of the reports showed an overall acceptable compliance with the requirements of the legislation. However this analysis was made on the basis of the reports provided by the States for the years 2007 and 2008. More steps should have been taken in the meantime by the States and their air navigation service providers and will be monitored through a second reporting process.

Despite the formal compliance, progress towards defragmentation of the European airspace and better performance of the air navigation services and European ATM network needs to be accelerated, particularly in view of the crisis affecting the aviation sector.

To this effect, further actions are envisaged, on the basis of the second Single Sky legislative package adopted in 2009.

Infrastructures and airports

The implementation of the Directive on groundhandling remains of some concern. The situation appears unsatisfactory in this respect, notably in some of the new Member States. It is therefore essential to continue a close surveillance of Member State's transposition instruments and the way they are applied.

The implementation of the Regulation on airport slots raises a number of questions. The Observatory on airport capacity has already identified elements that need better application, clarification or amendment. The Commission will duly take into consideration conclusions of the Observatory in this matter and will evaluate the possible shortcomings in order to assess the need for a general revision.

Aviation security

Since the introduction of Community rules in 2002 and of Commission inspections in 2004, results of aviation security inspections have steadily improved. The compliance with main provisions during aviation security inspections of airports rose from 62% in 2006 and 69% in 2007 to 78% in 2008 and 85% in 2009. However, inspections of some national administrations still showed that not all Member States make available sufficient resources to fulfil their national quality control obligations.

The fact that the Commission took a strict and coherent approach to the rectification of deficiencies identified during Commission inspections has also contributed to the improved inspection results. It is expected that the improved aviation security legislation and clearer rules on national quality control will further improve compliance levels in the European Union. However, a continued effort in inspections, enforcement and advice will remain vital to ensure a positive evolution.

5.13.3. **Evaluation results**

5.13.3.1. Priorities

Internal market and air services agreements

For this sector, priorities are:

– to ensure the correct application of Regulation 1008/2008;

– to maintain partnership with Member States, stakeholders and citizen representatives for a harmonised implementation of internal market regulations.

– to remove illegal provisions of existing bilateral air transport agreements between Member States and third countries.

Single Sky and modernisation of air traffic control

The priorities for the commission in the field of ATM do not change, the actions just need to be reinforced by a number of actions, with consist in developing a total system approach in line with the gate-to gate concept to improve the performance of the European aviation system in key areas such as the environment, capacity and cost-efficiency, having regard to the overriding safety objectives.

Air safety

Two main new priorities were added in 2009, in comparison with the ones identified in the 26th Annual Report, and remain valid for 2010: the amendment of Directive 94/56/EC on the investigation of civil aviation accidents and incidents (due to the completion of the impact assessment) and the adoption of a Commission Regulation concerning the imposition of fines and periodic penalty payments in case of non-compliance with aviation safety rules by entities certified by EASA (we were then in a position to present a proposal)

Additional actions for 2010 and beyond are: to amend Regulations (EC) No 736/2006 (EASA standardization inspections – need to adapt to new strategy and common rules) and 1356/2008 (EASA fees and charges – requested by the industry), to complete the set of EU harmonised safety standards (legal mandate) and the adoption of a targeted management safety plan at EU level (in respond to ICAO requirements related to safety management system).

Infrastructures and airports

In 2010 the sector will continue focussing on the proper implementation of the existing law as regards groundhandling, slots and airport charges. It will also concentrate on the implementation of the action plan on airport capacity, and notably on the supervision of the works of the Observatory on airport capacity.

Regarding groundhandling, the impact assessment on the possible revision of Directive 96/67/EC will be continued.

Aviation security

The priorities for the Commission in the field of aviation security remain unchanged, namely to further develop harmonised rules in aviation security that provide an adequate level of

protection whilst limiting the negative impact on facilitation and to ensure the application by all Member States of the common standards contained in Regulation (EC) No 300/2008 that will replace Regulation (EC) No 2320/2002 in April 2010.

5.13.3.2. Planned action (2010 and beyond)

Internal market and air services agreements

- Work with the Member States on the correct application of Regulation 1008/2008 notably on price transparency;

- Work with the Member States, and negotiations with third countries, to remove the remaining illegal clauses in bilateral agreements.

Single Sky and modernisation of air traffic control

The second package of the Single European Sky built on five pillars that will have to be developed within the next 2 years:

- a regulatory pillar, requiring the adoption of implementing rules in particular on performance, network management and functional airspace blocks,

- a safety pillar, based on the extension of EASA competences to ATM , and attributing tasks to the Agency with regard to the adoption of requirements and the reformulation of the ATCO licence Directive;

- a technology pillar, related to the development and deployment of the ATM Master plan under the aegis of the SESAR JU;

- an airport capacity pillar, integrating airports in the performance scheme and associating the Observatory on airport capacity to the adoption of measures coordinating ATM and airports slots;

- a human factors pillar, aimed at associating more effectively the social partners.

Air safety

– reinforced management of the *acquis*

New strategy for conducting EASA standardisation inspections, the SAFA checks, the management of the list of banned aircraft and the assessment of derogations to the harmonised rules. New management safety plan at EU level.

– enforcement oriented actions (infringement procedures)

New strategy for follow-up of EASA standardisation inspections.

– new legislation

1. amendment of Directive 94/56/EC on accident investigations;
2. adoption of a Commission Regulation concerning the imposition of fines and periodic penalty payments;

3. adoption of a series of new harmonised rules in the fields of Flight Crew Licensing, Air Operations, Third Country Operators, Air Traffic Management, Air Navigation Services and Aerodromes; and
4. amendment of current rules in the fields of initial and continuing airworthiness, EASA standardisation inspections and fees and charges.

Infrastructures and airports

Impact assessment analysis for the prospective revision of the Regulation on airport slots is planned for 2010. The possible revision will require a long-term preparation, which will in particular include a consultation of stakeholders on the principles of a new regime.

Aviation security

The Commission will continue to apply a strict compliance monitoring and enforcement policy to ensure an adequate protection of its citizens. The Commission therefore intends to continue its inspections at a frequency comparable to 2009 although the change in legislation will inevitably lead to certain limitations in this respect. Particular emphasis will be given to ensuring that Member States have an adequate number of resources to fulfil their obligations.

In order to ensure a smooth entry into force of the new implementing rules in the field of civil aviation security, the Commission will organise several training courses for national auditors nominated to participate in Commission inspections and also develop a new inspection handbook to be made available to all Member States.

5.13.4. **Summary by sector**

Internal market and air services agreements

Following the entry into force of Regulation 1008/2008 in 2008, a lot has been achieved with the Member States and at Commission level to improve the functioning of the EU Aviation market, notably on public services obligations, licences, ownership and control and price transparency. Efforts will be placed on price transparency given the importance it represents for consumers, while pursuing our efforts on the other aspects.

On the basis of the progress achieved in external relations, the Commission, together with the Member States, will aim at correcting the remaining bilateral air services agreements which are not in line with Community law.

Single Sky and modernisation of air traffic control

The priorities for the Commission in the field of air traffic management remain unchanged; the key objective is the implementation of the Single European Sky. Good progress has been made so far by States and the various stakeholders concerned, but the action of the Union needs to be reinforced in order to speed up the progress.

2009 has laid down additional foundations for further actions by the Commission which will be challenged in 2010 and the following years with the preparation of a large number of measures within tight deadlines.

Air safety

- Immediate reaction to safety threats identified (recurrent)

- Follow-up of the correct transposition and implementation of the *acquis* through a number of different tools, including inspections (recurrent);

- Updating and complement the *acquis* whenever necessary (recurrent);

– key actions (importance and urgency)

Legislative proposals (some are more important/urgent than others), permanent assessment of correct implementation through different means and immediate reaction when required (very important and urgent).

– programming of work and timetable for achieving the objectives of the *acquis*

a) avoid safety threats, immediate reaction to them and correct transposition/implementation are permanent objectives

b) legislative proposals to be adopted between 2010 and 2013:

- 2010: amendment to Regulation (EC) 2042/2003, new Regulations for accident investigation, fines and periodic penalty payments and for air controllers

- 2011: amendment of Regulations (EC) No 736/2006 (EASA standardization inspections) and (EC) No 1356/2008 (EASA fees and charges) as well as new Regulations for flight crew licensing, operations and operational suitability

- 2012: Regulations for operations, third country operators and ATM/ANS

- 2013: Regulations for aerodromes

Aviation security

The priorities for the Commission in the field of aviation security remain unchanged, namely to further develop harmonised rules in aviation security that provide an adequate level of protection and to ensure the application by all Member States of the common standards contained in Regulation (EC) No 300/2008 that will replace Regulation (EC) No 2320/2002 in April 2010.

The planned key actions are the continuation of the well established inspection regime at current frequencies, the strict enforcement of Community rules following the identification of deficiencies and the smooth transition, supported by training and guidance material, to the implementation of the revised aviation security legislation which will ensure more consistency, clarity and harmonisation while safeguarding the level of protection for European citizens.

5.14. MOBILITY and TRANSPORT - Maritime Safety

5.14.1. Current position

5.14.1.1. General introduction

The maritime safety EU *acquis* aims at enhancing the safety of ships in European waters, protecting the marine environment and ensuring appropriate living and working conditions on board. The main relevant pieces of legislation in this area are:

- Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations, (OJ L 131 of 28.5.2009, p. 47). This directive addresses the responsibility of Member States as flag States by establishing measures to be followed by the Member States and organisations concerned with the inspection, survey and certification of ships for compliance with the international conventions on safety at sea and prevention of marine pollution;

- Council Directive 95/21/EC of 19 June 1995 on port State control of shipping (OJ L 157 of 7.7.1995, p.1), to be repealed and replaced by Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131 of 28.5.2009, p. 57). The directive sets out rules applicable to Member States in their capacity of port States. It provides for 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 and for the establishment of common criteria for control of ships by the port State and harmonised procedures on inspection and detention;

- Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system (OJ L 208 of 5.8.2002, p. 10), recently amended by Directive 2009/17/EC of the European Parliament and of the Council of 23 April 2009 (OJ L 131 of 28.5.2009, p.101). The system established in accordance with this directive aims at improving the response of the authorities to incidents, accidents and potentially dangerous situations at sea, including search and rescue operations, and at better preventing and detecting pollution by ships.

Other relevant legislation includes directives on marine equipment (Directive 96/98/EC), harmonised safety rules and standards for passenger ships (Directive 98/18/EC), fishing vessels (Directive 97/70/EC) and the safe loading and unloading of bulk carriers (Directive 2001/96/EC), registration of persons on board passenger ships (Directive 98/41/EC), mandatory surveys for the safe operation of regular ro-ro ferry and high speed passenger craft services (Directive 99/35/EC), seafarers hours of work (Directive 1999/95/EC), stability requirements for ro-ro passenger ships (Directive 2003/25/EC), relating to the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, (Directive 2009/13/EC), accident investigation (Directive 2009/18), insurance of shipowners for maritime claims (Directive 2009/20/EC), compliance with flag State requirements (Directive 2009/21/EC), and Regulations on the accelerated phasing-in of double hull or equivalent design oil tankers (Regulation (EC) n° 417/2002), the prohibition of organotin compounds on ships (Regulation (EC) n° 782/2003), on the transfer of cargo and passenger ships between registers within the Community (Regulation (EC) n° 789/2004), on common rules and standards for ship inspection and survey organisations (Regulation (EC) No 391/2009), and

on the liability of carriers of passengers by sea (Regulation (EC) No 392/2009). Finally, environment-related directives on port reception facilities for ship-generated waste (Directive 2000/59/EC) and on ship-source pollution and on the introduction of penalties for infringements (Directive 2005/35/EC) should also be listed.

5.14.1.2. Report of the work done in 2009

The Committee on Safe Seas (COSS) set up under Regulation (EC) no. 2099/2002 met in February (twice), July and November. The meetings provided the opportunity for Commission services to discuss with representatives of Member States virtually all aspects of maritime safety. Opinions were issued on several proposed texts (marine equipment, phasing-in of double-hull ships, recognition of classification societies, port State control (expanded inspection of ships and company performance) and vessel traffic monitoring system.

Regular meetings on maritime policy took place in 2009 between the Director responsible for maritime safety and policy and his counterparts in the Member States. These meetings provided also an opportunity to foster clarification and better implementation of the acquis.

On 29/30 September, a general meeting with representatives of the Member States was organised with the objective of discussing and clarifying the content of the recent legislative package (III Maritime Safety Package) in preparation of transposition by Member States.

The European Maritime Safety Agency continued its broad program of inspection visits in the Member States. This program was initiated in 2004 at the request and in co-operation of the Commission and it currently covers the following areas: classification societies, training of seafarers, port State control, port reception facilities and vessel traffic monitoring and information systems (started in March 2009). The reports produced by the EMSA teams serve as basis for further Commission contact with the Member States either through requests for clarification or the launching of infringement procedures. In an area where there is a reduced number of complaints received from citizens or enterprises, these inspections are of great value to the Commission as they allow it to understand how the EU maritime safety *acquis* is implemented in the Member States.

The number of infringement procedures continued to decline in 2009. This was essentially due to the corrective measures introduced by Member States in order to improve the quality of the transposition of the *acquis* and its implementation, following pre-judicial initiatives by the Commission. Still at the end of the year circa 30 procedures remained open. They concentrate essentially on port State control and port reception facilities issues.

5.14.2. **Evaluation of the current position**

Maritime safety Community law is relatively young. This is all the more true as it was significantly completed and renewed in May 2009 with the publication of the III Maritime Safety package comprising six Directives and two Regulations. It is however based in international conventions and other instruments, for some of which there is considerable implementation experience in the Member States. Current implementation situation thus ranges from relatively stable, whilst not yet entirely acceptable (for instance, for Directive 95/21/EC on port State control of shipping which is closely related to the rules of the Paris MOU to which most Member States have been party to for several years) to more difficult as in the case of Directive 2000/59/EC on port reception facilities, where key provisions such as those on the coverage of costs by all ships, the monitoring of deliveries and the performance of inspections are still implemented unevenly throughout the Union.

The situation tends to become more complex as it is imperative to ensure a smooth transposition and applicability of the III Maritime Safety Package. This package covers a broad range of issues, some of which consist of improvements of current *acquis* (port State control, vessel traffic monitoring and information system, classification societies), while others are essentially new (accident investigation, Flag State obligations, liability of carriers of passengers by sea, insurance of shipowners).

5.14.3. **Evaluation results**

5.14.3.1. Priorities

There is a clear continuity in the efforts to ensure an appropriate transposition and implementation of the maritime safety *acquis*. In terms of thematic areas, emphasis will be put on the traditional areas of the monitoring of classification societies and of the implementation of directives on the training of seafarers, port State control, vessel traffic monitoring and information system and port reception facilities. Transposition of Directive 2005/35/EC (ship-source pollution and penalties) will also be closely monitored. Particular attention will be given to the effort by Member States to ensure timely and adequate transposition and implementation of the III Maritime Safety Package.

We shall continue to rely on the systematic assessment of implementation in the Member States based on the inspections by EMSA to be followed by contacts with Member States and, when appropriate, direct pre-judicial initiatives.

A pre-emptive approach is also taken in relation to the alignment to and implementation of the *acquis* by accession countries, in particular Croatia, through dialogue and assessment of administrative capacity (in co-operation with EMSA).

5.14.3.2. Planned action

Contact with national administrations will be ensured through COSS meetings. As far as the newest legislation is concerned, the Commission services will ensure the follow-up to the 2009 meeting with representatives of the Member States (monitoring of the transposition procedures, provision of advice).

Follow-up of EMSA inspection reports will be ensured leading to clarification actions and/or infringement procedures in the key areas mentioned under point 1.

5.14.4. **Sector summary**

The monitoring and promotion of the implementation of the maritime safety *acquis* concentrates on the traditional key areas (classification societies, training of seafarers, port State control, vessel traffic monitoring and information system and port reception facilities). Dialogue with Member States continues in different *fora* (COSS, meetings with the Directors-Generals of national administration, technical co-operation through EMSA). Clarification initiatives by the services and, when appropriate, infringement procedures are also undertaken. Considerable effort is to be devoted to detailing and explaining the newest *acquis* (III Maritime Safety Package published in May 2009) with a view to facilitate its transposition by Member States.

5.15. MOBILITY and TRANSPORT - Maritime Security

5.15.1. Current position

5.15.1.1. General introduction.

The main objective of the EU legislation on Maritime Security is to implement· measures aimed at enhancing ship, port facility and port security in the face of the threats posed by intentional unlawful acts. The EU legislation intends to provide a basis for harmonised interpretation and implementation of international measures to enhance maritime security adopted by the Diplomatic Conference of the International Maritime Organization (IMO), in 2002, with the establishment of the International Ship and Port Facility Security Code (ISPS Code) and the ILO164/IMO Code of Practice on Security in Ports**.**

The main pieces of Community acquis in this field are the following:

- Regulation (EC) No 725/2004165 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security: The Regulation takes into account amendments to the 1974 International Convention for the Safety of Life at Sea (the SOLAS Convention) and the maritime security measures imposed by the Regulation are only some of the measures necessary in order to achieve an adequate level of security across all of the various transport chains linked to maritime transport. The Regulation is limited in scope to security measures onboard vessels and the immediate ship/port interface.

- Directive 2005/65/EC166 of the European Parliament and of the Council of 26 October 2005 on enhancing port security: The Directive is mainly based on the recommendations contained in the ILO/IMO Code of Practice on Security in Ports. The Directive completes the mechanism provided for under the Regulation by establishing a security system for all port areas, in order to ensure a high and comparable level of security for all European ports. The aim of the Directive is to improve security in port areas not covered under the Regulation and to ensure that the enhancement of port security will support the security measures taken under the Regulation, without creating additional obligations in areas already governed by the Regulation.

- Regulation (EC) No 324/2008167 of 9 April 2008 laying down revised procedures for conducting Commission inspections in the field of maritime security: In 2005, in order to monitor the application by Member States of the Regulation and to verify the effectiveness of national maritime security measures, procedures and structures, the Commission adopted

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164 International Labour Organization

165 Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security, OJ L 129, 29.4.2004, p. 6.

166 Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security, OJ L 310, 25.11.2005, p. 28.

167 Commission Regulation (EC) No 324/2008 of 9 April 2008 laying down revised procedures for conducting Commission inspections in the field of maritime security, OJ L 98, 10.4.2008, p. 5.

Regulation (EC) No 884/2005168, laying down procedures for conducting Commission inspections in the field of maritime security. On 9 April 2008, the Commission adopted Regulation (EC) No 324/2008 laying down revised procedures for conducting Commission inspections in the field of maritime security, which also laid down *"procedures for the monitoring by the Commission of the implementation of Directive 2005/65/EC jointly with the inspections at the level of Member States and port facilities in respect of ports..."*. This Regulation, repealing Regulation (EC) No 884/2005, came into force on 1 May 2008.

5.15.1.2. Report on the work done in 2009

During the year 2009 the work done on monitoring the application of Community law in the field of maritime security had considerable developments.

- The Maritime Security Committee (MARSEC) met 6 times which were as much occasions to discuss with the Member States of the issues involved in the common interpretation of the security standards defined at the international level. Furthermore, these issues are also addressed with the stakeholders from the advisory group (SAGMaS).

- Follow-up of the infringement procedures launched for the absence of national transposition measures concerning Directive 2005/65/EC within the required deadline: The majority of the 22 Member States required to transpose the provisions of the Directive into national law only did so after the deadline for implementation (15 June 2007) had passed. Ten infringement procedures which were started by the Commission in the absence of notification of national transposition measures and on 18 September 2008, the Commission decided to take action before the European Court of Justice, against the last two Member States who had not yet met the deadline. By 3rd September 2009, the Court of Justice issued its judgments against the two Member States (***UK and Estonia***). Nowadays, all Member States have notified their National Implementing Measures.

- The Report assessing the implementation of the Directive has been adopted by the Commission on 21 January 2009. However, in view of the delay in transposing the Directive and in the practical implementation of its provisions by several Member States, the report focuses on implementation-related matters and short-term results.

- In 2009, the Commission's services carried out 189 inspections. The inspections permitted to check the implementation of the security legislation on the ground by the operators concerned, as well as the supervision of it by the Member States. The inspections have been focused mainly on port facilities and ships in order to check that assessments and security plans have been drawn up in line with Regulation (EC) No 725/2004, that they have been effectively implemented on the ground, and that the national authorities are conducting the necessary inspections and checks.

5.15.2. **Evaluation of the current position**

Considering the implementation of the Port Security Directive, it should be noted that the

168 Commission Regulation (EC) No 884/2005 of 10 June 2005 laying down procedures for conducting Commission inspections in the field of maritime security, OJ L 148, 11.6.2005, p. 25.

delays in preparing and adopting national transposition measures in a variety of Member States have had a knock-on effect, in that the relevant port authorities were not able to implement the Directive until the national measures had been finally approved and adopted.

The first inspections carried out into 2008 were very disappointing because the first eight visited ports did not lay out an assessment, nor a plan for security. In 2009, it has been noted an improvement of situation as regards port security assessments. Besides, the situation is not yet satisfactory in many Member States concerning the approval of port security plans.

Regarding Regulation (EC) No 725/2004, the inspection team reported on several occasions a lack of control exerted by the Member States to check the correct application of Community legislation in the port facilities and ships under their competence. This will remain a priority in 2010.

In the absence of access control to Port Facilities and the credible action plan to rectify this situation following the Commission's inspections, an infringement procedure has been opened against a Member State with the sending of a letter of formal notice.

Once a year, the Member States have to set up a "monitoring report" in order to record a compiled outcome of national inspections and of industry compliance with security obligations. These reports covering the previous calendar year have to be notified to the Commission before the end of March. One Member State - despite several reminders - did not notify its 2008 report and an infringement procedure had to be opened.

5.15.3. **Evaluation results**

The EU inspections are mainly intended to verify whether the legal requirements are being properly and effectively implemented by the Member States.

In 2009, the Commission conducted 189 inspections (92 port facilities, 35 ports, 55 ships and 7 national administrations).

The inspections have a double benefit. They highlight vulnerabilities and the remedies required regarding the EU legislation on maritime security. It has been noted an improvement of the situation following the inspections carried out. For the first time, two inspections were conducted in 2009 following information concerning the intrusion of illegal immigrants in port facilities. Both of them aimed to verify the overwhelming presence of unauthorised persons, in the aforesaid port facility areas, attempting to stowaways on board ships. The main problems have been solved. On the one hand, it permitted to check implementation of corrective actions taking also into account to the illegal immigrants issue sensitivity and the effectiveness and consistency of the actions taken by the authorities. On the other hand it has allowed to clarify the stowaways issue following a complaint received on behalf of a shipping company. These inspections have allowed to increase the surveillance systems and the efficiency for access control within the port facilities.

Furthermore, the working program for the performance of maritime security inspections carried out by the Commission systematically includes a section for verifying that the procedures for monitoring the application of the Directive have been correctly applied.

5.15.4. **Sector summary**

While the situation in maritime security sector is demonstrating the benefits of harmonised rules, enhancing ship, port facility and port security in the face of the threats posed by intentional unlawful acts, there are still a number of areas where some obstacles to efficient maritime security persist.

The efforts are concentrating in ensuring an efficient implementation of the existing maritime security legislation, by combining action in two fields:

- permanent contact with national administrations through the work of the Maritime Security Committee and in the context of preparation and follow up of inspections;
- based on the results of the inspections carried out by the Commission and on the on-going conformity checks, an action plan identifying the main areas where there is failure to comply with the Directive and Regulation will be the basis for initiating different actions, including infringement proceedings as necessary.

6. ENVIRONMENT

6.1. Nature Conservation

6.1.1. **Current position**

6.1.1.1. General introduction

The most important pieces of nature conservation legislation are the Birds Directive, 2009/147/EC (codified version replacing Directive79/409/EEC169) and Habitats Directive, 92/43/EEC170. The former sets out measures for the protection, management and control of all species of naturally occurring European wild birds, as well as introducing rules to protect their habitats. The latter protects natural habitats and wild flora and fauna throughout the European Union and establishes a European ecological network known as "Natura 2000".

Nature conservation legislation constitutes a fairly stable part of the EC environmental *acquis*. Developments in this sector mainly concern the annexes to the Birds and Habitats Directives that have been adapted on a number of occasions in response to scientific and technical progress and to the successive enlargements of the European Union. The most recent adaptation is in response to the Accession of Bulgaria and Romania to the European Union on 1 January 2007. The Union is at present very close to the completion of the Natura 2000 network and regulatory stability is required.

169 Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds OJ L 103, 25.4.1979, p. 1-18.

170 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora OJ L 206, 22.7.1992, p. 7–50.

6.1.1.2. Report of work done in 2009

Designation of Special Protection Areas and Special Areas of Conservation

Further progress was made in 2009 in the establishment of the Natura 2000 network, consisting of Special Protection Areas under the Birds Directive and Special Areas of Conservation under the Habitats Directive. On 22 December 2009, the Commission adopted six Decisions updating existing Biogeographical Lists of Sites of Community Importance (SCIs). The additions include 59 new sites and a total area of 30,000 km2. Most of the new sites are situated in marine areas. This means that for the first time significant progress has also been made as regards the designation of marine areas. Substantial designations of off-shore marine sites are, however, still expected in 2010 and 2011. Natura 2000 now includes nearly 26,000 sites, covering 17,6% of the EU's landmass and more than 160.000 km² of marine areas, making it the largest interconnected network of protected areas in the world.

Several Member States have increased the number of designated areas following infringement procedures launched by the European Commission and several of these procedures have been closed in 2009. Two Marine Biogeographical Seminars were organized in 2009 for the Atlantic and the Baltic Sea and the proposals of marine sites in these regions have been evaluated.

Most Member States are still in a process of designating their Sites of Community Importance as Special Areas of Conservation according to Article 4(4) of the Habitats Directive. This exercise includes the establishment of detailed conservation objectives for the individual sites and the design of appropriate management instruments according to Article 6(1) of the directive. Member States have to designate their SCI as SACs not later than six years after the inclusion of the sites in a Community list. That deadline was 28 December 2007 for most sites of the Macaronesian biogeographical region and 22 December 2009 for most sites of the Alpine biogographical region. For most sites of the Atlantic and Continental regions it will be 7 December 2010. An infringement procedure was launched in 2008 against Portugal and Spain for not having designated sites in that region as SACs. The Commission will consider launching new infringement procedures against Member States which still have not provided sufficient designations or which have not designated their SACs within the deadline required by the Habitats Directive.

Reporting

In 2009 the Commission published a Communication on the conservation status of Species and Habitats protected under the Habitats Directive following reports submitted by the Member States under Article 17 of the Habitats Directive. This assessment concluded that only 17 % of species and habitat types of Community interest are in a favourable conservation status EU wide and that substantial efforts are still necessary towards achieving the objectives of the Habitats Directive. Furthermore, the assessment revealed significant knowledge gaps in certain countries.

Non-conformity with the Birds and Habitats Directive

In 2009, the Commission pursued infringements dealing with non-conformity of national transposing legislation with the Birds and Habitats Directive.

In 2009, as regards the Birds Directive, a Reasoned Opinion under Article 258 of the Treaty on Functioning of the EU (TFEU) was sent to Slovakia and Denmark, while Greece received

a Letter of Formal Notice under Article 260 concerning the implementation of the judgement in case C-259/08. As regards the Habitats Directive, a Reasoned Opinion under Article 258was sent to Slovakia.

Insufficient designation of Special Protection Areas

Under the Birds Directive, Member States are obliged to designate all of the most suitable sites as Special Protection Areas to conserve wild bird species. The designation must be based on objective, verifiable scientific criteria. To assess whether Member States have complied with their obligation, the Commission uses the best available ornithological information. Where the necessary scientific information provided by Member States is lacking, national inventories of Important Bird Areas (IBA) compiled by the non-governmental organisation Birdlife International, are used. While not legally binding, the IBA inventory is based on internationally-recognised scientific criteria. The Court of Justice has already acknowledged its scientific value, and in cases where no equivalent scientific evidence is available, the IBA inventory is a valid basis of reference in assessing whether Member States have classified a sufficient number and size of territories as Special Protection Areas.

In 2009, the Commission sent a Reasoned Opinion under Article 258 to Slovakia, Lithuania, Latvia, Czech Republic and Cyprus for failing to designate enough Special Protection Areas (SPAs) on their territory. It also made an application to the Court in the case of Romania, for failure to designate sufficient SPAs.

Bird Hunting

Hunting is regulated in the European Union by the Birds Directive. Although the Directive contains a general prohibition on the killing of wild birds, it does allow certain species to be hunted provided this does not take place during the breeding season or migration periods. Hunting periods are set at national levels, and vary according to species and geographical location. Exceptionally, Member States may allow the capture or killing of birds covered by the Directive outside of the normal hunting season for a limited number of reasons, although such derogations are only available when there is no alternative solution.

As regards huntable species, the Commission has prepared further management plans on such species with an unfavourable conservation status. They are not legally binding but give guidelines to Members States to fulfil their obligations on species' conservation.

In 2008, the Commission decided to take Malta to the Court of Justice for its spring hunting practices (case C-76/08). The Court ordered, as an interim measure, that spring hunting was not to be allowed in 2008; in 2009 no further legislation permitting spring hunting was adopted by the Maltese authorities. On 10 September 2009 the Court gave its judgment in the main case. The Court found that, although autumn hunting did not in the specific case of Malta provide a satisfactory alternative solution to spring hunting, Malta had nonetheless breached the specific conditions for derogation under Art 9 of the Birds Directive and the principle of proportionality in permitting spring hunting. This Commission action was closely followed by the EP Petitions Committee which had carried out a fact-finding mission in 2006171.

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171 This was followed by European Parliament Resolution P6_TA(2007)0074 of 15 March 2007 on the hunting and trapping of migratory birds in spring in Malta.

In 2009, the Commission decided to take Italy to the Court of Justice in relation to certain regional hunting legislation. The relevant cases (C-164/09 concerning the Veneto Region, and C-508/09 concerning the Sardinia Region) are currently pending decision. Moreover, in response to a request by the Commission for the adoption of interim measures under Articles 278 and 279 TFEU on 10 December 2009, the Court issued an order requiring that Italy suspend the application of Article 4(1) of Lombardy's Regional Law 30 July 2008, n.24, as amended. This law allowed hunting derogations which, in the Commission's opinion, did not to comply with the conditions of Article 9 of the Birds Directive. A decision by the Court in the main case (ref. C-573/08) which raises a number of issues regarding the non-conformity of Italian national and regional legislation with the Birds Directive is still awaited.

Species protection

The Habitats Directive comprises an important pillar which is related to the protection of species. In particular, Articles 12 and 16 are aimed at the establishment and implementation of a strict protection regime for animal species listed in Annex IV(a) of the Habitats Directive within the whole territory of Member States. Focus is mainly on developing guidance documents such as the Guidance document on the strict protection of animal species of Community interest under the 'Habitats' Directive 92/43/EEC that was finalized in February 2007. Specific guidance documents have also been developed for the protection and management of large carnivores. An initiative for preparing species protection plans for a number of priority species has been launched.

Furthermore, the Commission is preparing further new or revised action plans for globally threatened bird species.

In order to reduce the conflicts between Cormorants and fisheries, the Commission is currently preparing guidance on the appropriate use of derogations under Article 9 of the Birds Directive.

Further judgments of the Court of Justice in 2009

In relation to the protection of SPAs to be designated under the Birds Directive (1979/409/EEC), on 11 December 2008 the Court ruled in case C-293/07, *Commission/Greece*, that Greece had failed to put into place a coherent, specific and complete legal protection regime for SPAs. In fact, the protection regime laid down in the Greek legislation did not include all SPAs and it provided varying protection of the sites in such a way that the objectives for the protection of SPAs, laid down in Article 4(1) and (2) of the Birds Directive and in Article 6(2) of the Habitats Directive, were not fulfilled.

In case C-362/06 Sahlstedt, on 23 April 2009 the Court of Justice dismissed the appeal against an order in case T-150/05 by which the Court of First Instance (CFI) had dismissed as unfounded and action by Mr. Sahlstedt (a Finnish landowner) seeking annulment of the Commission's decision adopting the list of sites of Community importance for the Boreal biogeographical region (designation of Natura 2000 sites).

The action for annulment was declared inadmissible due to lack of direct concern (the CFI did not study the possible individual concern). Advocate General Bot in his opinion, dated 23 October 2008, had considered that the appellants were both directly and individually concerned and that the substance of the appeal therefore should have been dealt with in the

CFI. However, the Court of Justice dismissed the appeal as inadmissible due to the lack of individual concern (paras. 32-33). Since there was no individual concern, the plea concerning direct concern was considered no longer relevant.

Petitions

In 2009, the Commission received 50 petitions related to the issue of nature protection. The subjects raised in these petitions ranged from the measures for the protection of Natura 2000 sites themselves to the environmental effects of infrastructure projects on designated sites. A large proportion of the nature protection petitions concerned projects with a potential impact on designated sites in Spain, France and Bulgaria. The ongoing close interest of the Petitions Committee in the issue of spring hunting in Malta should be mentioned. In 2009, four petitions concerning nature protection were closed. Responding to concerns raised within the Petitions Committee, DG ENV committed itself to organising a nature conservation seminar for Bulgarian officials in Sofia in 2010.

6.1.2. **Evaluation based on the current situation**

Despite the small number of legal instruments in this field, nature conservation legislation accounts for between a fifth and a quarter of environmental infringements. The nature sector accounts for the highest number of open environmental cases. The high number of cases in the nature sector is due mainly to the extent of the network, which now includes around 26, 000 sites: there are Natura 2000 sites in the vicinity of nearly every EU citizen. This is positive in as much as it brings the EU close to its citizens but it also means that the Commission receives a lot of complaints about threats to these sites. Although the demand from citizens, specialised and active NGOs and the European Parliament is high, the complaint and legal enforcement mechanisms for nature conservation in the Member States are often weak or inappropriate.

In order to rationalise the handling of this high number of cases and ensure the effective implementation of the nature directives, the Commission has taken several measures, which can be divided into three categories:

- *Focus on the main implementation priorities*: the core obligations of the directives were effectively addressed (i.e. correct and complete transposition and establishment of the Natura2000 network), while systemic problems of bad implementation were tackled (e.g. hunting derogations).

- *Proactive cooperation with Member States*: this includes the drafting of interpretative guidance documents for the main provisions of the nature directives; the development of targeted guidance for economic sectors such as the port sector, wind energy, the non-energy extractive industry, and inland waterways, which have particular challenges in relation to the legislation; training of the competent authorities; regular contacts with the national, regional and local authorities, establishment of the "*GreenEnforce Network*".

- *Improvements in the handling of complaints*: specific methods have been developed with the purpose of helping the complainants (i.e. ad hoc nature supplementary information form, which guides the complainants as regards the information needed to evaluate a complaint) and making more effective use of complaints (i.e. grouping of complaints in order to focus on systemic breaches).

Those measures have had a significant effect, as they resulted in the reduction of the implementation deficit.

6.1.3. **Evaluation results**

6.1.3.1. Priorities

Priorities will be the following:

- *Completing the establishment stage of the Natura 2000 network.* The terrestrial part of the Natura 2000 network is either established or close to establishment in accordance with the Habitats and Birds Directives. Habitats and species coverage still needs to be extended in places, mainly in the EU-12 Member States, and legal action will be pursued against Member States when necessary. The process has been launched to finalise the establishment of marine sites. Since the scientific knowledge and information available on the existence and distribution of marine habitat and species remains incomplete, the Member States were expected to submit their proposals by end 2008, based on existing knowledge, while pursuing further necessary surveys. In order to facilitate the process, a guidance document has already been prepared by the Commission services. First Biogeographic Seminars took place in 2009 for the Atlantic and the Baltic Seas. A guidance document on introducing fisheries measures for marine Natura 2000 sites in the context of the Common Fisheries Policy has also been prepared.

- *Ensuring a systematically correct approach to Natura 2000 site protection.* To enable the Natura 2000 network to achieve its goal of conserving key elements of Europe's biodiversity, there needs to be proper scrutiny and minimisation of, the impacts of potentially damaging plans and projects in line with ECJ case-law. Ensuring application of best scientific knowledge, examination of alternatives and, where appropriate, provision of compensatory habitats are all major challenges. In this regard, the Commission services issued a guidance document on Article 6(4) of the Habitats Directive, a key provision for the implementation of the nature directives. In addition, the Commission intends to further promote best practice within specific economic sectors, such as European ports, wind energy, non-extractive industries, inland waterway transport and agriculture.

- *Ensuring overall positive management of Natura 2000 network.* Apart from vetting potentially damaging plans and projects, Member States need to set up effective management systems for Natura 2000, supporting human activities such as conservation-sensitive farming that are beneficial to conservation objectives while also meeting socio-economic needs. In 2009 a new expert group on the management of Natura 2000 was established. This group will be used to develop and exchange information on best practice in Natura 2000 management, focusing in particular on integrated management approaches and reconciling nature conservation and economic development objectives.

- *Prioritisation of Commission's legal enforcement work.* In the coming years, the Commission will continue to pursue its legal enforcement action to help meet the main objectives of the nature conservation legislation. To this effect, high priority will continue to be given to pursuing infringement cases concerning significant non-conformity of national implementing legislation with the Birds and Habitats Directives, insufficient site designations (mainly in the EU-12 Member States and for marine sites), including lack of designation of SCIs as SACs where the deadline has expired and the lack of adequate legal protection and management regimes for the Natura 2000 sites. Focus will also be on

addressing breaches concerning big infrastructure projects or interventions involving EU funding that have significant adverse impacts on Natura 2000 sites. In this context, the Commission will take into account considerations such as irreversible ecological damage and, where appropriate, seek interim measures from the European Court of Justice172. Infringements concerning unsustainable hunting practices in some Member States will also be followed up closely. In order to better handle individual complaints pointing to widespread problems of bad implementation, the established practice of launching horizontal infringement cases will continue to be followed. The approach in implementing EC legislation in general is set out in the Commission Communication "A Europe of results – Applying Community law" (COM(2007)502 final)173. The approach to be taken in the implementation of EC environmental law in particular is laid down in the Commission Communication on implementing European Community Environmental Law (COM(2008)773 final)174.

Planned action (2010 and beyond)In addition to planned actions described under the previous point, the Commission will publish in 2010 a Communication on the implementation of the Biodiversity Action Plan and the perspectives for biodiversity conservation post-2010.

6.1.4. **Sector summary**

As regards the designation of Special Protection Areas and Sites of Community Importance as part of the Natura 2000 network, further substantial progress was made in 2009. In December 2009, the Commission adopted six decisions updating existing Biogeographic Lists of Sites of Community Importance (SCIs). The additions include 59 new sites and a total area of 30,000 km2. Most of the new sites are situated in marine areas. This means that for the first time significant progress has also been made as regards the designation of off-shore marine areas, although substantial efforts are still needed.

Most Member States are now in a process of designating their Sites of Community Importance as Special Areas of Conservation (SAC) according to Article 4(4) of the Habitats Directive. Member States have to designate their SCI as SACs not later than six years after the inclusion of the sites in a Community list. The deadline for designation as SAC was 28 December 2007 for most sites of the Macaronesian biogeographical region and 22 December 2009 for most sites of the Alpine biogographical region. For most sites of the Atlantic and

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172 In the last two years the Commission has three times sought for interim measures in nature protection cases. In cases C-503/06, *Commission v. Italy* and C-76/08, *Commission v. Malta*, the Court ordered the Member States to halt illegal hunting activities on 19 December 2007 and 24 April 2008 respectively. In case C-193/07, *Commission v. Poland*, the Commission sought interim measures from the ECJ to prevent a Polish motorway project causing serious habitat damage: the request was dropped when Poland agreed to halt the relevant works pending an ECJ judgment.

173 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0502:FIN:EN:PDF

174 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0773:FIN:EN:PDF

Continental regions it will be 7 December 2010. Infringement procedures had been launched in 2008 for the non-designation of SACs in the Macaronesian region. One of the future main challenges will be to launch and manage corresponding infringements for the sites in the remaining regions in case they have not been designated as SACs before the respective deadlines.

Species protection continues to constitute a challenge when implementing the Nature Directives. The species listed in the Directives shall be strictly protected but they can also be hunted provided the conditions in the Directives are fulfilled. The proper functioning of the Natura 2000-network is ensured by hunting derogations granted on correct grounds and by appropriate protection regimes and management of protected sites, including of the species present there.

The priorities in the Nature sector have largely remained the same from previous years. Legal enforcement work in this sector, as in other environment sectors, must be prioritised in the interest of the efficient pursuit of the objectives of environment legislation. The approach to be taken in the implementation of EC environmental law in particular is laid down in the Commission Communication COM(2008)773 final on implementing European Community Environmental Law.

Therefore, in the coming years, the Commission will continue to pursue its legal enforcement action to help meet the main objectives of the nature conservation legislation. To this effect, high priority will continue to be given to pursuing infringement cases concerning significant non-conformity of national implementing legislation with the Birds and Habitats Directives, insufficient site designations (mainly in the EU-12 Member States) and the lack of adequate legal protection and management regimes for the Natura 2000 sites, including the lack of designation of SCIs as SACs where the deadline has expired. Focus will also be on addressing breaches concerning big infrastructure projects or interventions involving EU funding that have significant adverse impacts on Natura 2000 sites. In this context, the Commission will take into account considerations such as irreversible ecological damage and, where appropriate, seek interim measures from the European Court of Justice175. Infringements concerning unsustainable hunting practices in some Member States will also be followed up closely. In order to better handle individual complaints pointing to widespread problems of bad implementation, the established practice of launching horizontal infringement cases will continue to be followed.

6.2. Waste Management

175 In the last two years the Commission has three times sought for interim measures in nature protection cases. In cases C-503/06, *Commission v. Italy* and C-76/08, *Commission v. Malta*, the Court ordered the Member States to halt illegal hunting activities on 19 December 2007 and 24 April 2008 respectively. In case C-193/07, *Commission v. Poland*, the Commission sought interim measures from the ECJ to prevent a Polish motorway project causing serious habitat damage: the request was dropped when Poland agreed to halt the relevant works pending an ECJ judgment.

6.2.1. **Current position**

6.2.1.1. General introduction

Waste legislation covers a large share of the entire EU environmental acquis and includes thirteen main legislative acts adopted by the European Parliament and the Council and a large number of related decisions adopted through comitology procedures. The overall scope of this legislation is the prevention or reduction of waste production, the re-use, the recycling, other types of recovery than recycling and the disposal of different categories of waste; permitting and control of disposal operations, mainly landfills; and shipments of waste within the EU as well as to and from third countries.

The basic requirements are laid down by the Waste Framework Directive176 which is complemented by specific legislation addressing particular environmental threats associated with waste. This specific legislation includes harmonised rules on waste management practices, including strict emission limits and operating requirements for the incineration and landfill of waste; harmonised rules on shipments of waste; and product specific legislation setting targets for collection, re-use, recovery and recycling and introducing producer responsibility principles for specific waste streams derived from consumer goods, in particular packaging waste, end of life vehicles, waste electrical and electronic equipment, mining waste and batteries.177

6.2.1.2. Report of work done in 2009

The Commission adopted during 2009 three reports providing information about the situation in Member States as regards their implementation of EU waste legislation. A general implementation report178 covers Directives 2006/12/EC on waste (the EU waste framework directive), 91/689/EC on hazardous waste, 75/439/EEC on waste oils, 86/278/EEC on sewage sludge, 94/62/EC on packaging and packaging waste, 1999/31/EC on the landfill of waste and 2002/96/EC on waste electrical and electronic equipment (period 2004-2006). Two specific reports were adopted covering the Regulation (EC) 1013/2006 on shipments of waste179 (period 2001-2006) and Directive 2000/53/EC on end-of-life vehicles180 (period 2005-2008).

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176 Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain directives (OJ L, 312, 22.11.2008 p. 3). This Directive replaces 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) and has to be transposed by the Member States by 12 December 2010.

177 For an entire list of all EU waste legislation, please consult the Commission's Europa web-site http://ec.europa.eu/environment/waste/index.htm.

178 20.11.2009, COM(2009)633 final.

179 24.06.2009, COM(2009)282 final.

180 20.11.2009, COM(2009)635 final.

The reports show that implementation and enforcement of EU waste legislation remain poor, particularly as regards the waste framework directive, the landfill directive and the waste shipment regulation. In many cases, it is clear that waste treatment infrastructure is missing and waste is not collected separately. This results in reuse, recycling and recovery targets for waste streams such as end-of-life vehicles or packaging being missed.

A series of over 40 awareness-raising events organised by the Commission was completed during 2009. The Commission visited Member States in order to stress the need to strengthen implementation and enforcement of key requirements of EU waste legislation. The events covered all Member States and focused particularly on the waste shipment regulation, the Landfill directive and the Waste Framework directive. These events intended to promote better implementation, enforcement and application 'on the ground' of key EU waste legislation requirements. The events proved to be valuable tools to exchange and discuss good practice and practical problems with implementation and enforcement. They gave a comprehensive insight into national characteristics and specific problems with implementation. The conclusions showed large disparities in how Member States implement EU waste legislation requirements and significant deficiencies in large parts of the EU. An important need to strengthen implementation and enforcement of these EU requirements was clearly identified. Reports on the awareness-raising events were published by the Commission.

The Commission supported during 2009 in co-operation with the IMPEL network a large number of co-ordinated inspections, spot-checks and controls of waste shipments in Member States. These actions were part of a project to strengthen Member States' inspections, build up their capacity and improve co-operation between all relevant authorities. Over 10,000 inspections of transports were checked, including inspections of containers, vehicles and storage locations. Several hundreds of company inspections were also carried out. In total, 22 Member States and several neighbouring countries participated in the joint enforcement actions. A specific report of these actions was published by the Commission.

In 2009, the Commission received 26 petitions related to waste sector which covered a wide range of waste legislation. In 2009, seven petitions have been closed. A large part of petitions concerned Spain, Italy and Greece. The petitions proved valuable in drawing Member States' attention to the need for good landfill management. Particular mention may be made of the Petitions Committee's close interest in the waste situation in Campania in Italy and its view that the Commission should prioritise good implementation of waste rules across the EU. The Commission plans to take further action in 2010 to respond to this concern.

With regard to WEEE Directive, conformity is achieved for eight Member States. In 2009 the Commission continued legal enforcement actions opened in 2007 horizontally against a number of Member States. As of end of 2009, infringement cases were open for 14 Member States (Czech Republic, Denmark, Estonia, Spain, Finland, France, Ireland, Romania, Italy, Lithuania, Latvia, Portugal, Sweden and Slovakia). In 2010, the Commission in cooperation with the remaining Member States (Malta, UK, Belgium, Bulgaria and Romania) will assess their national legislation. Legal enforcement action will be taken in 2010 where necessary.

With regard to RoHS Directive, correct transposition is achieved by 20 Member States, for 11 of them after legal enforcement actions were launched. As of end of 2009, infringement cases were open for 7 Member States (Czech Republic, Spain, France, Italy, Romania, Sweden and Slovakia).

With regard to the Directive 2006/66/EC on batteries and accumulators, full transposition has been achieved for 23 Member States. As of end of 2009, infringement cases for failure to communicate measures of transposition of the Directive were open for 4 Member States (Belgium, Czech Republic, Greece and France). The deadline for Member States to transpose Directive 2008/103/EC amending the Directive 2006/66/EC on batteries and accumulators expired in January 2009. Full transposition has been achieved for all Member States except for Greece. In 2009 infringement cases were open for 15 Member States for failure to communicate measures of transposition of the Directive and all of them closed except for Greece. The Commission launched a conformity study to assess Member States transposition measures.

With regard to the Packaging waste Directive, in 2010 the Commission in cooperation with the Member States will assess the conformity of national legislation and take legal enforcement action where necessary.

Concerning the Directive on the management of waste from extractive industries (hereafter: the Mining waste Directive) full transposition has been achieved for 19 Member States. As of end of 2009, infringement cases for failure to communicate their transposition measures of the Directive were open for 8 Member States (Austria, Czech Republic, Estonia, France, Greece, Ireland, Portugal and the United Kingdom). In 2010, as a horizontal exercise for 10 Member States for which conformity studies are available, the Commission will assess the national legislation in cooperation with the relevant Member States and take legal action where necessary. The Member States concerned are Denmark, Hungary, Italy, Latvia, the Netherlands, Poland, Romania, Slovenia and Sweden.

With regard to ELV Directive, conformity has been achieved for 12 Member States. In 2009 the Commission has opened or continued enforcement actions concerning non-conform national legislation. As of December 2009, 13 infringement procedures were ongoing (Belgium, Czech Republic, Denmark, France, Italy, Cyprus, Lithuania, Poland, Romania, Slovenia, Slovakia, Sweden and the United Kingdom. In 2009, infringements were opened against 7 Member States concerning obligation to provide, at three-year intervals, a report on implementation of the ELV Directive (Article 9 of the Directive). As of end 2009, one case remained open (Ireland).

With regard to transposition of the Landfill Directive 1999/31/EC, legal action was taken against 15 Member States for inadequate transposition. As of December 2009 cases are still open for 8 Member States (Belgium, Czech Republic, Estonia, France, Italy, Poland, Slovakia and the United Kingdom). Reasoned Opinions have been sent to 3 Member States (Slovakia, Poland and France) and in 2009 2 Member States (Czech Republic and Estonia) were referred to the European Court of Justice. The assessment of Bulgaria's and Romania's legislation is ongoing.

In 2009, there has been one judgment related to illegal landfills (C-120/09 against Belgium). The three horizontal cases against France (C-423/05), Italy (C-135/05) and Belgium (C-120/09) are followed up in the Article 260 TFEU procedure by either a LFN Article 260 TFEU or Court application Article 260 TFEU where a Reasoned Opinion under ex Article 228 EC (now Article 260 TFEU) had already been sent. A Letter of Formal Notice was sent to Italy and to France in 2009. In a horizontal case against Spain concerning a significant number of illegal and uncontrolled landfills, the Commission referred the case to the Court in 2009.

With regard to the serious situations in Italy, Campania region and Bulgaria, Sofia concerning deficient implementation, in 2009 the Commission has worked very closely with both Member States. With regard to Bulgaria, the Commission decided to refer the case failure to provide an adequate and integrated system for the disposal of household waste in Sofia to the European Court of Justice. Concerning Italy, in June 2007, the Commission launched legal action against Italy over the chronic waste crisis affecting Naples and the rest of the Campania region. The Commission considers that Italy failed to set up an adequate and integrated waste management system in the Campania region and to guarantee that waste is collected, treated and disposed of without endangering human health and the environment. In view of the continuation of the infringement, the Commission referred the case to Court of Justice in July 2008. The case is currently pending before the ECJ and the judgment is expected in early 2010.

Judgments of the Court of Justice in 2009

A number of important ECJ judgments were delivered in 2009. Belgium was condemned for failure to transpose the Directive 1999/31/EC on landfill of waste (17 December 2009, C-120/09 *Commission v Belgium*). Greece was condemned for failure to draw up hazardous-waste management plan and to establish an integrated and adequate network of disposal installations for hazardous waste (10 September 2009, C-286/08 *Commission v Greece*). Ireland was condemned for failure to fulfil its obligations under the Council Directive 75/442/EEC on waste with regard to disposal of domestic waste waters through septic tanks in the countryside and other individual waste water treatment systems (29 October 2009, C-188/08 *Commission v Ireland*). In addition, the Court judged on a preliminary reference of an Italian court on the interpretation of the polluter pays principle in the framework of Article 15(a) of the Directive 2006/12 on waste (16 July 2009, C-254/08 F*utura Immobiliare and Others*).

6.2.2. **Evaluation based on the current situation**

The implementation reports, awareness-raising events and studies carried out showed that the implementation gaps are very serious throughout a large part of the EU, in particular as regards the waste framework directive, the landfill directive and the waste shipment regulation.

In some Member States which joined the EU after 2004, the situation is particularly problematic with heavy reliance on landfilling, inadequate waste treatment infrastructure and no societal habits to separate and recycle waste. The situation is, however, not much better in many of the other Member States which continue to breach EU rules on waste management and where inefficient diversion of biodegradable waste from landfills continues to contribute to climate change.

Probably the most serious and wide-spread gaps in implementation are the extensive illegal waste dumping prohibited by the waste framework directive and the high numbers of substandard landfills still occurring in the EU. All landfills must comply with the landfill directive and related Council decision on waste acceptance criteria for landfills, the "WAC Decision". The environmental and health impacts for citizens are significant. The Commission monitors the correct implementation of both the landfill directive and the WAC Decision. A large number of infringements of the waste framework directive and its

prohibition of illegal dumping have been addressed by horizontal cases grouping many individual illegal dumps.

On 16 July 2009, two important targets kicked in under the EU landfill directive: the closure of existing illegal landfills (Article 14) and the 2009 biodegradable diversion target, that is, diversion from landfills of 50% biodegradable waste of 1995 values (Article 5). The Commission is currently evaluating information received from Member States on their compliance with these provisions.

The joint enforcement actions showed that illegal waste shipments remain a serious problem for the EU. Around 19% of transports containing waste were illegal. Most of the cases concerned illegal exports from the EU to countries in Africa and Asia in contravention of, for example, the export ban on hazardous waste or information requirements for exports of "green", non-hazardous waste.

On 31 December 2006, the two quantitative targets of the WEEE Directive became due. This implies that starting with the reporting year 2007, the targets for separate collection, recycling and recovery have to be met by the EU-15. Slovenia must be compliant starting with the reporting year 2008, and the other EU-12 with the reporting year 2009. The Commission is to receive reports on the years 2007 and 2008 from the Member States by the end of June 2010, and will then be in the position to assess compliance by the EU-15 and Slovenia.

6.2.3. **Evaluation results**

6.2.3.1. Priorities

If properly implemented and enforced EU waste legislation could, in addition to waste-related benefits, reduce greenhouse gas emission by between 19-31% and at almost 200 million tonnes of CO2 a year. This would save €2.5 billion annually at today's carbon price of €13 per tonne. Waste legislation offers also significant opportunities for EU companies to innovate and access valuable secondary raw materials. A level playing field for companies as well as better opportunities for innovation could be ensured by strengthening implementation of the EU waste acquis. The significant costs of having to clean up after illegal dumping and its negative impacts on air and water could be avoided. Poor implementation of EU waste legislation is therefore a missed economic, social and environmental opportunity which the EU cannot afford.

The most serious case of non-compliance, in particular illegal waste dumping, missing waste infrastructure and substandard landfills need to be addressed through consistent legal actions as well as continued measures in support of better implementation and enforcement.

The currently high rate of illegal waste shipments must be brought down.

6.2.3.2. Planned action (2010 and beyond)

The IMPEL network continues to address the issues of illegal waste. The IMPEL network carries out joint inspections of waste shipments and seeks to extend these to all Member States. The Commission has also addressed this problem by proposing reinforced legislation. The recently proposed recast of the WEEE Directive aims to obtain fully documented control over 85% of the e-waste stream. In addition, it includes rules to avoid illegal shipments of electrical and electronic waste, especially when falsely declared as used products. The Commission is also assessing the feasibility of strengthening the inspection requirements under the EU waste shipment regulation.

In addition to planned actions described under the previous point, the Commission should aim to fulfil the objectives and priorities set out above through the following specific actions:

- Pursue effectively and consistently legal enforcement and proceedings before the Court of Justice concerning illegal landfills and gaps in waste infrastructure, with a particular focus on structural and systemic failures by Member States to address these problems. On the basis of conformity studies and in cooperation with Member States assess and where necessary launch legal enforcement actions concerning the conformity of national transposition measures with the Directive on packaging and packaging waste, Directive on landfill of waste, the Mining Waste Directive.
- Monitor the implementation of the targets associated to waste policies, in particular, the collection target for WEEE to be achieved by Member States will be assessed in 2010 on the basis of reporting obligations. Subsequent infringement cases will be open in case of non-compliance.
- Organise awareness events, information exchanges and other bilateral and multilateral meetings with Member States and stakeholders, with a targeted approach addressing specific problems identified in each Member States and covering the most serious and wide-spread implementation deficits, including illegal landfills, illegal waste shipments and the lack of adequate waste management infrastructure existing in several Member States. The deadline for Member States to transpose the Waste Framework Directive (2008/98/EC) expires on 12 December 2010; therefore the Commission will ensure that Member States communicate their transposition measures and will timely initiate legal enforcement actions for failure to do so.
- Closely monitor (a) Member States' compliance with the targets set in the Landfill Directive for diverting biodegradable waste from landfills; (b) the obligations to ensure that all landfills comply with this directive's requirements, in particular concerning obligations to close all non-conform landfills by 16 July 2009; and (c) the waste management capacity and landfill capacity in each Member State.

6.2.4. **Sector summary**

Reports and studies during 2009 demonstrate that significant deficits in the implementation of EU waste legislation remain in large parts of the EU, particularly as regards illegal waste dumping, inadequate waste treatment infrastructure and illegal waste shipments. The Commission stepped up its efforts to support Member States in better implementation through awareness raising, information exchange and guidance as well as participation in joint enforcement actions. Studies were carried out to explore new initiatives for coming years,

including a study on the feasibility of an EU waste implementation body and inspection requirements for waste shipments.

6.3. Environmental Impact Assessment & Strategic Environmental Assessment

6.3.1. Current position

6.3.1.1. General introduction

There are two important pieces of legislation in this sector: Council Directive 85/337/EEC[181] on the assessment of the effects of certain public and private projects on the environment, as amended by Directives 97/11/EC[182], 2003/35/EC[183] and 2009/31/EC[184] (the EIA Directive) and Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment (the SEA Directive[185]).

The EIA Directive obliges Member States to carry out environmental impact assessments before certain types of public and private projects which are likely to have a significant impact on the environment are authorised.

The SEA Directive seeks to ensure that the environmental consequences of certain public plans and programmes that are likely to have significant environmental effects are identified and assessed while they are being prepared and before they are approved.

6.3.1.2. Report of work done in 2009

The EIA Directive

The EIA Directive was amended three times, in 1997, in 2003 and in 2009:

- Directive 97/11/EC widened the scope of the EIA Directive by increasing the types of projects covered, and the number of projects requiring mandatory environmental impact assessment (Annex I). It also strengthened the procedural basis of the EIA

181 OJ L 175, 05.07.1985, p.40.

182 OJ L 073, 14.03.1997, p.5.

183 OJ L 156, 25.06.2003, p.17.

184 OJ L 140, 5.6.2009, p.114.

185 OJ L 197, 21.7.2001, p. 30.

Directive by providing for new screening arrangements, including new screening criteria (at Annex III) for Annex II projects, and providing minimum information requirements.

- Directive 2003/35/EC was seeking to align the provisions on public participation with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters.
- Directive 2009/31/EC amended the Annexes I and II of the EIA Directive, by adding projects related to the transport, capture and storage of carbon dioxide (CO_2). A new project was added in Annex I.16: *"pipelines with a diameter of more than 800 mm and a length of more than 40 km… for the transport of carbon dioxide (CO_2) streams for the purposes of geological storage, including associated booster stations"*; this type of project must shall be made subject to an assessment in accordance with Articles 5 to 10 of the EIA Directive. Furthermore, two new project categories were introduced in Annex II: storage sites of carbon dioxide pursuant to Directive 2009/31/EC (Annex II.23) and installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations covered by this Annex, or where the total yearly capture of carbon dioxide is 1,5 megatonnes or more (Annex II.24); this type of projects is subject to a screening with a view to determining whether an EIA is required.

The Commission is continuously assessing the conformity of the national transposition measures communicated and initiates, when necessary, infringement procedures. The EIA Directive generates a relatively high number of complaints, due to its large scope of application. However, given the essentially procedural character of the obligations laid down, only a small number of complaints lead to infringement cases. The majority of infringement cases concern bad (incomplete or incorrect) transposition of the Directive's provisions or failure of the Member States to apply the screening mechanism (article 4(2) and Annex III of the Directive).

In 2009, the Commission opened in total eight new infringement procedures on the basis of the EIA Directive. Five cases were opened against Belgium, Italy and Romania concerning bad application of the EIA Directive, three of which were based on a complaint. Three cases were launched against Hungary, Italy and Bulgaria for non-conform transposition of the EIA Directive. One case out of those opened in 2009 has already been closed, due to satisfactory amendments of the Bulgarian EIA legislation.

Article 2(3) of the EIA Directive allows Member States to exempt specific projects in exceptional circumstances (e.g. for unforeseen civil emergencies; threats to human health and the environment; security risks) from the provisions of the Directive in whole or in part, and to notify the Commission. In 2009, this provision has been used by Italy and Greece.

- On 29 July 2009, the Region of Umbria informed the Commission of their intention to exempt a temporary waste facility at San Carlo, Terni from the EIA procedure. According to the information received from the Region of Umbria, the request is justified by an exceptional circumstance – the emergency situation arising from the leakage of polluted waters containing chromium from an overlying contaminated site into the water table during the construction of a road tunnel. The polluted waters need to be immediately removed from the tunnel and treated in a waste facility to protect human health and the surrounding environment. The Region of Umbria has indicated that it does not intend to carry out an EIA for the waste treatment facility either in full or in part, as: i) there is no time to do so, and ii) the waste facility is a temporary one

that will be removed in around 6 months time once the impermeabilisation of the tunnel is completed.

- On 28 December 2009, the Greek Ministry of the Environment, Energy and Climate Change) informed the Commission of their intention to partially exempt the project entitled *'PATHE (Patras-Athens-Thessaloniki) main highway: Tempi interchange–Rapsani interchange section and Platamonas–Skotina junction subsection (Neos Panteleimonas diversion), roadworks to protect the existing road from rainfall'* from the EIA procedure. According to the Greek authorities, the continuous rainfall that occurred on 17 December 2007 constitutes the exceptional circumstance justifying their exemption request. The rainfall caused the death of one person and led to the interruption of traffic on this road, which is the main road link to Northern Greece. The aim of this exemption request is to guarantee road and transport safety, to protect the environment and safeguard the road link with Northern Greece.

It should be stressed that, in both cases, the recommendations of the Guidance document on the "Clarification of the Application of Article 2(3) of the EIA Directive" have been followed.

The SEA Directive

The deadline for transposing the SEA directive expired on 21 July 2004, but significant delays in transposition have occurred in many Member States. This is why the Commission's action initially focused on launching non-communication infringement proceedings against many Member States. After having ensured that the Directive had been transposed in all Member States, the Commission started a systematic assessment of the conformity of the national transposition measures communicated and initiated, when necessary, infringement procedures.

Thus, in 2008 infringement proceedings for non-conform transposition of the SEA Directive were opened against the following eleven Member States: Bulgaria, Czech Republic, Denmark, Estonia, Ireland, Latvia, Lithuania, Malta, Poland, Slovenia and United Kingdom. This action continued in 2009 and infringement proceedings for non-conform transposition were opened against twelve Member States: Spain, Belgium, Germany, Greece, Finland, France, Netherlands, Sweden, Slovakia, Austria, Italy and Portugal. Some of these cases have been already closed following clarification of national authorities and/ or adoption of necessary amendments ensuring compliance with the Directive's requirements (Bulgaria, Latvia, Malta, Poland, Czech Republic and Slovenia). In three cases (Estonia, Ireland and Denmark), the Commission continued the infringement procedure in 2009 by issuing reasoned opinions.

In addition, one infringement procedure, based on a complaint, was launched in 2009 against Bulgaria for bad application of the SEA Directive.

Judgments of the Court of Justice in 2009

The EIA Directive has been the subject of several cases brought before the European Court of Justice. The case-law of the Court of Justice has contributed to a better understanding of certain provisions of the Directive. In 2009, the ECJ delivered, inter alia, the following rulings:

In Case C-75/08 (Judgment of 30/4/2009), the Court replied to the reference for a preliminary ruling from the Court of Appeal (England & Wales) and clarified the requirements under

Article 4 of the EIA Directive. The reference for a preliminary ruling was related to whether or not it is necessary to give reasons for the determination made by the competent national authority not to proceed to an environmental impact assessment. The Court ruled that Article 4 of the EIA Directive, as amended, *"must be interpreted as not requiring that a determination, that it is unnecessary to subject a project falling within Annex II to that directive to an environmental impact assessment, should itself contain the reasons for the competent authority's decision that the latter was unnecessary. However, if an interested party so requests, the competent administrative authority is obliged to communicate to him the reasons for the determination or the relevant information and documents in response to the request made".* The Court added that *"if a determination of a Member State not to subject a project, falling within Annex II to Directive 85/337 as amended by Directive 2003/35, to an environmental impact assessment in accordance with Articles 5 to 10 of that directive, states the reasons on which it is based, that determination is sufficiently reasoned where the reasons which it contains, added to factors which have already been brought to the attention of interested parties, and supplemented by any necessary additional information which the competent national administration is required to provide to those interested parties at their request, can enable them to decide whether to appeal against that decision".*

In Case C-427/07 (Judgement of 16/7/2009), the Court dealt with two issues: the conformity of Irish legislation in relation to private road construction development, and the incomplete transposition of Directive 2003/35/EC.

- As regards the first issue, the Court recalled that a Member State which established criteria or thresholds at a level such that, in practice, an entire class of projects would be exempted in advance from the requirement of an impact assessment would exceed the limits of its discretion under Articles 2(1) and 4(2) of the EIA directive unless all projects excluded could, when viewed as a whole, be regarded as not being likely to have significant effects on the environment. The Court concluded that *"by subjecting private road construction development to an environmental impact assessment only if that development formed part of other developments coming within the scope of Directive 85/337… and themselves subject to the assessment obligation, the Irish legislation, as applicable when the time-limit set in the reasoned opinion expired, meant that any private road construction development carried out in isolation could avoid an environmental impact assessment, even if the development was likely to have significant effects on the environment."*
- As regards the second issue, the Court ruled that Ireland had failed to adopt the laws, regulations and administrative provisions necessary to comply with Article 3(3) to (7) and Article 4(2) to (4) of Directive 2003/35/EC, and had failed to adequately notify such provisions to the Commission of the European Communities. This part of the ruling is interesting because it is the first time that the Court interprets Article 10a of the EIA Directive.

In Case C-263/08 (Judgment of 15/10/2009), the Court ruled that a project concerning abstraction of water leaking into a tunnel which houses electric cables and its recharging into the ground or rock in order to compensate for any reduction in the amount of groundwater, and the construction and maintenance of facilities for the abstraction and recharging, are covered by point 10(l) in Annex II to the EIA Directive, irrespective of the ultimate destination of the groundwater and, in particular, of whether or not it is put to a subsequent use. This reference for a preliminary ruling is also interesting because the Court clarified the concept of public concerned. According to the Court, *"members of the 'public concerned' within the meaning of Article 1(2) and 10a of Directive 85/337, as amended by Directive*

2003/35, must be able to have access to a review procedure to challenge the decision by which a body attached to a court of law of a Member State has given a ruling on a request for development consent, regardless of the role they might have played in the examination of that request by taking part in the procedure before that body and by expressing their views". The Court also added that *"Article 10a of Directive 85/337, as amended by Directive 2003/35, precludes a provision of national law which reserves the right to bring an appeal against a decision on projects which fall within the scope of that directive, as amended, solely to environmental protection associations which have at least 2.000 members"*.

In Case C-205/08 (Judgment of 10/12/2009), the question of application of the EIA Directive to a transboundary power line was raised in a reference for a preliminary ruling from an Austrian Court (Umweltsenat). In his opinion, the AG Ruiz-Jarabo Colomer had stressed that *"given that individuals, goods, services and capital are able to move around the European Union without restrictions, it would be paradoxical to restore those barriers in the case of a phenomenon like pollution which, by its very nature, disregards countries and continents. Accordingly, since Community environmental policy entails the tackling of pollution in different States and since that campaign cannot be waged from one location, it would be inconsistent to split projects subject to an EIA by reference to the territory in which they take place"*. Based on its previous rulings in Cases C-142/07 and C227/01, the Court explained that *"projects listed in Annex I to Directive 85/337 which extend to the territory of a number of Member States cannot be exempted from the application of the Directive solely on the ground that it does not contain any express provision in regard to them. Such an exemption would seriously interfere with the objective of Directive 85/337. Its effectiveness would be seriously compromised if the competent authorities of a Member State could, when deciding whether a project must be the subject of an environmental impact assessment, leave out of consideration that part of the project which is located in another Member State"*. The Court concluded that Articles 2(1) and 4(1) of the EIA Directive, as amended, *"are to be interpreted as meaning that the competent authorities of a Member State must make a project referred to in point 20 of Annex I to the Directive, such as the construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km, subject to the environmental impact assessment procedure even where the project is transboundary in nature and less than 15 km of it is situated on the territory of that Member State"*.

Petitions

In 2009, the Commission received 52 petitions related to a wide variety of projects and compliance with the EIA Directive. Five petitions were closed during 2009. A large part of petitions concerned Spain, Bulgaria, Germany, Italy.

6.3.2. **Evaluation based on the current situation**

6.3.2.1. Implementation of the EIA-SEA Directives

In July 2009, the Commission adopted the fourth Report on the application and effectiveness of the EIA Directive (COM(2009)378). In September 2009, the Commission adopted the first

Report on the application and effectiveness of the SEA Directive (COM(2009)469)186. Both reports address and evaluate the status of the application and effectiveness of the Directives and their implementation by the Member States.

The Commission's report on the EIA confirms that the objectives of the Directive have generally been achieved. The principles of environmental assessment have been integrated into the national EIA systems. All Member States have established comprehensive regulatory frameworks and implement the EIA in a manner which is largely in line with the Directive's requirements; in many cases, Member States have built on the minimum requirements of the Directive and have gone beyond them. As a result, environmental considerations are taken into account in the decision-making process, which has become more transparent. However, the development of EIA is an evolving process. While ensuring that the EIA Directive is effectively implemented across an enlarged EU, it is also necessary to ensure that the Directive is adapted to the Community and international policy and legal contexts. Thus, the Commission's report indicates areas where improvements are needed (e.g. screening, public participation, quality of the EIA, EIA transboundary procedures, coordination between the EIA and other environmental directives and policies, such as climate change and biodiversity) and presents possible recommendations for action.

According to the Commission's Report on the **SEA**, it appears that the overall picture of the application and effectiveness of the SEA Directive across all Member States is a varied one, in terms of the institutional and legal arrangements of the SEA procedure, and in terms of how Member States perceive its role. This diverse picture also determines the way in which Member States view the benefits and drawbacks and what measures are likely to improve the implementation and effectiveness of the Directive. The Commission's report showed that, overall, the SEA Directive contributes to the systematic and structured consideration of environmental concerns in planning processes and better integration of environmental considerations upstream. In addition, by means of its requirements (environmental report, consultation and information of the authorities and public concerned etc.) it ensures better and harmonized planning procedures, and contributes to transparent and participatory decision making processes.

The guidance documents developed by the Commission services in previous years on important aspects of both directives187 were often used as a reference in contacts with national authorities.

6.3.2.2. Enforcement of the EIA/SEA Directives

Although the Environmental Impact Assessment sector continues to generate a high number of complaints, its contribution to the overall number of open cases has decreased. Most open cases in the sector still relate to the EIA Directive, but cases relating to the SEA Directive are on the increase. The current situation is satisfactory.

186 Both reports can be found at http://ec.europa.eu/environment/eia/home.htm.

187 http://ec.europa.eu/environment/eia/home.htm

The majority of the infringement cases related to the EIA Directive concern bad (incomplete or incorrect) transposition of the Directive's provisions or failure of the Member States to apply the screening mechanism correctly (Article 4(2) and Annex III of the EIA Directive).

With regard to the SEA Directive, it is relatively recent and there is still not sufficient experience on its implementation. Given the similar nature of the obligations between the EIA and SEA Directives, it is to be expected that problems in the correct application of the SEA Directive will be similar to those encountered in applying the EIA Directive. In terms of enforcement, early signs are that decisions as to whether smaller plans and programmes or modifications require an SEA (so-called "screening" decisions) could pose problems of bad application. In addition, there are similar concerns as regards the definition of "plans and programmes".

6.3.3. **Evaluation results**

6.3.3.1. Priorities

In 2009, the Commission services continued applying the priorities188 which were identified in the previous reports and which were highlighted by the Commission in its communication COM/2008/773 and the Commission staff working document accompanying the communication. Individual breaches of certain provisions of the environmental impact assessment legislation, which are not covered by the abovementioned priorities, should primarily be addressed through the existing review mechanisms at Member State level.

On the basis of the implementation experience, it is not necessary to modify the priorities already identified regarding the enforcement of the EIA and SEA Directives. The Commission services will therefore continue implementing the priorities identified in the

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188 It should be recalled that those priorities include the following:

- Non-conformity of transposing measures for the EIA/SEA Directives likely to affect the attainment of the legislative objectives. These cases now mainly concern the EU-12 Member States.
- Breaches concerning big infrastructure projects or interventions involving EU funding.
- Breaches linked to bad transposition of certain provisions of the environmental impact assessment legislation likely to affect overall the attainment of the legislative objectives.
- Breaches that reveal interpretation problems concerning certain provisions of the environmental impact assessment legislation which could have a significant influence on the impact of the legislation that would justify seeking clarification from the Court of Justice.

sectoral communication COM/2008/773 and the Commission staff working document accompanying the communication.

6.3.3.2. Planned action (2010 and beyond)

EIA Directive

The EIA Directive has been identified as a potential instrument for a future simplification exercise189, the aim being to identify overlaps, gaps and potential for reducing regulatory and administrative burdens, in particular regarding transboundary projects.

The findings of the Commission's implementation report will be relevant in the framework of a simplification exercise. The Commission will consider all simplification methods (codification, codification combined with the introduction of comitology, recasting, merging, use of regulation).

Any simplification initiative will aim to improve environmental protection, increase the degree of harmonisation and simplify existing procedures. Regardless of the approach chosen, the Commission will ensure that any major modification will be subjected to a consultation with all stakeholders and will undergo a legislative impact assessment.

SEA Directive

The findings of this first Commission's implementation report suggest that the application of the SEA in Member States is in its infancy, and that further experience is needed before deciding on whether the Directive should be amended and, if so, how this should be done. Member States seem to prefer stability in the legislative requirements, to allow SEA systems and processes to settle down and provide the opportunity to establish robust ways of using SEAs to improve the planning process. The next evaluation report should be prepared in 2013.

6.3.4. **Sector summary**

The EIA Directive has achieved its objectives. However, since the development of EIA is an evolving process, the challenge of ensuring that the Directive is implemented in an effective and consistent manner across all Member States is continuous. The findings of the recent Commission's implementation report will be relevant in the framework of a simplification exercise. Any simplification initiative will aim to improve environmental protection, increase the degree of harmonisation and simplify existing procedures. All simplification methods will be considered (codification, codification combined with the introduction of comitology, recasting, merging, use of regulation). Regardless of the approach chosen, the Commission will ensure that any major modification will be subjected to a consultation with all stakeholders and will undergo a legislative impact assessment.

189 COM(2009)15.

The SEA Directive is still in its infancy. Further experience is needed before deciding on whether the Directive should be amended and, if so, how this should be done.

The Commission services will continue the implementation of both Directives on the basis of the priorities recently identified in the sectoral communication COM/2008/773 and the Commission staff working document accompanying the communication.

6.4. Protecting Water Resources

6.4.1. Current position

6.4.1.1. General introduction

Water legislation in the European Union entered a new era following the adoption of the ***Water Framework Directive*****190** which establishes a strategic framework for the protection of all water bodies, i.e. rivers, lakes, coastal waters and groundwater in a highly integrated manner. As the cornerstone of EU water policy, the Water Framework Directive provides that all water bodies must meet the standard of "good status" as a rule by the end of 2015. To this end, Member States must draw up a river basin management plan (RBMP) and a programme of measures for each river basin district. The draft plans and programmes were to be submitted to the public for consultation by December 2008 at the latest. They should have been adopted by 22 December 2009 and reported to the Commission 3 months thereafter.

The Water Framework Directive (WFD) will repeal several pre-existing EU water acts by December 2013, except the Urban Waste Water,191 Drinking Water,192 Bathing Water193 and Nitrates Directives.194 The implementation of the Water Framework Directive must not

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190 Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1–73).

191 Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ L 135, 30.5.1991).

192 Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ L330, 5.12.1998).

193 Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ L031, 5.2.1976). This Directive is in the process of being replaced by Directive 2006/7/EC of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC (OJ L of 4.2.2006).

194 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).

jeopardise the achievement of the objectives of these EU water acts and vice-versa. Under the WFD, complementary Directives have been adopted on the protection of *Groundwater* against pollution and deterioration195 and on *Environmental Quality Standards (EQS)* 196 establishing the standards which constitute the chemical status criteria for the Water Framework Directive.

The ***Urban Waste Water Directive***, in particular, is a key element of EU water policy for achieving the Water Framework Directive environmental objective of good status. The Urban Waste Water Treatment Directive requires that wastewater generated by agglomerations is collected and made subject to secondary treatment before being discharged into the natural environment. More stringent treatment must be applied when wastewater is discharged into so called sensitive areas. The original EU15 Member States should have achieved the objectives of the Directive in 1998 for sensitive areas, in 2000 for large towns and cities discharging in normal areas and by 2005 for smaller towns discharging in normal areas. Regarding newer EU12 Member States, which joined the EU in 2004 and 2007, their Accession Treaties provide for extended time periods to meet the objectives of the Directive.

The ***Drinking and Bathing Water Directives*** require Member States to meet binding quality standards to ensure safe drinkable water from the tap and clean water for bathing, to monitor whether the standards are complied with and to inform consumers and the public accordingly.

The ***Nitrates Directive*** is also an important instrument which deals with the relationship between agriculture and water quality. In order to reduce and prevent water pollution caused by nitrate pollution originating from agricultural sources, Member States must monitor waters, designate so called nitrate vulnerable zones and then adopt and implement action programs and codes of good agricultural practices with the aim of improving fertiliser management and reducing nitrate leaching towards waters. Monitoring programs are required to be set up to assess the efficiency of these action programs.

The ***Floods Directive***197 requires Member States to assess flood risks and to establish flood risk management plans by 2015, with the aim to reduce flood risk for human health, economic activity, the environment and cultural heritage. The ***Marine Strategy Framework Directive***198 established a strategic framework for the protection of the marine environment

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195 Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (OJ L 372, 27.12.2006, p. 19–31).

196 Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council (OJ L 348, 24.12.2008, p. 84–97).

197 Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks (OJ L 288, 6.11.2007, p. 27–34).

198 Directive 2008/56/EC of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19-40).

in a highly integrated manner. It provides that all marine waters must meet the standard of "good environmental status" as a rule by 2020, and that coordination and cooperation between Member States has to take place in shared marine regions. To this end, Member States must draw up the necessary programmes of measures by 2015

6.4.1.2. Report of the work done in 2009

Management of the acquis, new legislation and preventive measures

The Common Implementation Strategy, an informal process set up in 2001, has delivered extensive guidance to promote the implementation of the ***Water Framework Directive***. The objective of the strategy is to provide a forum for Member States, stakeholders and Commission's experts to work together towards a successful implementation of the core water law at EU level. In this context a number of expert groups comprising Member States and stakeholders' experts have contributed to the development of various implementation tools and measures.

The implementation of the ***Water Framework Directive*** in 2009 was characterised by the following main developments. Most Member States conducted consultations of the public and interested parties on draft River Basin Management Plans (RBMPs) in the first semester. The Commission monitored this process closely and further developed the concept of and methodology for compliance-checking in consultation with Member States in expert groups. This will form the basis on which the Commission will start assessing the content of the final RBMPs in 2010, with a view to publishing a third Commission implementation report in 2012.The development of reporting structure and procedures via WISE, the Water Information System for Europe, further helps to simplify the reporting process for Member States, thus reducing administrative burden.

The second Water Framework Directive implementation report199 was published focusing on the implementation of the monitoring networks. In general, there is a good monitoring effort across the EU, although some shortcomings were identified, including some of a serious nature. For the first time all Member States who reported, did so electronically through WISE.

Preparatory work continued for the next proposal, based on article 16 of the Water Framework Directive, on the identification of new priority substances and the development of environmental quality standards for them. This proposal is planned for early 2011.

The deadlines for notification of national transposing legislation for the ***Groundwater Directive*** expired on 15 January 2009 and the ***Floods Directive*** on 26 November 2009. For the Floods Directive, compliance promotion took place in the form of the development of a transposition checklist, which was circulated to Member States. A transposition checklist is

199 COM(2009)156 final, of 01.04.2009, Report from the Commission to the European Parliament and the Council in accordance with article 18.3 of the Water Framework Directive 2000/60/EC on programmes for monitoring of water status, and the accompanying Commission Staff Working Document SEC(2009)415 of 01.4.2009.

also in development for the EQS Directive. The Commission furthermore adopted a Directive on technical specifications for chemical analysis and monitoring of water status200.

The Commission continued the stakeholder consultation process on the future eventual revision of the ***Drinking Water Directive*** which was commenced in 2008. Based on the results of this consultation exercise, the Commission in 2009 commenced the impact assessment process to accompany the drafting of a new legislative proposal amending elements of the existing legislative framework. In 2009, the Commission also drew up two documents to support the implementation of the new ***Bathing Water Directive:*** Decision 2009/64/EC on the equivalence on microbiological monitoring data allowing the use of alternative monitoring methods201 and a guidance document that provides advice to Member States for the establishment of the bathing water profiles by the 2011 deadline which was published in December 2009202. In 2009, the Commission also published its 5th report on the implementation of the ***Urban Waste Water Directive***.203

As to the implementation of the ***Nitrates Directive***, the Nitrates committee made up of Commission and Member State representatives was convened four times in 2009 mainly to discuss derogations requested by Germany, The Netherlands and the United Kingdom. These meetings resulted in the adoption of Decision 2009/753/EC (Germany), Decision 2009/431/EC (United Kingdom) and Decision 2010/65/EU (The Netherlands) allowing those Member States to apply higher amounts of livestock manure to land.. In addition, the Commission continued to assess the implementation of the Nitrates Directive in the various Member States, in particular focusing on implementation in France, Greece, Spain, Portugal, Sweden, Denmark Poland, Latvia, Lithuania, Slovakia, Czech Republic, Bulgaria and Romania.

Management of complaints and of infringements

Despite the close cooperation with the Member States, certain infringement actions were necessary in 2009.

- *Assessment of conformity of national legislation:* The Commission continued the assessment of conformity of the transposition of the ***Water Framework Directive***. At the end of 2009, the Commission still had to pursue 17 cases of non-conformity which had been opened from 2007 onwards. The Commission sent new letters of formal notice to Spain in February 2009, to Belgium and the Netherlands in September 2009 and Bulgaria

200 Commission Directive 2009/90/EC of 31 July 2009 laying down, pursuant to Directive 2000/60/EC of the European Parliament and of the Council, technical specifications for chemical analysis and monitoring of water status. OJ L 201, 1.8.2009, p 36.

201 Commission Decision 2009/64/EC of 21 January 2009 specifying, pursuant to Directive 2006/7/EC of the European Parliament and of the Council, ISO 17994:2004(E) as the standard on the equivalence of microbiological methods (OJ L23 of 27.1.2009).

202 http://ec.europa.eu/environment/water/water-bathing/pdf/profiles_dec_2009.pdf

203 Commission Staff Working Document SEC(2009) 1114 final, 3.8.2009 "5th Commission Summary on the Implementation of the Urban Waste Water Treatment Directive".

in November 2009. Additional letters of formal notice were sent to Denmark and Estonia in November 2009. Reasoned opinions were sent to Romania, France and the Czech Republic in October 2009. The Commission was however in a position to close the cases started against Slovenia and Latvia in 2009.

- *Non-communication of transposing national measures:* On the ***Groundwater Directive***, letters of formal notice on non-communication were sent to 20 Member States in April 2009. By the end of 2009 Belgium, Denmark, Estonia and the Netherlands had only submitted incomplete transposing acts. Reasoned opinions were sent to Belgium, Greece, Spain, the United Kingdom, the Czech Republic and Estonia in October 2009 and to Denmark, Luxemburg, Finland and Ireland in November 2009. The Netherlands and Ireland communicated their transposing acts early 2010.
- *Bad implementation:* there were two cases of bad application related to the ***Water Framework Directive*** decided in 2009 concerning the absence of a report on monitoring networks. Whereas the case against Greece was closed, the case against Malta had to be referred to the Court of Justice.
- *Complaints:* A horizontal complaint submitted in 2006 against 11 Member States, on the scope of the term "water services" was pursued during the year in the context of conformity cases concerning the relevant Member States. The Commission addressed this issue in the letters of formal notice relating to the non-conformity cases. A complaint against Austria on the basis of article 4.7 of the Water Framework Directive was closed in 2009 after the project was cancelled.
- *Court ruling:* The Court ruled against Spain on 7.5.2009 (Case C-516-07) on the implementation of article 3 of the Water Framework Directive.

Regarding the ***Urban Waste Water Directive,*** the Commission's enforcement work has focused firstly on ensuring full compliance with the Directive's obligation to designate all sensitive areas and ensure that more stringent treatment is provided to discharges from agglomerations into these areas by 1998 for the EU 15 Member States. In June 2009, the Commission sent Belgium a reasoned opinion under the former Article 228 of the EC Treaty for its failure to ensure compliance with the earlier judgment of the Court of Justice in case C-27/03. In May 2009 the Commission decided to refer Portugal to the Court of Justice for its failure to ensure compliance with its more stringent treatment obligations for sensitive areas. The Court of Justice also gave its judgments against Sweden in case C-438/07 and Finland in Case C-335/07 on 6 October 2009. The judgment from the Court of Justice in case C-390/07 against the United Kingdom was given on 10 December 2009. The Commission largely lost these three cases on the basis of the adoption by the Court of a strict approach to the burden of proof.

The Commission secondly continued to follow up compliance with the 31 December 2000 deadline in the ***Urban Waste Water Directive*** requiring collecting systems and appropriate treatment to be provided for urban waste waters discharges emanating from larger agglomerations of over 15,000 population equivalent. In December 2009, the Commission decided to refer France to the Court of Justice for its failure to comply with these obligations. Furthermore, a reasoned opinion was sent to Italy in February 2009 for the same failures. The Court of Justice gave its judgment against Portugal on 7 May 2009 in case C-530/07 for its failure to ensure compliance with these requirements for a number of agglomerations.

The year 2009 also saw the launching of legal action by the Commission with regard to ensuring compliance with the collecting and treatment obligations for smaller agglomerations

of 2,000 to 15,000 population equivalent for which the deadline of compliance was 31 December 2005. Letters for formal notice were sent to Belgium, France, Portugal, Germany and Luxembourg. This was the first wave of infringement action to follow up on this deadline for the EU 15 Member States.

In addition to this, a reasoned opinion was sent to Greece on 23 March 2009 for its failure to provide the Commission with a timely report on its implementation of the ***Urban Waste Water Directive***. A reasoned opinion was sent under the former Article 228 of the EC Treaty to Greece in February 2009 with regard to its failure to ensure compliance with the first judgment of Court of Justice in case C-119/02. A reasoned opinion was also sent to Spain under the former Article 228 of the EC Treaty for its failure to ensure compliance with the earlier judgment of the Court of Justice in Case C-219/05. Finally, the Court of Justice provided clarification in a case against Ireland, Case C-188/08, in a judgment of 29 October 22009 that domestic waste water discharged through septic tanks in the countryside was covered by Community waste legislation.

For the ***Drinking Water Directive,*** letters of formal notice were sent in 2009 to Lithuania, Bulgaria and Romania on the ground that their national law did not fully and correctly transpose the Directive. Furthermore, reasoned opinions were sent to Belgium and the United Kingdom and an additional reasoned opinion was addressed to Luxembourg. These infringement letters concerned the continued failure by these Member States to ensure that the ***Drinking Water Directive*** has been correctly transposed. In the same year, the Commission was able to close the cases that had been launched against Hungary, Slovenia, Malta, Latvia and Estonia in the light of these Member States' replies and initiatives. The Commission also decided to send a letter of formal notice to Spain in 2009 for its failure to correctly apply the Directive in Alicante. Furthermore, in 2009 the Commission decided to close its case against France after it was satisfied that the Member State had sufficiently implemented Court ruling C-147/07 for the violation of the "old" Drinking Water Directive (80/778/EEC).204

Concerning the new ***Bathing Water Directive***, the Commission's enforcement work focused on the notification by Member States of the national measures adopted to transpose the Directive and on the communication of the first national lists of bathing waters, which were due before the start of the 2008 bathing season:

Non-communication of transposing national measures: Member States were required to transpose the new ***Bathing Water Directive*** and notify these transposing measures to the Commission by 24 March 2008 at the latest. Letters of formal notice were addressed in July 2008 to 21 Member States, namely Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Sweden and the United Kingdom for their failure to do so. This proved successful as many of these Member States transposed and notified their domestic implementing legislation by the end of 2008. At the end of 2009, only two Member States, the Czech Republic and Poland had still not notified full transposing measures. As a consequence, at the end of November 2009, the Commission referred these two Member States to the Court of Justice.

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204 Council Directive 80/778/EEC of 15 July 1980 relating to the quality of water intended for human consumption (OJ L 229, 30.8.1980, p.11). Directive 80/778//EEC was repealed and replaced by Directive 98/83/EC on 25 December 2003.

As to the ***Nitrates Directive,*** in December 2008 the Commission decided to refer Luxembourg to the Court of Justice for having in place a non-compliant nitrate action programme (case C-526/08). A hearing took place on 2 December 2009 and the case was still pending judgment in Court of Justice at the end of 2009. In 2008 the Commission services held meetings with the United Kingdom authorities to ensure the adequate amendment of its nitrate action programmes and as a result the United Kingdom adopted new compliant programmes, which led the case being closed in 2009. The same year administrative pre-action letters for having in place non-compliant nitrate action programmes were addressed to France and Greece. As a result a case was initiated against France for having in place the non-compliant nitrate action programmes. In addition a request for information was addressed to France for clarification regarding the designation of vulnerable zones. Discussions with Spain in order to ensure the adequate amendment of its nitrate action programmes continued in 2009. By the end of 2009 the required amendments to legal texts were not yet completed to ensure compliance with the Directive.

Petitions

In 2009, the Commission received 17 petitions related to water quality management and resource protection. Two petitions were closed during 2009. Most of the petitions concerned Spain, Germany and the United Kingdom.

6.4.2. **Evaluation based on the current situation**

Emission-oriented legislation, such as the ***Urban Waste Water and Nitrates Directives***, has achieved great progress in protecting water quality. Much progress on integrated water management has been made with the gradual implementation of the ***Water Framework Directive*** and the publication of River Basin Management Plans. However, considerable challenges remain. These include addressing issues of water scarcity, droughts and floods, ensuring that waste water in the EU 12 and also originating from small towns in the EU 15 is properly collected and treated and bringing about the achievement of good chemical, ecological and quantitative status by 2015 as required by the ***Water Framework Directive***.

On the implementation of the ***Water Framework Directive,*** the situation as regards the main 2009 milestone, i.e. the delivery of the 1st River Basin Management Plans, can be summed up as follows: 1/3 of the Member States published their Plans by the deadline, 1/3 are likely to publish them before the reporting deadline in March 2010, and the remaining 1/3 have accumulated significant delays in consultation procedures, which are likely to lead to substantial delays in the adoption and implementation of the plans. The Commission will start a comprehensive assessment of all available plans after the 22 March 2010 reporting deadline.

The conformity of the transposition of the ***Water Framework Directive*** has improved during the year as a result of the prioritised actions set for 2009, although a number of non-conformity cases still remain open. Late, incomplete and non-conform transposition of the main legal act is still an obstacle to the implementation of the Directive.

One key implementation challenge was identified in the 2nd implementation report on the ***Water Framework Directive*** in relation to monitoring, i.e. the absence of exhaustive national methods for assessing the ecological status of surface water bodies or the existence of non-compliant monitoring networks. This is an obstacle to the assessment of the ecological status.

The non-communication cases brought forward on the ***Groundwater Directive***, have prompted the notification of the majority of transposition measures to the Commission. These will be subject to conformity assessment starting in 2010. Delays in transposing this act could in a few cases lead to delays in the implementation of certain groundwater related aspects of the ***Water Framework Directive***. The implementation of the ***Groundwater Directive*** will be assessed in relation to the River Basin Management Plans referred to above.

Water quality has improved following EU 15 Member States' encouraging progress in implementing the ***Urban Waste Water Directive.*** Yet, there are still many agglomerations, for instance, in Belgium, Italy and Spain that lack complete waste water collecting systems and treatment facilities. As to the EU12 Member States, the implementation of the Directive is characterized by transitional periods foreseen in the Accession Treaties regarding the building of the necessary waste water infrastructure and by the fact that the EU has made financial support available.

Concerning both the ***Drinking*** and the ***Bathing Water Directives***, assessment surveys show a real improvement in terms of meeting environmental quality standards even if further progress still needs to be made. The preservation, enhancement and restoration of drinking and bathing water quality will depend upon the correct and full transposition and implementation of both Directives, but also on the delivery of the objectives in the Water Framework Directive, Urban Waste Water Directive and Nitrates Directive.

As to the ***Nitrates Directive,*** significant progress has been made in the recent years, including in 2009, regarding the designation of "vulnerable zones" and the elaboration and implementation of monitoring programmes. However, further improvements are clearly needed, in particular, with regard to the quality of action programmes as nitrate concentrations are still major concerns in some intensively farmed areas. The Commission published on 9 February 2010 its report205 to the European Parliament and Council on the implementation of the Directive for the period 2003-2007.

6.4.3. **Evaluation results**

6.4.3.1. Priorities

The Commission will prepare the third and major report on the implementation of the ***Water Framework Directive*** in 2012 (as required by article 18 of the Directive), including a review of how Member States have tackled their river basin management planning.

This review will consider issues such as Member States' implementation of river basin based management approaches, water pricing policies, including full account and internalisation of environmental and resource costs, cooperation on trans-boundary rivers, public consultations, land use changes, setting of ecologically based objectives, protected areas, analysis of all pressures on water resources, integration of water concerns into sector policies, degree of

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205 Report from the Commission to the Council and the European Parliament on implementation of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources based on Member States reports for the period 2004-2007

achievement of good ecological and chemical status, good ecological potential and good groundwater, chemical and quantitative status by 2015, and the establishment of programmes of measures to reach the targets.

The Commission plans also to carry out a policy review on water scarcity and droughts in 2012, which will focus on assessing what is being achieved and whether more action is needed on water efficiency, policy integration, land use, use of unconventional water resources, drought management and stakeholders' mobilisation.

Regarding the ***Drinking Water Directive***, the Commission will consider drafting, in 2010, a legislative proposal aimed at revising the Directive. The Commission will also assess Member States' data on drinking water quality for 2005-2007 and compile an EU-wide synthesis report in 2010.

6.4.3.2. Planned action (2010 and beyond)

Given that the preservation, improvement and restoration of water quality is so closely linked to the ***Water Framework Directive***, apart from dealing with existing transposition-related cases, the Commission will focus on ensuring Member States fully meet their obligations, including in particular the adoption of appropriate River Basin Management Plans and programmes of measures for each river basin district and the development of national methods for assessing the ecological status of surface water bodies. Therefore, and in view of the above mentioned third report on the implementation of the Water Framework Directive, the following actions are planned:

– Enforcing the adoption of the 1st River Basin Management Plans and starting the compliance assessments of these plans in 2010, including checking the implementation of the Groundwater and the Environmental Quality Standards Directives.

– Supporting and enforcing the transposition of the Directives on Groundwater, Floods and Environmental Quality Standards, including starting conformity assessments.

– Continuing the development, together with the European Environmental Agency, of the Water Information System for Europe (WISE) in 2010 as a single platform for water information and reporting to simplify and reduce the overall administrative burden involved in reporting.

In addition, the Commission will launch, if necessary, appropriate legal enforcement action against Member States that fail to comply with the obligations set out in these Directives. In this respect, the Commission will continue to make use of the Common Implementation Strategy as an informal platform to foster better implementation and to exchange good practice.

Planned new legislation includes the preparation of a proposal on priority substances (amending annex X of the Water Framework Directive) and the establishment of related environmental quality standards.

The Commission's work regarding the implementation of the ***Urban Waste Water, the Drinking and the Bathing Directives*** will be based on a twin-track approach. On the one hand, it will continue to promote the exchange of information, experience and cooperation at

an informal level with Member States and stakeholders. On the other hand, the Commission will draw up and publish implementation reports, including a report on bathing water quality in 2010 and also in 2010 an EU-wide synthesis report on drinking water quality. In addition, the Commission will launch, if necessary, appropriate legal enforcement action against Member States that fail to comply with the obligations set out in these Directives.

The Nitrates Directive: The Commission's work to ensure compliant implementation will continue in 2010 on the basis of detailed assessments of the information provided by Member States in their 4-year implementation reports and via bilateral contacts. The assessments will focus on the main obligations of the Nitrates Directive, namely on water monitoring, the designation of "vulnerable zones" and the drawing up and updating of nitrates action programmes. It will then need to be decided whether these assessments need to be followed up with infringement action. The Commission will continue to organise meetings of the Nitrates Committee on Member States' derogation requests and to give Member States the opportunity to exchange information on implementation. The Commission published its 4 yearly report on implementation in February 2010.

The Commission will also focus on the transposition and implementation of the following new EU water Directives:

- The ***Marine Strategy Framework Directive*** establishes a strategic framework for the protection of marine waters in the EU and requires Member States to achieve "good environmental status" for all marine waters by 2020 on the basis of an initial assessment of marine water quality by 2012 and the establishment by 2015 of programs of measures. The Commission's enforcement priorities will focus on these deadlines with the first step being to assess whether Member States have notified national transposing measures and designated competent authorities by the 15 July 2010 deadline. The Commission will then need to assess whether those measures will ensure correct and full transposition of the Directive. The Commission will also need to adopt a Decision by mid-2010 fixing criteria and methodological standards for determining "good environmental status".
- The new ***Bathing Waters Directive*** was required to be transposed into national law by 24 March 2008. In 2010, the Commission will need to continue to verify whether the transposition is both correct and complete and whether the Directive is appropriately implemented, including the Member States' duty to annually designate and notify bathing waters. Enforcement action will need to be taken where necessary.

6.4.4. **Sector summary**

Substantial progress regarding the implementation of EU water law has been observed in the past decade as a result of increased awareness among decision-makers of the critical importance of meeting water quality standards to preserve water resource and the associated natural environment and to protect human health. Better implementation has often been driven by informal and formal cooperation between Member States, industries, non-governmental organisations, consumers and the Commission as well as by infringement procedures. However, more efforts need to be made to ensure full compliance with EU water Directives. In respect of the Nitrates Directive, the Commission has noted that several regions within the EU show worrying water quality trends for which reinforced action programmes will need to be developed. With regard to the Urban Waste Water Directive, Member States must ensure that it is fully applied, including in the new EU 12 Member States and in smaller towns for all 27 Member States. The implementation of EU water legislation and the enhancement,

preservation and restoration of water quality will greatly depend on Member States meeting their obligation to take all required measures to guarantee the achievement by 2015 of the environmental objectives of "good chemical and ecological status" for surface water bodies and of "good chemical and quantitative status" for groundwaters set in the Water Framework Directive. The Commission will continue to focus on the proper transposition of European water legislation, including of the new Floods and Marine Strategy Directives and their implementation. The Commission will continue its efforts to ensure that Member States fulfil their obligation under these Directives and will assist them, when necessary, via formal and informal cooperation channels.

6.5. Air quality and environmental noise

6.5.1. Current position

6.5.1.1. General introduction

Ambient air quality

The new Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe is the key legal instrument in this sector206. The Directive entered into force on 11 June 2008 and merges four Directives207 and one Council Decision208 into a single air quality instrument. It introduces new objectives for fine particles ($PM_{2.5}$) but does not change existing air quality standards. Available evidence points to serious problems in complying with the air quality limit values in many European air quality zones but the new Directive does, however, give under certain conditions Member States greater flexibility in meeting some of these standards in areas where they have difficulty complying.

Under the new Directive 2008/50/EC Member States have the possibility to notify an exemption from the application of the limit values for PM_{10} (and to postpone the limit values

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206 . *OJ L 152, 11.6.2008, p. 1–44.*

207 The four directives merged into the new directive are: Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management*;* Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air*;* Directive 2000/69/EC of the European Parliament and of the Council relating to limit values for benzene and carbon monoxide in ambient air; and Directive 2002/3/EC of the European Parliament and of the Council relating to ozone in ambient air

208 Council Decision 97/101/EC establishing a reciprocal exchange of information and data from networks and individual stations measuring ambient air pollution within the Member States.

for nitrogen dioxide (NO_2) which enter into effect in 2010) provided that certain conditions are satisfied. The Commission has nine months from the submission of a notification to assess it and to decide whether to raise objections or not. If no objections are raised, the notification will be tacitly approved at the expiry of the nine months assessment period.

Air emissions

There are several legal instruments which affect the emissions of certain air pollutants at source. These include Directive 98/70/EC relating to the quality of petrol and diesel fuels209, Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels210 and the Paints Directive 2004/42/EC on the level of solvents (volatile organic compounds) in paints, varnishes and refinishing products.

Environmental noise

The Noise Directive211 lays down a common approach to avoiding, preventing or reducing on a prioritised basis the harmful effects of exposure to environmental noise. It requires the assessment and mapping of ambient noise in large agglomerations and in the vicinity of major roads, railways and airports.

6.5.1.2. Report of work done in 2009

Ambient air quality

Since 2005 when the PM_{10} limit values entered into force, a majority of Member States have reported as being in non-compliance. In 2008, 288 zones in 21 Member States did not comply with these limits212. The dilemma has been how to treat these breaches of existing Community law whilst recognising the explicit possibility for Member States to seek a time extension for compliance. The Commission's policy has been to launch infringement proceedings in respect of those situations which have not been the subject of a notification from the Member States or where the Commission has raised objections following a Member State notification. There are currently open infringement proceedings against 22 Member States in respect of PM_{10}.

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209 Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC (*OJ L 350, 28.12.1998, p. 58–68).*

210 Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in t he sulphur content of certain liquid fuels and amending Directive 93/12/EEC (*OJ L 121, 11.5.1999, p. 13–18).*

211 Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise (*OJ L 189, 18.7.2002, p. 12–25).*

212 Provisional data; to date information from Malta and some Italian regions is missing

Up until December 2009, notifications concerning PM_{10} had been received from 18 Member States covering 295 air quality management zones. For around 16% of these, the Commission did not raise any objection, a further 15% or so of the zones were already in compliance whilst objections were raised for approximately 70% of the zones covered by the notifications. Member States are free to re-notify for zones where objections have been raised but any exemption must expire before the end of June 2011.

Whilst closing some infringement cases in 2009, the Commission also continued to pursue infringement procedures it had launched in previous years (France and Spain) and has started some others against several Member States (Bulgaria, Czech Republic, Poland, Portugal and Romania) that have shown exceedances of sulphur-dioxide (SO_2) limit values that have been in force since 1 January 2005. New exceedances were discovered in 2008 and reported to the Commission in 2009 as part of the formal reporting requirements. These excesses may also be the subject of further infringement proceedings in due course.

Air emissions

There has been a significant degree of non-preparedness by ships visiting EU ports to be able to comply with the stricter fuel sulphur requirements whilst at berth (0.1% max $^{w}/_{w}$). These requirements entered into force on 1 January 2010 but many ships have not undergone the necessary adaptation to their boilers despite the requirements having been known since 2005 and the relatively minor nature of the adaptations required. Given the volume of ships requiring technical modification and the limited number of suppliers, the Commission recommended that Member State competent authorities take into account the demonstrable conduct of ship owners to ensure that the necessary adaptation is completed in the shortest possible time when considering the infringement of the provisions of national law transposing the Directive.

There were also in 2009 ongoing infringement proceedings against two Member States (Czech Republic and *UK*) for a failure to communicate their national legislation transposing Directive 2005/33/EC which amends the sulphur in fuels directive. The CZ case has meanwhile been closed.

Environmental noise

Under the Noise Directive, the Member States had to send to the Commission by 18 January 2009 summary information about their noise action plans based upon noise maps prepared in 2007. Strategic noise maps are required to be drawn up in order to monitor the extent of noise pollution, to inform and consult the public about noise exposure, its effects, and the measures considered necessary to address noise.

Approximately half of the Member States have so far failed to submit information about their noise action plans. A further Member State (Malta) has failed to report information about noise maps and is the subject of ongoing infringement procedures.

Petitions

In 2009 the Commission received 13 petitions related to air quality and environmental noise. Five petitions were closed during 2009. Half of the petitions concerned Germany; others raised issues of air pollution in Ireland, Netherlands, Spain and Austria.

6.5.2. **Evaluation based on the current situation**

Ambient air quality

There remain widespread non-compliance with air quality limit values and particularly those for PM_{10} which is probably the pollutant of most concern given its adverse impacts on health. The limits for nitrogen dioxide enter into force in 2010 and it is likely that there will also be widespread non-compliance for this pollutant as well. This is due in part to a lack of preparedness by the Member States to undertake the necessary assessments of air quality and to put into place the necessary plans and actions to improve air quality in good time. The ongoing "time extension" exercise should improve the capacity of the Member State authorities to prepare plans and programmes. The Commission will also host a workshop to assist the Member States in preparing plans and programmes and notifications for time extensions in the spring of 2010. Community measures such as those adopted on light and heavy duty vehicles will also help improve compliance. In addition, the *Janecek* case (Case C-237/07) should also lead to improvements as it clarifies that individuals have the right to request the preparation of air quality plans before national courts.

Air emissions

There are no serious issues associated with the implementation of the fuel quality directive except for the occasional failure to report on fuel quality in a timely fashion. The sulphur in liquid fuels directive establishes maximum permitted levels of sulphur in a range of fuels including heating oil, heavy fuel oil and marine fuels. The non-respect by ship owners with the fuel sulphur requirements whilst at berth in EU ports is likely to be a short-term problem that ought to be resolved by the autumn of 2010 by which time all ship owners should have undertaken the necessary adaptation of their ships. However, there is sufficient information in the public domain that there are other regular non-compliances in relation to marine fuels. A perceived problem of the directive is that the obligation falls to the end user rather than on those placing the relevant fuel on the market. The problem is exacerbated by the fact that there is an inconsistency in approach to fuel monitoring amongst the Member States (often with very limited information) which derives from the fact that the Directive's provisions are unclear.

Environmental noise

The problems thus far encountered in relation to the implementation of the Noise Directive are three-fold. First, Member States have been late in preparing the necessary maps (although this is probably due to the fact that this is the first attempt at undertaking a technically challenging task) which then leads to delays in the preparation of noise action plans given the quite short time permitted between the two. The second problem is that there are no harmonised assessment methods and so Member States have used national methods thus making a wider geographical assessment or comparison more difficult. Third, the reporting requirements are unclear such that non-standardised reporting of maps has occurred which in some cases makes the use of the reported information very difficult.

6.5.3. **Evaluation results**

6.5.3.1. Priorities

Ambient air quality

In the coming years, the Commission will continue to monitor closely the situation with regard to compliance with air quality limit values in all Member States. It will continue to follow its "horizontal approach", which allows air pollution problems to be addressed in a far higher number of places than would have been possible if it had only focused on individual cities or regions.

Air emissions

The first priority is to improve the compliance with the permitted sulphur levels for those liquid fuels covered by Directive 1999/32/EC. Secondly, a priority will be to improve the monitoring and reporting under the both the paints Directive and the sulphur content of liquid fuels Directive.

Environmental noise

The first priority is to improve the consistency in the Member States' assessments of environmental noise and the usefulness of the reported information. A second priority is to improve the implementation of the Directive by the Member States by providing greater clarity and guidance.

6.5.3.2. Planned action (2010 and beyond)

Ambient air quality

Infringement procedures are to be envisaged against Member States in breach of the limit values for PM_{10} which do not apply for a time extension or do not meet the conditions for obtaining such extension. In addition, the Commission will start monitoring more closely the implementation of the limit values for NO2 which entered into effect in 2010. As regards excessive SO_2, the Commission will continue to pursue the legal enforcement action it has already launched against several Member States.

Air emissions

There are reviews of the sulphur in fuels and the Paints directives underway with the intention to bring forward amending legislation, if appropriate, in 2010 and 2011 respectively.

Environmental noise

The priorities for further action will be to complete the ongoing review of the legislation including its implementation. In addition, the Commission intends to propose harmonised assessment methods in 2010 by committee procedure and to consider streamlined electronic reporting procedures for a future revision of the Directive. Finally, where maps or action plans have not been prepared or reported or are deficient in relation to the requirements of the Directive the Commission may pursue infringement proceedings.

6.5.4. **Sector summary**

In 2005 a set of legally binding EU air quality limit values became applicable, including limit values for particulate matter PM_{10}, pollutant with very important adverse impacts on health. A widespread non-compliance with PM_{10} limit values remains, partly due to challenging and complex nature of this pollutant and the lower and delayed impact of certain community measures. But the main reasons are serious delays in the implementation of the directives in a large number of Member States, mainly as regards the drawing up and implementation of the necessary plans to ensure that air quality is improved in good time. The capacity and awareness of the Member State authorities of the need to tackle air pollution at the source and to prepare plans and programmes should be increased through the procedure and conditions laid down in the new Directive 2008/50/EC on ambient air quality and cleaner air for Europe for extending the time required for achieving compliance with the limit values for PM_{10}, NO_2 and benzene, joined with coherent and timely enforcement where appropriate.

In the coming years, the Commission will continue to monitor closely the air quality situation in order to ensure long term and sustainable compliance with the limit values in all Member States. In particular, it will be a priority task to assess further time extension notifications (primarily for NO_2) or re-notifications (for PM_{10}) as well as to follow-up on the decisions adopted by the Commission. A further priority will be to ensure a timely and effective implementation of Directive 2008/50/EC. Dissemination of information to the public and cooperation between the Member States and the Commission in order to develop appropriate policies should continue.

6.6. Industrial installations

6.6.1. **Current position**

6.6.1.1. General introduction

The most important piece of legislation relating to industrial emissions is Directive 2008/1/EC concerning integrated pollution prevention and control (IPPC Directive, codified version of Directive 96/61/EC). This Directive sets out common permit rules for industrial installations in order to prevent and control emissions into air, water or soil. Installations covered by the IPPC Directive are required to operate under an integrated permit granted by the competent authorities of the Member States. The provisions of the directive were due to enter into effect either in October 1999 (for new installations) or before October 2007 (for existing installations).

The Large Combustion Plants (or LCP) Directive, 2001/80/EC, aims to reduce emissions of sulphur dioxide, nitrogen oxides and dust from combustion plants whose rated thermal input is equal to or greater than 50 MW. The control of emissions from such plants contributes significantly to the Union's efforts to protect the health of EU citizens and the environment by combatting acidification, eutrophication and ground-level ozone as part of the overall strategy to reduce air pollution (see also NEC Directive).

Further important legislation relating to industrial emissions (other than greenhouse gases) includes the Waste Incineration (WI) Directive, 2000/76/EC, the VOC Solvent Emissions (SE) Directive, 1999/13/EC and the E-PRTR Regulation (EC) No 166/2006.

In addition to the sectoral directives, the National Emission Ceilings (NEC) Directive, 2001/81/EC, plays an important role in defining and limiting the total national emissions of

certain air pollutants with the aim to reduce negative effects on human health and the environment, such as acidification, eutrophication and ground-level ozone. The NEC Directive covers air emissions of all economic sectors and sources within the national territories.

The Seveso II or Major Accident Hazards Directive213 applies to establishments in which certain dangerous substances are present in sufficiently large quantities to create a major accident hazard. It contains obligations on both operators and Member State authorities to take measures aimed at preventing major accidents and limiting their consequences.

6.6.1.2. Report of work done in 2009

Revision of the existing legal framework

In June 2009, a political agreement was reached in first reading on a proposal for a directive on industrial emissions (IED), which is a recast of seven directives, including the IPPC, LCP, WI and VOC SE Directives. The Council's Position at first reading is subject to second reading in the first half of 2010, with the aim of adopting the Directive in by the end of 2010.

Work in relation to the revision of the NEC Directive could not continue in 2009 but has been put back on the new Commission's agenda in 2010.

Work on a review of the Seveso II Directive, including a number of studies and consultations with Member States and stakeholders continued in 2009, with a view to a Commission legislative proposal in 2010.

Compliance promotion and legal enforcement work

In the course of 2009 the Commission continued to carry out implementation work concerning the IPPC Directive in line with the actions specified in its action plan which forms part of the 2007 Commission Communication "*Towards an improved policy on industrial emissions*"214 *Transposition of the IPPC Directive*

In 2009 out of the ongoing three non-conformity infringement procedures regarding the non-conform transposition of the IPPC Directive, the one against the Czech Republic was closed. A Reasoned Opinion was addressed to Estonia, while in case of Lithuania it is expected that the adoption of the foreseen legislative amendments will solve the remaining shortcomings. Concerning the Article 260 (ex 228) procedure against Belgium, having received the necessary clarification from the Walloon Region, the Commission closed the case in May 2009.

Transposition of the LCP and WI Directives

After the technical assessment of the conformity studies on the LCP Directive, Member States (except Cyprus, Greece, Luxembourg and Portugal, where the transposition has been found to

213 Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances OJ L 10, 14.1.1997, p. 13–33.

214 COM(2007) 843 final

be correct and complete) were addressed by pre-258 (ex 226) letters in July 2009. An analysis of the responses is being carried out by the Commission.

Similar letters about the WI Directive were sent out in January 2010 to Member States (except Bulgaria which was subject to an individual exercise at an earlier stage, and Greece, Luxembourg and Spain, where the transposition has been found to be correct and complete).

IPPC permits for existing installations under Article 5(1) of the Directive

By 30 October 2007, all existing IPPC installations had to obtain a permit issued in accordance with the requirements of the Directive. After the expiry of this deadline, the Commission launched eleven infringement procedures in 2008 against Belgium, Bulgaria, Denmark, Estonia, Greece, Spain, Ireland, Italy, The Netherlands, Portugal and Slovenia. Out of these, the one against Estonia was closed in October 2009 and the one against Bulgaria is expected to be closed in 2010 since both Member States reached 100% in terms of permitting. Eight of the remaining nine Member States have been referred to the Court of Justice of the European Union. In addition, the Commission launched new procedures in the course of 2009 against Austria, France, Malta and Sweden.

Implementation of the IPPC and WI Directives

Three-yearly implementation reports were to be sent by Member States to the Commission by 30 September 2009 (covering the period 2006-2008). The Commission has sent pre-258 (ex 226) letters to those Member States who have not fulfilled this reporting obligation even after several reminders (to Greece and Luxembourg concerning both Directives, and to Slovenia concerning the WI Directive). The Commission will carry out the assessment of the reports provided by Member States during the course of 2010.

Implementation of the LCP Directive

For implementing the LCP Directive provisions for certain existing plants, eight Member States have chosen to apply a national emission reduction plan (NERP) instead of setting individual emission limit values: the Czech Republic, Greece, Finland, France, Ireland, Portugal, Spain and the United Kingdom.

In 2009, the Commission has checked the compliance of these MS with the NERP provisions but further communications with MS will be necessary in order to validate the assessment. For those MS where breaches have been found, infringement procedures will be launched in the course of 2010.

The Accession Treaties of four Member States (LT, RO, BG and PL) include transitional derogations for some provisions of the LCP Directive, which are conditional to meeting emission ceilings for all of the large combustion plants in the MS in certain specified years (including 2008 in all cases). The Commission has assessed the 2008 LCP emissions in these MS against the Accession Treaty ceilings and has identified potential breaches for Poland and Bulgaria. Further communication with these MS will be carried out in 2010 to evaluate the situation in view of possible infringement procedures.

Implementation of the VOC Solvents Directive

In 2009, the Commission has received the reports from all Member States on the implementation of the Directive during the period 2005-2007. As the deadline for the

application of the provisions for existing installations was 30 October 2007, no final conclusions on the implementation could be drawn, but progress has been noted regarding the authorisation or registration of installations and regarding the application of the measures to ensure compliance. A summary report will be drawn up by the end of 2010 in conjunction with the implementation report on the IPPC Directive 2008/1/EC.

Implementation of the E-PRTR Regulation

On 9 November 2009, the Commission and the European Environment Agency launched the new European pollutant release and transfer register (E-PRTR). The register contains information about the quantity and location of pollutants released to air, water and land by industrial facilities throughout Europe. It includes annual data for 91 substances and covers more than 24 000 facilities in 65 economic activities. It also provides additional information, such as the amount and types of waste transferred from facilities to waste handlers both inside and outside each country.

The Commission has been working on a questionnaire for the three-yearly implementation reports to be sent by Member States to the Commission, together with the information to be reported to the E-PRTR pursuant article 7 of the Regulation by 31 March 2011.

Implementation of the NEC Directive

According to the NEC Directive, Member States shall prepare emission inventories and emission projections for certain air pollutants and shall submit this information to the Commission and the EEA annually. The report due by 31 December 2009 had to include emission inventories for 2007 (final) and 2008 (provisional) and updated emission projections for 2010.

The analysis of the latest reports shows that a number of Member States are still projected to be above the ceilings for 2010. In a few cases the transgression is small and it is likely that the ceiling can be met in the course of the next years.

For eight Member States (Austria, Belgium, France, Germany, Ireland, Luxemburg, Malta, Spain) the transgression is substantial, ranging from 10 to 58% and these Member States would have to make significant additional efforts to comply with their ceilings.

The Commission is considering the most appropriate way to address these shortcomings and to ensure proper implementation of the Directive by the deadline of end 2010.

Transposition of the Seveso II Directive

In 2009 the Commission pursued infringement procedures against a number of EU-12 Member States for non-conform transposition of Directive 96/82/EC and the amending Directive 2003/105/EC (the Seveso II Directive). During the course of the year 3 of those cases were closed (Estonia, Latvia and Romania). At the end of 2009, cases remained open against Bulgaria, Czech Republic, Lithuania and Poland. The Commission also pursued an infringement procedure against Belgium for non-conform transposition of Directive 96/2/EC. It also closed infringement procedures previously initiated against 4 EU-15 Member States (Denmark, Finland, France and Sweden) for non-conform transposition of amending Directive 2003/105/EC.

External Emergency Plans under the Seveso II Directive

The Commission also continued legal action before the Court against 6 Member States (Austria, Belgium, Germany, Luxembourg, Portugal and Spain) where external emergency plans for so-called upper-tier establishments were lacking in breach of the Seveso II Directive. During 2009 the Court issued rulings against Austria, Belgium, Luxembourg and Portugal (see below). The cases against Germany and Luxembourg were closed since the Member States concerned had taken steps to ensure that the necessary plans were in place.

Petitions

In 2009, the Commission received 6 new petitions related to industrial emissions. These petitions raised issues concerning the United Kingdom, Lithuania and Italy. In addition, the Commission has been dealing with those petitions which were received in earlier years, but follow-up with the national authorities has proved necessary to enable sending updated information to the Parliament. Particular attention has been paid on cases where potential serious or persistent breach of EU law could have been identified (e.g. alleged huge exceedance of emission limit values by ILVA steel plant in Taranto, Italy).

Judgements of the Court of Justice of the European Union in 2009

In a judgement of 7 May 2009 (Case C-443/08) the Court found that France had not adopted laws and regulations to transpose several provisions of Directive 1999/13/EC, in particular, the concepts of 'small installation' and 'substantial change'.

In a judgement of 1 October 2009 (Case C-252/08) the Court concluded that Malta has failed to fulfil its obligations under the Large Combustion Plant Directive, 2001/80/EC, in relation to the operation of the Phase One steam plant of the Delimara and Marsa power stations.

The Court also declared that Belgium (Case C-342/08), Luxembourg (Case C-289/08), Austria (Case C-401/08) and Portugal (Case C-30/09) were in breach of their obligations in relation to the drawing up of external emergency plans pursuant to Article 11.1 (c) of the Seveso II Directive (cf. judgements of 12 March 2009, 2 April 2009 and 15 October 2009).

6.6.2. **Evaluation based on the current situation**

IPPC Directive

The IPPC Directive still falls short of being fully applied and respected. This is partly due to very significant delays in the correct transposition and implementation of the obligations of the directive in an important number of Member States. The main problems relate to the important delays in issuing the IPPC permits, shortcomings in the implementation (in particular BAT), a need for increased clarity in the legislation, restrictions in its scope and insufficient enforcement of its application. While the currently negotiated IED proposal addresses the majority of these shortcomings, significant progress has been achieved in terms of permitting, due to increased support to Member States, and due to the infringement procedures where necessary. The Commission is also continuing its in-depth assessment of the implementation by Member States through the investigation of the permits and operational conditions of some specific installations (new study launched in 2010).

LCP Directive

As a result of pre-258 (ex 226) letters concerning transposition, several Member States have made commitments in terms of adopting new legislation to ensure full compliance with the Directive's provisions.

As set out under point 1.1.1.2, the Commission has identified issues concerning the application of the Directive in a number of Member States, in particular concerning compliance of the emissions with the ceilings defined under the NERP and with the ceilings under the Accession Treaty. In case of confirmation of the identified breaches, the Commission will launch infringement procedures in the course of 2010.

In addition, the correct application of the Directive at individual installations will be considered in the framework of a study in the course of 2010.

Waste Incineration Directive and VOC Solvents Directive

The correct application of these Directives at individual installations will be considered in the framework of a study in the course of 2010.

NEC directive

As described above under point 1.1.1.2, some Member States will probably fail to meet the national emission ceilings for 2010 mainly due to insufficient measures taken in order to reach compliance.

The NEC Directive has not yet been subject to conformity checking (exercise launched in 2009, results expected in 2010). Therefore, no assessment of the transposing national measures could be carried out, and potential deficiencies have not yet been addressed.

Seveso II Directive

The basic provisions of the Seveso II Directive have remained essentially unchanged since 1996. Overall, the Directive appears to be fit for purpose and is being satisfactorily applied and complied with. The level of transposition and implementation of the Directive has continued to improve, and the number of outstanding legal proceedings has steadily reduced. As noted above, a review of the Directive is ongoing. This is expected to lead to Commission proposals in 2010. No major overhaul of the Directive appears to be necessary. The main change that is foreseen is the adaptation of Annex to the Directive to the Globally Harmonised System of classification of dangerous substances. Certain other provisions are expected to be updated and clarified to improve implementation and enforceability.

6.6.3. **Evaluation results**

6.6.3.1. Priorities

Industrial emissions

Continued attention needs to be paid to improved respect for the existing provisions and to a strong follow-up on their full implementation.

Priority is therefore attached to:

- Finalization of the on-going co-decision procedure with the adoption of a new industrial emissions Directive

- Ensuring full transposition of the relevant Community legislation by Member States (assessment of conformity studies on the VOC is foreseen for 2010, while on the NEC Directive for 2011)
- Increased assistance to Member States on implementation
- Ensuring that Member States fulfil their reporting obligations.
- A more systematic approach concerning the breaches of the IPPC Directive and launching of infringement procedures
- Annual reporting on progress in implementation of the Action Plan and its revision as part of the next Commission's report on IPPC implementation (around end 2010 or beginning 2011) (see further information below).
- Development of transposition checklist and interpretative guidance documents on the new IED to provide early support to Member States in transposition and implementation.

On the basis of these priorities and the work programming set out below, it is hoped to improve substantially compliance with the existing provisions at the latest by 2012, by which time the focus of attention will move to the implementation of the new legislative framework.

Seveso II Directive

Regarding the Seveso II Directive, the main priority at present is the development of proposals for a revised Directive in the light of the results of the review process. However importance also continues to be attached to ensuring the full transposition and implementation of the existing Directive.

6.6.3.2. Planned action (2010 and beyond)

2008-2010 Action Plan on implementation of the existing IPPC directive

The Commission will continue to prioritise work on its current collective infringement proceedings, covering a large number of deficiencies in several Member States. Infringement proceedings could also be opened against those Member States showing a significant delay in fulfilling their reporting obligations.

The Commission will strengthen its monitoring and supporting mechanisms by revising and refocusing the current IPPC Action Plan on Implementation for the time period 2008-2010 as set out below.

- Ensure full transposition of the legislation on industrial emissions

  The success of the existing legislation relies first of all on effective transposition by Member States in their national legal systems. At the end of 2009, Estonia and Lithuania had still not fully transposed the IPPC Directive. The Commission will continue to pursue infringement proceedings to ensure full and correct transposition of the industrial emissions legislation.

- Support Member States in their implementation of the legislation

  This will include enhanced information exchange, the development of guidance, visits to authorities and training. This support will continue throughout the introduction and implementation of the revised legislation.

- Enhanced monitoring and compliance checks

The Commission will continue to monitor the number of IPPC permits issued and updated and, where required, investigate the system of monitoring and inspection at IPPC installations. Such investigation will cover specific industrial installations and sectors, the use of general binding rules, and the analysis of complaints.

- Improve data collection for review of BREFs and create stronger links with the Research Framework Programme

The permit conditions, including emission limit values (ELVs), used in IPPC permits must be based on BAT as defined in the IPPC Directive. To continue to help the licensing authorities and companies to determine BAT, the Commission will continue to organise the exchange of information between experts from Member States, industry and environmental organisations resulting in the adoption and publication by the Commission of BAT Reference Documents (BREFs).

Seveso II Directive

The Commission will continue to monitor implementation of the Seveso II Directive and take action as appropriate. The ongoing work in relation to the review of the Directive will also continue in 2010 with Commission proposals for possible amendments to the Directive expected later in the year.

6.6.4. **Sector summary**

Both the transposition and the implementation of the legislation related to industrial installations and diffuse sources (in particular the IPPC, the LCP and the NEC Directives) pose difficulties for Member States. The Commission, while supporting Member States in different ways (interpretational guidance, studies, workshops), carries out enforcement actions to ensure full compliance.

The capacity and awareness of competent authorities of the need to tackle air pollution should be increased throughout the EU.

In the coming years, the Commission will continue to monitor closely the implementation, while at the same time giving priority to the adoption of the new Directive on Industrial Emissions.

6.7. Chemicals and Biocides

6.7.1. **Current position**

6.7.1.1. General introduction

Chemicals

The REACH Regulation (1907/2006)215, which entered into force on 1 June 2007, is the cornerstone of the EU's new chemicals legislation. REACH, which is considerably more far-reaching than previous legislation, deals with the registration, evaluation, authorisation and restriction of chemicals. Registration means the process by which information on the safety of chemicals will need to be submitted for registration in a central database, managed by ECHA. Evaluation includes a quality check of the registration dossiers and examination of testing proposals and is done by ECHA; it also includes a more thorough examination of specific substances, where Member States play an important role. Substances of very high concern will require authorisation for use and before being placed on the market. There is a procedure for restriction of manufacturing, placing on the market or using of certain substances where there is an unacceptable risk to health or the environment, which needs to be addressed on community wide basis.

Regulation (EC) No 1272/2008216 on the Classification, Labelling and Packaging of Substances and Mixtures was adopted in 2008 and incorporates the UN GHS (United Nations Globally Harmonised System) into Community law and will replace after a transitional period certain provisions of the current directives related to the classification, packaging and labelling of dangerous substances (Directive 67/548/EEC217) and preparations (Directive 1999/45/EC218). Provisions of these Directives shall be repealed with effect from 1 June 2015.

Directive 76/769/EEC, which concerns restrictions on the marketing and use of certain dangerous substances, was repealed by the REACH Regulation on 1 June 2009, the work having been fully integrated into REACH (through Title VIII and Annex XVII)

Two other pieces of legislation should be mentioned here. First, persistent organic pollutants ("POPs") are governed by Regulation (EC) No 850/2004219. This legislation implements the commitments to which the Community has signed up to under the 1998 UN-ECE Protocol on POPs and the UNEP Stockholm Convention on POPs. The Regulation contains requirements to eliminate and/or restrict POP substances to a level equal or even stricter that foreseen under the international agreements. The obligations from the two international agreements have thus been completely transported into Community Law and are as such enforceable according to these rules.

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215 Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No. 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC.

216 OJ L 353, 31.12.2008, p. 1

217 OJ L 196, 16.08.1967, p. 1.

218 OJ L 200, 30.07.1999, p. 1.

219 OJ L 158, 30.4.2004, p. 7.

Second, basic provisions concerning the protection of laboratory animals used in experiments are contained in Directive 86/609/EEC220. On 5 November 2008 the Commission adopted a proposal to revise Directive 86/609/EEC. One of the key reasons for the proposed revision was uneven implementation of the directive in the Member States.

Biocides

Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market221 (the Biocides Directive) concerns the authorisation and placing on the market of biocidal products in the Member States, the mutual recognition of authorisations within the Community and the establishment at Community level of a list of active substances which may be used in biocidal products.

By 10 February 2010, 33 active substances were included in Annex I and 1 active substance in Annex IA. In accordance with Article 16(1) of the Directive, Member States are allowed to apply national rules and practices during the implementation of the review programme. The first product authorisations in accordance with the Biocides Directive were also granted in 2009.

Regulation (EC) 689/2008 of the European Parliament and the Council of 17 June 2008 concerning the export and import of dangerous chemicals implements the Rotterdam Convention on the Prior Informed Consent Procedure (PIC) for certain hazardous chemicals and pesticides in international trade. It establishes special rules for the trade in certain chemicals with third countries with a view to protecting human health and the environment from potential harm and contributing to the environmentally sound use of such chemicals. By 10 February 2010 around 140 substances (pesticides and industrial chemicals) were listed on the Annex I to the Regulation, including 40 substances that are subject to the PIC procedure under the Convention.

6.7.1.2. Report of work done in 2009

This sector of EC environmental law is characterised by substantial new developments; however, legal enforcement action in these fields does not constitute a significant workload for the Commission.

Chemicals

REACH entered into force on 1 June 2007. This included the establishment of the European Chemicals Agency (ECHA) and the preparation of IT-systems to hold the new database. Registration of chemicals manufactured or imported in quantities of 1 tonne or more per year started on 1 June 2008. Between 1 June and 1 December 2008 manufacturers had the possibility to pre-register their phase-in substances. Pre-registration, as its name suggests, precedes full registration and provides for extended deadlines. Depending on the volumes and the hazardous properties of substances, these extended deadlines are 2010, 2013 or 2018. In 2008, ECHA has received about 2.7 millions pre-registration dossiers. If a company failed to pre-register by 1 December 2008 it can no longer place its phase-in substances on the market

220 OJ L 358 , 18.12.1986 p. 1.

221 OJ L 123, 24.4.1998, p. 1.

until it has completed registration. With the first registration deadline for phase-in substances set for 1 December 2010, most of the work undertaken under registration in 2009 has addressed industry´s preparedness for the submission of registration dossiers and their compliance with data sharing provisions. In this context a number of events took place in 2009 aimed at raising awareness of industry´s obligations and role in the Substance Information Exchange Fora (SIEFs). In addition to this a lot of effort has been put into further clarifying obligations under the registration and evaluation chapters, mostly turning into updates of ECHA´s guidance documents.

2009 saw the first judgement of the ECJ on REACH, which pertained to the obligation to register monomers and other substances used to manufacture polymers, in which the legality of the REACH provision was upheld by the Court.

Within the process of authorisation, ECHA identified in 2008 15 substances of very high concern (SVHC) for the candidate list subject to eventual authorisation. This list was increased in 2009 with 14 substances. Out of the first batch of 15 substances, 7 were prioritised for authorisation in 2009, though the Commission is still working on the amendment of Annex XIV which will effectively subject them to the authorisation regime in REACH. Once the Commission takes the decision to make a substance subject to authorisation (by including them in Annex XIV REACH) any manufacturer, importer or downstream user of that substance must apply for authorisation to use it.

Member States were obliged to notify to the Commission their national provisions for penalties applicable for REACH infringements by 1 December 2008. A number of Member States did not fulfil that obligations and therefore by March 2009 legal enforcement action was launched against 8 Member States. Of these Member States, 7 adopted national provisions for penalties applicable for REACH infringements and notified them to the Commission, with the result that the infringement processes were closed. Only one country has still to adopt these national rules. The Commission launched a study to assess the national laws setting penalties for the infringement of the REACH provisions, which was performed and finalised in 2009. The study has identified a number of differences between Member States´ approach to adopting penalties which are effective, proportionate and dissuasive. The Commission is currently studying the possible steps ahead further to the findings and conclusions of this study, with a view to achieving a higher level of harmonisation and a better functioning of the internal market in this respect.

To exchange information on enforcement, the Forum for Exchange of Information on Enforcement, composed of members nominated by the Member States, was set up within ECHA. The Forum coordinates a network of Member State authorities responsible for enforcement of the Regulation. Its main tasks include: proposing, coordinating and evaluating harmonised enforcement projects and joint inspections; identifying enforcement strategies and, best practice in enforcement; and examining proposals for restrictions with a view to advising on enforceability.

In 2009 an additional 9 substances were included within the framework of the Stockholm Convention on POPS and an additional 7 in the UN ECE protocol on POPs,

Every three years Member States shall forward to the Commission information on the application of the POPs Regulation including information on infringements and penalties and statistical data on production and placing on the market of particular substances. By the

deadline of 20 May 2008 several Member States had not fulfilled these obligations. Despite repeated requests four Member States did not provide their three yearly report in 2009.

The co-decision process for the revision of Directive 86/609/EEC on the protection of laboratory animals saw great advancement in 2009, where the Swedish Presidency took an active role to reach an agreement with the European Parliament for a final text.

In 2009, the Commission undertook and finalised a study on mixture toxicity which aimed at providing a 'state of the art' overview of the science and methodologies for assessing the hazardous effects arising from exposures to several chemicals simultaneously. This work coincided with an initiative taken in the Council requesting the commission to assess how such effects arising from multiple exposures are covered in current legislation.

In 2009, the Commission received two petitions related to animal experiments in Malta and the United Kingdom and compliance with the Directive 86/609/EEC the protection of animals used for experimental and other scientific purposes.

Biocides

During 2008 the Commission followed the transposition of the Commission Directives amending Directive 98/8/EC concerning the placing of biocidal products on the market. The Commission has closed all of the open infringement cases.

The Commission also opened 11 horizontal non-communication cases concerning Commission Directive 2007/20/EC222 of 3 April 2007 amending Directive 98/8/EC of the European Parliament and of the Council to include dichlofluanid as an active substance in Annex I thereto. Most of the aforementioned cased were closed during 2008, and the last two were closed in 2009.

A similar situation followed the implementation of Commission Directive 2006/50/EC223 of 29 May 2006 amending Annexes IVA and IVB to Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market, where out of seven non communication cases opened during 2008. All but one cases were closed during 2008, and the last was closed in 2009.

In 2008 three non-communication cases were registered concerning Commission Directive 2007/69/EC224 of 29 November 2007 amending Directive 98/8/EC of the European Parliament and of the Council to include difethialone as an active substance in Annex I thereto and two concerning Commission Directive 2007/70/EC225 of 29 November 2007 amending Directive 98/8/EC of the European Parliament and of the Council to include carbon dioxide as an active substance in Annex IA thereto. All of the cases were closed during 2009.

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222 OJ L 94, 4.4.2007, p. 23.

223 OJ L 142, 30.5.2006, p. 6.

224 OJ L 312, 30.11.2007, p. 23.

225 OJ L 312, 30.11.2007, p. 26.

The Commission adopted Decision 2009/244/EC concerning the placing on the market of a carnation (Dianthus caryophyllus L., line 123.8.12) genetically modified for flower colour, for the purpose of import, retailing and ornamental uses (not for cultivation or food/feed uses).

On biocides, as set out in the implementation report following Article 18 of the Directive published in 2008, the current progress rate of the review programme will not permit its completion by 14 May 2010 as planned. This is mainly due to the fact that, before any review could start (the second phase), it was necessary to establish an inventory of active substances used in biocidal products placed on the European market of biocidal products. Considering these findings, an extension to the review was proposed by the Commission. On 16 September 2009 the Commission adopted Directive 2009/107/EC extending the deadline for completion of the review programme until 14 May 2014[226].

The Commission presented its proposal for a revision of the Biocides Directive in 2009. The proposal will take the form of a Biocides Regulation repealing and replacing the Biocides Directive. The main changes proposed by the Commission will include an extension of the scope to materials and articles treated with biocidal products, a possibility to have certain categories of products authorised at Community level, measures aimed at strengthening the mutual recognition, obligatory rules on data sharing of tests involving vertebrate animals and a partially harmonised fee structure. The proposal is currently discussed in the Council and in the European Parliament.

6.7.2. **Evaluation based on the current situation**

Chemicals

The REACH Regulation entered into force on 1 June 2007. Its main obligations started applying on 1 June 2008.However, as 1 December 2010 is the first deadline for the registration of a large number of substances (CMRs and substances above 1000 tonnes), there is not yet sufficient information concerning its implementation in Member States. In order to ensure compliance, Member States should put in place effective monitoring and control measures. The Commission is concerned that Member States may not be able to make sufficient resources available to ensure compliance by economic operators. Every five years Member States must submit a report to the Commission on the operation of the Regulation in their respective territories, including sections on evaluation and enforcement. The first report has to be submitted by 1 June 2010. The Commission is currently preparing a reporting format and an IT system for these reports.

With regard to POPs Regulation, the reason for the delay in submitting the annual reports could be that the Member States may consider them as low priority, as the reporting format only sets out four questions which remain the same every year. As for the three annual reports, the reasons could be linked to non-ratification of the Stockholm Convention on POPs and/or the Protocol to the regional UNECE Convention on Long-Range Transboundary Air Pollution (CLRTAP) on POPs.

Biocides

226 Directive 2009/107/EC of 16 September 2009 amending Directive 98/8/EC, OJ L262, 6.10.2009, p40

In the biocides area the Commission undertook to monitor the progress made in the second phase of the Review Programme for biocides regulated by Commission Regulation (EC) No 1451/2007.227 Serious delays and significant variations were found in the performance at all stages of the procedure between the Member States.

The reasons for the delays are, for example, the technical complexity of the work, insufficient human resources and lack of experience with dossier preparation (by participants) and dossier evaluation (by Member States). However also considerable time was needed to develop appropriate testing methodologies and exposure scenarios or for defining harmonised approaches for the evaluations.

The revised PIC Regulation was adopted in 2008 and requires the Commission to regularly compile a report on the operation of the procedures, which shall include reports from Member States. The Commission foresees to compile this report in the course of 2012.

6.7.3. **Evaluation results**

6.7.3.1. Priorities

Chemicals

Effective implementation of REACH and CLP Regulations is the main priority in the chemicals sector. The Chemicals Agency is playing a key role in the effective implementation of REACH. It will coordinate, over a period of 11 years, the registration of some 30 000 chemical substances in use today.

Member States should provide their first reports on the operation of REACH by June 2010 and ECHA will report by June 2011. On the basis of these reports, the Commission will prepare the first general report on the operation of REACH.

The priorities for POPs will be firstly to transpose the agreements reached in 2009 under the Stockholm Convention and the UNECE Protocol into the POPs regulation and secondly to develop proposals for new additions to the Convention.

. *Biocides*

The first applications for authorisations in accordance with the Biocides Directive were received in 2009. In view of this, further action is needed to facilitate the implementation of the legal and practical requirements related to these procedures. Estimations showed that the number of applications for product authorisation and mutual recognition will exponentially increase in 2010 and beyond.

In addition the speeding up of the evaluation of biocidal active substances in the Review programme will be a main priority.

As concerns the PIC Regulation, it is planned to draft a proposal for an amendment that addresses changes resulting from Regulation (EC) 1272/2008 on classification, labelling and

227 Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market, OJ L 325, 11.12. 2007, p3

packaging of chemicals and to finalise the guidance documents for implementation of the Regulation.

6.7.3.2. Planned action (2010 and beyond)

Chemicals

The Commission will continue to work to enhance good cooperation, coordination and exchange of information with the Member States and the European Chemicals Agency regarding enforcement so that the system established by the REACH and CLP Regulations can operate effectively. The Commission will work closely with the Forum for Exchange of Information on Enforcement in this regard.

Most guidance documents necessary for industry preparedness for registration under REACH and notification to the Classification and Labelling inventory under the CLP Regulation have been adopted, with some necessary updates being on their way. The staggered deadlines for registration are 2010, 2013 and 2018 and the deadline for CLP notification is 1 January 2011. Equally a lot of work will be developed in 2010 to ensure the proper functioning of the evaluation and authorisation titles in REACH for which ECHA and Member States are responsible.

REACH calls for the Commission to carry out a review of the scope of the Regulation by June 2012 to avoid overlaps with other relevant Community provisions, and on the basis of which it could present if appropriate a legislative proposal. The work to be undertaken has started and for this purpose the Commission has launched a study which will be developed in 2010 and 2011 with the view to assess overlaps and gaps between REACH and other community legislation when regulating chemicals, but also identify ways of increasing synergies between all relevant pieces of legislation.

With regard to POPs Regulation the Commission will continue to stress to the Member States the importance of the continuity of the information provided by them. Furthermore the Commission intends to improve the reporting format with the aim to make it more user-friendly and less time consuming. This can be achieved by establishing links to the SEIS (Shared Environmental Information System) initiative. A SEIS Regulation is currently under preparation. The Commission will also address reminders to Member States about their reporting obligations on the application of the POPs Regulation, followed by legal enforcement action where necessary.

Biocides

In the biocides area, the Commission will continue to carefully monitor that the obligations of the Member States under the biocides review programme, including the delivery of competent authority reports, are adequately met, and will take action where this is not the case. During the meetings of the competent authorities for biocides, which are held four times a year, the Commission will asks for an update on significantly delayed dossiers. Member States are invited to explain the reasons in order to solve outstanding issues or collect expert views.

In view of the acceleration in the product authorisation stage, the Commission in consultation with the Member States will focus on the smooth implementation of the process and ensure the operation of the Register for Biocidal Products to be in line with the requirements.

The fifth Conference of the Parties of the Rotterdam Convention will be held in June 2011 and requires a thorough preparation by the Commission, which will start in 2010 and become a priority in 2011. The administrative work as well as the software of the European Database on Export and Import of dangerous chemicals, which is the central tool for implementation of the PIC Regulation, will undergo major changes that need to be implemented smoothly.

6.7.4. **Sector summary**

Chemicals and Biocides sector of EC environmental law is characterised by substantial new developments. In the chemicals sector, though REACH main obligations started applying on June 2008, the first big lot of registrations will come in by December 2010. Similarly, the Industry Classification and Labelling inventory will be established in 2011. Consequently, sufficient information on the implementation is not yet available. Although almost full compliance has been achieved concerning introduction of penalties, the Commission is looking at the way forward for a more harmonised approach in relation to these penalties.

As regards biocides, firstly, the revision of the current legislative framework is expected to bring important improvements to implementation. Secondly, the review programme for biocides requires close monitoring in order to avoid excessive delays. Thirdly, the start of the product authorisation stage is a key challenge which will require attention in forthcoming years.

6.8. Governance and Environmental Liability

6.8.1. **Current position**

6.8.1.1. General introduction

Governance

Public access to environmental information has always been considered as a key issue to promote greater awareness of environmental matters, a free exchange of views and more effective participation by the public in environmental decision-making. The EU decided as long ago as 1990 to introduce specific legislation; however, new impetus was given by the UN-ECE Aarhus Convention. Directive 2003/4/EC228 was adopted to fully comply with the requirements of the Convention and constitutes a significant improvement compared with the previous legislation. The objectives of the Directive are: a) to guarantee the right of access to environmental information held by or for public authorities and to set out the basic terms and conditions of its exercise; and b) to ensure that, as a matter of course, environmental information is progressively available and disseminated to the public using in particular computer telecommunication or electronic technology. Both 'passive', i.e. upon request, and 'active' dissemination of environmental information are covered by the Directive. Its scope is broad due to the fact that 'environmental information' and 'public authority' are both given very wide definitions. The latter covers not only national, regional and local authorities, including public advisory bodies, but also private non-governmental bodies providing public services or performing public administrative functions in relation to the environment. The

228 Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, *OJ L 41, 14.2.2003, p. 26–32*

Directive makes provision for both administrative and judicial review. Directive 2003/4/EC had to be transposed by 14 February 2005.

Public access to environmental information is complemented by the second pillar of the Convention. This was implemented by Directive 2003/35/EC229 in respect of certain plans and programmes relating to the environment, as provided for in Article 2. This Directive had to be transposed by 25 June 2005.

The third pillar of the Aarhus Convention is access to justice, which guarantees the effectiveness of the previous two pillars was partially implemented by the previously mentioned two Directives and Directive 2004/35/EC and by Regulation 1367/2006[230].

Other activities pursued by the Commission to enhance access to justice can be summarised as compliance promotion, which ensures a dialogue with Member States on possible problems of implementing EU law at national level. Amongst others, access to justice constitutes an integrated element of the Cooperation with Judges programme that was started in 2008.

Environmental Liability

Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage (Environmental Liability Directive)231 establishes a framework for environmental liability based on the "polluter pays" principle, with a view to preventing and remedying environmental damage.

6.8.1.2. Report of work done in 2009

Governance

Despite some delays, all the Member States have transposed the Directive 2003/4/EC. The Commission contracted an external consultant to carry out studies dealing with the conformity of national implementing legislation with the requirements of the Directive. Further to the finalisation of these studies in 2008 and their examination, in 2009, letters were sent to most Member States inviting them to comment on the findings of the studies.

Only few petitions submitted to the European Parliament raised problems of the application of Directive 2003/4/EC in the Member States. On the basis of information available or supplementary documents supplied in the framework of the petitions, there was no evidence that public authorities applied the Directive incorrectly.

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229 Directive 2003/35/EC of 26 May 2003, OJ L 156, 25.06.2003, p. 17. Public participation and access to justice concerning Directives 85/337/EEC and 96/61/EC are dealt with the relevant sections of this Report.

230 See Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13).

231 OJ L 143, 30.4.2004, p. 56.

Despite some delays, all the Member States have transposed Article 2 of the Directive 2003/35/EC. By 25 June 2009 the Commission had to send a report on the application and effectiveness of the Directive to other institutions. National reports were not provided for by the Directive, however the Commission considered it important to have information from the Member States. The requested contributions were forwarded, in certain cases, with an important delay, preventing from the elaboration of the report by the deadline. On the basis of the received information, it appears that the effective application of Article 2 in the Member States was limited, notably due to the fact that in most cases the SEA procedure (see the section on the SEA) was followed. There is no evidence that it was applied incorrectly.

The Czech Presidency of the EU Council of Ministers organised a Conference on the Application of the Aarhus Convention in Practice in Brno, 16-17 April, 2009, where the Commission was represented and access to justice was discussed by the participants.

The Cooperation with Judges programme continued during the year 2009, starting with a seminar in Sofia on EIA and Nature, followed by a Lithuanian seminar discussing EU waste legislation in December and in February 2010 Paris seminar on Nature which all had the integrated element of access to justice.

Concerning access to justice, the Commission places a particular emphasis on implementing and monitoring the Member States application of already adopted EU law, namely the Access to Information and Public Participation Directives' provisions on access to justice.

The role of the ECJ in interpreting access to justice provisions is becoming more and more important in furthering the objective of wide access to justice. The Court delivered a judgement in 2009 stating that Ireland has failed to transpose certain elements of Directive 2003/35, (C-427/2007). By requiring the notion of prohibitive costs in judicial environmental cases to be explicitly transposed, the Court provided a better guarantee of effective access to justice for the public and NGOs. In a preliminary ruling concerning the Swedish national rules (C-263/08) the Court ruled on NGOs standing, stipulating that the national rule setting a requirement that only an association with at least 2 000 members may bring an appeal against a decision adopted on an environmental matter is against the provisions and the objective of wide access to justice set out in Directive 85/337/EEC.

Environmental Liability

The Environmental Liability Directive (ELD) was to be transposed by 30 April 2007 at the latest. However, only four Member States had notified complete transposition by this transposition deadline, consequently the Commission had to open an infringement procedure in 2007 through a Letter of Formal Notice addressed to 23 Member States. This infringement procedure for non-communication of the transposing measures was continued in 2008 and 2009 by Reasoned Opinions to 16 Member States And eventually a Court application against 9 Member States which still failed to transpose the Directive. After having issued two judgements for failure to transpose the ELD in 2008 (Finland and France), the European Court of Justice rendered further five judgements in 2009 (Austria, Greece, Luxemburg, Slovenia and the United Kingdom) for failure to transpose the Directive. By the end of 2009 one Member State still had not fully completed the transposition into domestic law.

After the exploratory study of 2008, the Commission launched and obtained a comprehensive study in 2009232 in view of the reporting obligation in Article 14 of the Directive on the effectiveness of the ELD in terms of actual remediation of environmental damages and on the availability at reasonable costs and on conditions of insurance and other types of financial security for the activities covered by the scope of strict liability of the ELD. Within the second study, questionnaires were addressed to Member States' experts, the insurance sector, and the industrial sector, interviews were carried out and a workshop was held with all stakeholders in July 2009. The study was finalised in November 2009233.

6.8.2. **Evaluation based on the current situation**

Governance

According to Directive 2003/4/EC, no later than 14 August 2009 Member States had to communicate to the Commission their national reports on the experience gained in its application to enable it to submit a report to other EU institutions. A Guidance Document for these reports was drawn up by the Commission, in co-operation with Member State experts, in 2007.

During 2009, the Commission reminded Member States of the need to submit these reports. By the end of 2009, the majority of the Member States had responded to the Commission's reminder, but it proved nonetheless necessary to prepare action under Article 258 of the Treaty for those Member States who had failed to submit a report.

Although the national reports had yet to be analysed at the end of the year, it appeared that, in general, public authorities at national and regional level have applied Directive 2003/4/EC correctly. However, given the Directive's wide scope, it was less clear whether, at local level, notably in small municipalities or entities, public access to environmental information is always provided according to the relevant standards.

In addition, requests for clarification to the Commission services show that public authorities need to make greater efforts to inform the public adequately of their rights under the Directive. This right includes the right to make an administrative or judicial challenge at national level to a refusal by a public authority to provide requested information. In general, the Commission considers that that these rights should be exhausted before the Commission itself examines the justification for an individual instance of refusal of access to information. Moreover, it appears that public authorities need to pay further attention to the active dissemination of environmental information to the public, in particular, through the Internet.

On the basis of information available and national contributions, there was no evidence that public participation concerning plans and programmes, provided for in Article 2, was incorrectly applied by Member States.

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232 Accessible at: http://ec.europa.eu/environment/enveco/liability/index.htm#financial_security

233 Study on the implementation effectiveness of the Environmental Liability Directive (ELD) and related financial security issues, November 2009.

The implementation of public participation provisions related to EIA and IPPC is still under assessment by the Commission, further action shall be taken in light of the findings.

The Cooperation with Judges programme is considered to be a useful tool in raising awareness of access to justice requirements at EU level amongst judges.

Regarding the case-law of the ECJ, there is a growing number of cases on the most important issues related to access to justice (such as the admissibility rules of the public in review procedures, and the issue of prohibitive costs that can be regarded as barring effective access to justice) which has an indisputable positive effect on access to justice.

Environmental Liability

The Directive is relatively new and at present still not completely transposed by all Member States. However, a first evaluation of important aspects of the ELD will be presented in the above mentioned Commission report on the effectiveness of the ELD and availability of financial security which is due by April 2010. Another, broader application report of the Commission will be due by April 2014, based on Member States application reports.

Apart from the application of the significance criteria (Annex I of the Directive) and the application of the appropriate measures to ensure the remedying of environmental damage ('primary', 'complementary' and 'compensatory' remediation according to Annex II of the Directive), the proper functioning of financial security instruments will be significant for the successful implementation of the ELD in the Member States in particular as regards effective remediation of environmental damage. Furthermore, the Commission has given support to the Member States through interpretation of open questions in expert meetings and in particular through an EU supported research project developing a tool-kit on the remediation methods. The results of the research programme REMEDE were made available in 2008234.

According to the results of the comprehensive study of 2009 referred above, further work needs to be done to raise the awareness of the ELD and its implications among operators and other stakeholders (local administrators, financial and insurance industry) which could be done through information, workshops and other means of awareness raising. The study showed also a need for improving communication and exchange of information between the different stakeholders in order to create and stabilise a sustainable and well performing implementation infrastructure. Further, the promotion of a common understanding and of a more harmonised approach of the most important practical issues (significance, measurement and remediation methods of environmental damage) for instance through guidance and through continued information exchange would appear useful. In order to broaden financial security, an increased focus on alternative financial security instruments should also be promoted. Finally, following the example of some Member States, all Member States should be encouraged to draw up information on ELD cases and to exchange information about such cases of environmental damage in order to better cooperate in the implementation of the ELD across the EU and to evaluate its effectiveness in terms of actual remediation of environmental damage.

234 Available on the Internet at the official Website of Resource Equivalency Methods for Assessing Environmental Damage in the EU (REMEDE): <http://www.envliability.eu/>.

6.8.3. **Evaluation results**

6.8.3.1. Priorities

Governance

The priority for the Commission is to verify the conformity of national legislation with the requirements of the Directive 2003/4/EC and ensure that the directive is applied correctly in practice by public authorities at all levels. In 2010, the Commission will analyse Member State responses to the enquiries it sent in 2009 and will ensure the necessary further follow-up. The Commission will present in the first part of 2010 the report on the application and effectiveness of Directive 2003/35/EC.

By monitoring Member States' implementation of existing provisions, drawing attention to possible non-compliance and engaging in interactive discussions with national judges as a part of the Cooperation Programme with Judges, the compliance promotion pursued by the Commission in access to justice issues is considered very effective.

Environmental Liability

The first priority is to ensure that all Member States complete transposition of the ELD as soon as possible. Therefore, the horizontal non-communication cases were continued in 2009 and shall be concluded in 2010 until the last Member State would transpose the Directive completely. The next priority for the Commission is to ensure that the Environmental Liability Directive is correctly transposed in all Member States. Therefore the Commission started to assess the conformity of the domestic legislation with the ELD and has to conclude this exercise in cooperation with Member States in 2010 and where necessary launch legal enforcement actions. Another priority for 2010 results from the mentioned reporting obligation before April 2010.

6.8.3.2. Planned action (2010 and beyond)

Governance

As mentioned above, in 2010 the Commission will ensure an appropriate follow-up to the dialogue it initiated with Member States in 2009 in order to address transposition of the Directive or concrete difficulties encountered by public authorities in enforcement.

Based on the national contributions, the report on the experience gained in the application and effectiveness of the Directive, as provided for by its Article 9 will be drawn up.

Compliance promotion in access to justice issues is envisaged to continue beyond 2010.The on-going Cooperation with Judges Programme shall ensure a constant dialogue with national judges on access to justice.

It is envisaged to include environmental access to justice provisions in the e-Justice portal described above.

Environmental Liability

The Commission's efforts need to continue to ensure that the ELD is fully and correctly transposed. Apart from continuing and completing the horizontal non communication action,

the Commission will therefore in 2010 conclude the examination of the conformity of the transposing legislation of the Member States and take enforcement action as necessary. In this context, the Commission will continue to discuss questions of interpretation and application of the ELD with government experts.

The Commission will adopt and publish the report on the effectiveness of the ELD and availability of financial security and will present it to the Council and Parliament in the first semester 2010. The Commission will also draw the conclusions from the report and input from its discussion in the Council and Parliament and start implementing them in 2010 as far as possible.

6.8.4. **Sector summary**

Overall, Member States appear to apply the Directive on access to environmental information correctly, but the existing practice indicates that public authorities of all levels, in particular lower ones, need to make greater efforts to inform and respect the right of the public under the Directive.

Fully correct transposition of the Directive in the Member States is a priority for the Commission and in 2010 the Commission will pursue the exchanges opened with Member States in 2009.

Based on the reports submitted by Member States, the Commission will also prepare a report on implementation for both Directives 2003/4/EC and 2003/35/EC.

The ELD is relatively new and was still not fully transposed by one Member State at the end of 2009; therefore the Commission's priority is to firstly achieve a full transposition by all Member States and consequently carry out the first evaluation of ELD which will be available in the first half of 2010.

6.9. Climate change

6.9.1. Current position

6.9.1.1. General introduction

Climate change stands at the top of the international political agenda. This is confirmed both by the attention given to the 15th Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) in December 2009 in Copenhagen, and by the swift adoption of the climate and energy package in early 2009. This package, which entered into force in June 2009, implements the EU's greenhouse gas emission reduction commitments for 2020, prepares the EU's greenhouse gas emissions trading system (EU ETS) for the future and provides the framework to meet reduction targets in sectors other than those covered by the EU ETS. The high political priority the EU gives to climate change is also confirmed by the decision to appoint a Commissioner and create a new Directorate General for Climate Action.

ETS

The EU ETS was established with the adoption of the Emissions Trading (Directive 2003/87/EC235). It is a market-based instrument aimed at gradually reducing emissions in selected sectors. It should help the Union and the Member States meet their Kyoto Protocol commitments to reduce greenhouse gas emissions in a cost-efficient manner. The EU ETS started operating in January 2005. A revision of the ETS Directive (Directive 2009/29/EC236) was prepared and negociated in 2008 and entered into force in June 2009. This revision broadly amends the EU ETS design as from 1 January 2013 (i.e. the beginning of the third trading period 2013-2020). In addition, Directive 2008/101/EC237, which provides for the inclusion of the aviation sector in the EU ETS, entered into force in February 2009 and will take effect as from 1 January 2012.

Monitoring mechanism

Together with the Emissions Trading Directive, Decisions 280/2004/EC238 and 2005/166/EC239 are among the most important cross-cutting measures in this area of climate change. With the adoption of these decisions, the EU established a mechanism for monitoring and reporting greenhouse gas emissions. This mechanism has enabled the Commission to more accurately, rigorously and regularly evaluate the progress made in reducing emissions under the UNFCCC and the Kyoto Protocol. As a result, Member States have increased timeliness and quality in the submission of their data.

EU Effort Sharing Decision

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235 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).*

236 Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (*OJ L 140, 05.06.2009, p.63-87*)

237 Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading with the Community (*OJ L 8, 13.01.2009, p.3-21*)

238 Decision 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).*

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

Decision 406/2009/EC240 (Effort Sharing Decision, ESD) lays down binding annual targets for greenhouse gas emissions outside the scope of the ETS, for the period 2013-2020, for each Member State. It entered into force on 25 June 2009. About 60% of the total EU-27 greenhouse gas emissions are covered by the ESD. The most important emitting sectors are transport (about 30% of total ESD emissions), private households and services (25%), and agriculture (15%). By way of contrast with the EU ETS, which is a Union-wide market-based instrument already in place with well established rules and procedures for installations and Member States, the Effort Sharing Decision is a new legal instrument with far-reaching consequences for Member States' obligations to reduce greenhouse gas emissions. Though the ESD will rely on both Union-wide and national measures, the lion's share of mitigation actions will have to be prepared and implemented at Member State level.

By 2013, the following key actions will be necessary to implement the ESD and prepare for the 2013-2020 compliance period:

a) Determining the exact targets for Member States for the period between 2013 and 2020 (comitology decision);
b) Amending the Monitoring Mechanism Decision (ordinary legislative procedure);
c) Establish modalities for transfers of emission allocations between Member States (comitology decision);
d) Prepare for the inclusion of land use, land-use change and forestry (LULUCF) in the Uniion reduction commitment (co-decision, this point is explained in more detail below).

In addition, the ESD invites the Commission to make an amending proposal as appropriate in the case an international agreement leading to mandatory reductions of GHG emissions exceeding 20 percent compared to 1990 levels materialises. The ESD also sets out the criteria to be assessed in a report that is to be presented within 3 months of the signature of such an agreement by the Union.

On the basis of this report, the Commission will, if appropriate, submit a legislative proposal amending Decision 406/2009/EC and Directive 2009/29/EC in view of the emission reduction commitment to be implemented under the international agreement on climate change. The Commission will act with a view to entry into force of the amending act upon the approval of that agreement by the Union. The proposal would be based on the principles of transparency, economic efficiency and cost-effectiveness, as well as fairness and solidarity in the distribution of efforts between Member States.

LULUCF (Land use, land-use change and forestry)

Articles 8(1) and 8(6) of the ESD and Article 28(1) of the ETS Directive require the Commission to consider, in its assessment of an international agreement, a number of issues consequent to including LULUCF-related emissions and removals in the Union reduction commitment.

If an international agreement is reached, the Commission intends to propose to include emissions and removals related to LULUCF in the Community reduction commitment, as

240 Decision No. 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitment up to 2020.

appropriate on the basis of rules forming part of the agreement, according to harmonised modalities ensuring the permanence and environmental integrity of the contribution of the sector as well as accurate monitoring and accounting. The Commission would also assess whether the distribution of individual Member States' efforts should be adjusted. The legal proposal is to enter into force at the same time as the international agreement.

In the event that no international agreement on climate change is approved by the Union by end 2010, Article 9 of the ESD provides that Member States may specify their intentions for the inclusion of LULUCF in the Union reduction commitment taking into account methodologies within the work carried out in the context of the UNFCCC. In view of such specification by Member States, the Commission will, by 30 June 2011, assess options for the inclusion of emissions and removals from activities related to LULUCF in the Community reduction commitment, ensuring the permanence and environmental integrity of the contribution of the sector as well as accurate monitoring and accounting, and make a proposal, if and as appropriate, with the aim of the proposed act entering into force from 2013 onwards. The Commission would also consider whether the distribution of individual Member States' efforts should be adjusted accordingly.

CCS Directive

Directive 2009/31/EC on the geological storage of carbon dioxide (CCS Directive) is one of the world's first comprehensive legal frameworks for the regulation of the environmental risks of carbon capture, transport and storage. It entered into force on 25 June 2009. Although it covers the full chain of activities arising in CCS, carbon capture and transport are comparable to other activities already regulated at EU level. The CCS Directive therefore regulates these activities by introducing them into the scope of the existing legislation. Carbon capture is regulated under Directive 2008/1/EC (IPPC Directive) and under Directive 85/337/EC (EIA Directive', and pipeline transport is regulated under the EIA Directive.

As there is no suitable existing legal framework for the management of carbon storage sites, the CCS Directive applies here as a free-standing instrument. The Directive establishes an authorisation regime for geological storage sites and covers site exploration, characterisation, selection, monitoring, closure and post-closure management, as well as composition of the CO2 stream. One notable provision included is that draft permit decisions for storage sites (and also decisions on transfers of responsibility, see below) are to be submitted to the Commission, which is to issue - within 4 months - an opinion on whether the draft permit decisions meet the requirements of the Directive. The Commission will establish a Scientific Panel to assist it in its assessment.

Liability arrangements for storage sites are of concern both to operators and public administrations, and are organised by a number of provisions within the Directive. The operator is responsible for taking corrective measures in the case of significant irregularities (events implying the risk of leakage or damage to human health or the environment). As a consequence of the inclusion of geological storage of CO2 within Annex I of the EU ETS, the operator must also surrender EU allowances to cover any leaked emissions. Operators must also put in place financial security before the start of operation, so as to ensure that all obligations under the permit can be met. Damage to the local environment is covered by including geological storage within Directive 2004/35/EC (Environmental Liability Directive), which has its own provisions on financial security. There are also provisions on transfer of responsibility of the site to the state, upon the operator's payment of a financial contribution covering at least the anticipated cost of monitoring for a period of 30 years, when

a number of conditions that indicate that the site presents a low risk of leakage or other adverse impacts are met,.

There are further provisions ensuring that all new power plants above a particular threshold are subject to an assessment of the feasibility of CCS retrofit, as well as on market access to CO2 transport networks and storage sites to avoid distortions of competition.

There are no implementing provisions required under the CCS Directive, but the Commission is invited to provide guidance on a number of issues (composition of the CO2 stream, conditions for transfer of responsibility to Member States, and financial contributions required of the operator at the point of transfer of responsibility). The Commission also intends to produce guidance on a number of other issues.

6.9.1.2. Report of work done in 2009

In 2009 the EU ETS-related work was focused on two main sets of activities: (a) ensuring that the current ETS works properly and that its rules are correctly applied by Member States and (b) preparing the implementing measures for the revised ETS Directive to be implemented from 2013.

In relation to the implementation of the monitoring and reporting mechanism, the Commission focussed on ensuring the complete and timely submission of data by the Member States. Under Article 3 (1) and (2) of Decision 280/2004/EC, read in conjunction with Decision 2005/166/EC, Member States must submit to the Commission an annual report on national greenhouse gas (GHG) emissions (due by the 15 January 2009) and a biennial report on national policies and programmes aimed at reducing these emissions (due by the 15 March 2009). These reports are required by the Commission so it can draft its annual reports on the EU's actual and future predicted GHG emissions in compliance with the UN Framework Convention on Climate Change and the Kyoto Protocol.

There are no implementing provisions required under the CCS Directive, but the Commission is invited to provide guidance on a number of issues (composition of the CO2 stream, conditions for transfer of responsibility to the Member State, and the financial contribution required of the operator at the point of transfer of responsibility). In addition, the Commission will also provide support to Member States in the transposition process.

(a) Ensuring that the current ETS works properly

Conformity assessments

On the basis of conformity assessment initiatives related to the ETS Directive, the Commission services indentified various issues requiring clarification in respect of national legislation transposing the Directive. Consequently, the services sent informal letters of inquiry to 24 Member Sates in the course of 2009, asking for clarifications of their national legislation. As of January 2010, 21 Member States had replied: while many issues have been solved, some replies agree that legislative amendment would be useful, whereas other replies indicate a difference of opinion between the Member State and the Commission. On the basis of the explanations given by the Member States, the Commission will decide on further action in 2010.

Implementation and legal enforcement

Cases related to the ETS Directive - National Allocation Plans:

The individual national allocation plans (NAPs) adopted by Member States fix the total number of emission allowances and set out the methodologies to allocate them to individual installations covered by the EU ETS. NAPs for period between 2008 and 2012 are thus an important element in the Member States' strategies for achieving their relevant emission reduction targets under the Kyoto Protocol.

In 2007 several MS opposed the Commission decision on their respective NAP. In essence, they claimed that the upper limit set by the Commission on the total quantity of allowances they may allocate was too low, and that the Commission had exceeded the limits of its discretion when assessing the proposed NAPs by using its own methodology.

Consequently, 9 Member States brought annulment actions on the basis of Article 230 EC before the European Court of Justice. The Slovak Republic subsequently withdrew its case, and in early 2010 the following cases were pending before the General Court: T-221/07 Hungary, T-194/07 Czech Republic, T-369/07 Latvia, T-368/07 Lithuania, T-499-500/07 Bulgaria, T-483-484/07 Romania. For each of these cases, the written procedure has ended.

In Cases T-183/07 and T-263/07, the General Court delivered its judgments on 23 September 2009. The General Court annulled the Commission's decisions rejecting the Estonian and Polish NAPs. It considered that the Commission had exceeded its powers by relying on data that in its view were more robust than the data contained in the two NAPs without giving sufficient reasons as to why the data in the NAP were considered to be of insufficient quality, and by fixing a maximum level for the total quantity of allowances to be allocated by Poland and Estonia. Moreover, in the Polish case (T-183/07), the General Court found that the Commission infringed the obligation to state reasons, and in the Estonian case (T-263/07), that the Commission infringed the principle of sound administration.

The Commission lodged appeals to Cases T-183/07 and T-263/07 on 3 December 2009. Those appeals are based on several legal grounds. Most importantly, the Commission considers that the General Court interpreted the powers of the Commission in the NAP assessment process too narrowly. The Commission also submits that General Court did not sufficiently taken into account the fundamental purpose of the EU ETS – to reduce overall EU emissions of greenhouse gases – and the need to ensure the equal treatment of Member States during the NAP assessment process.

Some companies covered by the EU ETS also brought actions. The only such case still pending concerns a direct action (T-16/04) brought before the General Court by Arcelor. In essence, Arcelor argues that the EU ETS Directive breaches the principle of equal treatment. The Court of Justice has already ruled on similar issues in another case also related to Arcelor. All the other cases against the EU ETS brought by companies have been found to be inadmissible.

Other cases related to the ETS Directive

American Airlines, United Airlines, Continental Airlines and the American Air Transport Association are seeking to annul the EU ETS before the UK High Court in respect of its application to aviation. The Commission will intervene in support of the EU ETS if this issue comes before the Court of Justice.

EU ETS NAP Implementation:

During 2009, the remaining four NAPs, relating to Bulgaria, Hungary, Poland and Cyprus, have been approved. As a result of the judgements in Cases T-183/07 and T-263/07 (see above), the Commission adopted new decisions on the originally notified Estonian and Polish NAPs on 11 December 2009. As the NAPs were rejected, Estonia and Poland will have to submit new NAPs, which will be subject to further assessment by the Commission.

Use of credits generated under the mechanisms of the Kyoto Protocol (i.e. hydroelectric power production projects)

According to the ETS Directive as amended by Directive 2004/101/EC (the Linking Directive), "Member States may allow operators to use CERs and ERUs from project activities in the Community scheme" (Article 11a (1)), with the exception of credits from land use, land use change and forestry activities as well as nuclear projects (Article 11a (3)). "In the case of hydroelectric power production project activities with a generating capacity exceeding 20 MW, Member States shall, when approving such project activities, ensure that relevant international criteria and guidelines, including those contained in the World Commission on Dams November 2000 Report "Dams and Development – A New Framework for Decision-Making", will be respected during the development of such project activities(Article 11b (6)).

Since the interpretation of this requirement varied among Member States, a voluntary harmonisation process on the application of Article 11b (6) was carried out in 2008 and 2009. It has resulted in uniform guidelines and a questionnaire template to guide project proponents through the preparation of the compliance report. The guidelines and the template are the output of one year's work of an informal working group set up by Member States and the Commission. The final version of the documents was presented to Climate Change Committee on 29 January 2009. Following a transitional period, as of 1 July 2009 all large hydroelectric projects are to be approved by all Member States only if they have submitted to Member States' DNA, together with other required documents, also a verified Article 11b(6) compliance report.

(b) Preparing the implementation of the revised EU ETS

Before 2013 15 comitology procedures, 7 legislative proposals and a variety of reporting requirements are foreseen to implement the EU ETS.

During 2009, the Commission held a number of separate stakeholder and expert meetings regarding the list of (sub-)sectors deemed to be exposed to a significant risk of carbon leakage, the auctioning regulation, the harmonised rules for transitional free allocation (benchmarks), the need for measures to prevent market abuse and the regulations on monitoring and reporting of emissions and on verification of emission reports and accreditation of verifiers. All of these measures are to be adopted through comitology.

The revised ETS Directive advanced several deadlines for the Commission's deliverables. For example, the deadline for determining the sub-sectors deemed to be exposed to a significant risk of carbon leakage was advanced by 6 months to 31 December 2009, the deadline for adopting a Regulation on timing, administration and other aspects of auctioning was advanced by 6 months to 30 June 2010, and the deadline for adopting harmonised rules for the transitional free allocation of allowances (benchmarks) was advanced by 6 months to 31 December 2010. Due to the importance of providing regulatory certainty and predictability to

the market, the bulk of the necessary implementing measures should be ready well in advance of the beginning of the third trading period in 2013.

In 2009, implementing measures and further guidance for the revised EU ETS from 2013 were prepared in the following areas:

Benchmarking and carbon leakage

During 2009 the Commission held a number of broad stakeholder meetings and bilateral consultations with industry and NGOs as well as expert meetings with Member States' representatives on the topics of a list of sectors and subsectors deemed to be exposed to a significant risk of carbon leakage and on transitional Union-wide rules for harmonised free allocation (benchmarks). Both measures are to be adopted through comitology. A list of sectors and subsectors deemed to be exposed to a significant risk of carbon leakage, the first implementing measure under the revised Directive, was adopted by the Commission on 24 December 2009 as Commission Decision 2010/2/EU.

Preparations for large-scale auctioning as from the 3rd trading period

Article 10(4) of the revised EU ETS Directive invites the Commission to adopt a Regulation on the auctioning of allowances by 30 June 2010. In 2009, the Commission continued its preparatory work to this end. Stakeholders were invited to participate in a written public consultation which was open from 3 June to 3 August 2009 and which was based on a detailed consultation document. The responses and a draft outline of the Regulation were discussed in stakeholder meetings in September and October respectively. Throughout the year, many further meetings with specific stakeholders and Member States took place to ensure a thorough and correct understanding of the various technical issues to be addressed in the Regulation. A proposal is to be submitted to the Climate Change Committee in early 2010.

Protection from insider dealing and market manipulation

Article 12(1a) of the revised EU ETS Directive provides that the Commission, by 31 December 2010, shall examine whether the market is sufficiently protected from insider dealing or market manipulation and, if appropriate, bring forward proposals to ensure such protection. Due to the cross-cutting nature of the topic, DG Environment, DG Transport and Energy and DG Internal Market and Services worked together to get a first overview of the level of protection of the EU ETS carbon market. A Task Force looked into the nature of the carbon market, on the one hand, and the scope of relevant financial markets legislation and energy markets legislation, on the other hand. This preliminary work was followed up by preparations for a more in-depth external study to be launched in 2010.

Registries

During the first half of 2009 the Commission finalised the implementation of Regulation 916/2007/EC (the Registry Regulation) and Regulation 994/2008/EC that provides amended rules for the compliance calculation, the national allocation plan tables' management and the connection of the registries of Cyprus and Malta through the Community Registry

The revised EU ETS Directive provides that all allowances will be held in the Community Registry as from 2012. This will transfer the bulk of Member State-level ETS-related IT-operations to the Commission, a process which will require a significant expansion of the Registry related IT-capacities of the Commission.

During the second semester of 2009, the Commission held meetings with Member States registry Administrators to elaborate the rules and the technical modalities deemed necessary to adapt the registries system and particularly the European Union Registry to Directive 2008/101/EC (Aviation), Directive 2009/29/EC (ETS Review) and Decision 406/2009/EC (Effort Sharing). The new provisions render necessary an amendment of the Registry Regulation to be adopted through comitology in early 2010.

(c) Implementation and legal enforcement of ESD and CCS

ESD

Although no comitology procedures were initiated with regard to the ESD in 2009, the Commission services have started preparations for a number of implementing provisions. Similarly, preparatory work on the revision of the Monitoring Mechanism (Decision 280/2004/EC) is ongoing.

EU CCS Directive

The main implementation and legal work related to CCS so far in fact took place in ancillary legal contexts. The first item was Community ratification of amendments to the Convention for the Protection of the marine Environment of the North-East Atlantic ('OSPAR Convention') to allow geological storage of CO2 under the seabed (adopted 30 November 2009). The second was the development of monitoring and reporting guidelines (MRGs) for CCS under the Emissions Trading Directive for the purposes of quantifying the emissions for which allowances must be surrendered for capture, transport and storage activities, including in the case of leakage (comitology, EP and Council scrutiny completed, adoption pending).

Member States have to transpose the provisions of the Directive by 25 June 2011. By way of exception, the provision regarding the assessment of the feasibility of CCS retrofit (see above) applies from 25 June 2009 and had to be transposed by that date.

(d) Ensuring complete and timely reporting by the Member States

In early 2010, the Commission was able to close all pending cases against Member States(EE, HU, LUX, MT) that had failed to submit their 2008 annual and 2007 biennial reports.

New cases were launched in 2009 against several Member States on the ground that they had communicated to the Commission no or incomplete 2009 annual reports on GHG emissions or 2009 biannual report on policies and measures. This concerned :

BE, BG, CY, CZ, DK, DE, EE, EL, ES, FI, FR, HU, IRE, IT, LUX, LT, LV, MT, NL, PL, PT, SI, SK and the UK for the 2009 annual reports;

HU, PL, LV, RO for the 2009 biannual reports.

In view of the Copenhagen Climate Change Conference the Commission found it important to take a strict approach in this regard. In early 2010 the Commission was able to close all cases, except the cases against BG and MT concerning the 2009 annual report and the cases against PL and RO concerning the 2009 biannual report.

Still, it is the Commission's view that the emphasis of its enforcement action should not be on the start of new infringement proceedings, but rather on a constructive collaboration with the Member States resulting in the Member States submitting their complete reports on time. This is the approach that the Commission will continue to follow concerning the 2010 annual reports due for 15 January 2010.

6.9.2. **Evaluation based on the current situation**

(a) Ensuring that the current ETS works properly

For the current ETS, the following problems and corrective actions were identified:

Conformity assessments

The conformity studies on the transposition by Member States of the ETS directive as amended by Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 and the informal letters of inquiry that were issued focussed on those provisions of the ETS Directive that were not likely to be modified as a consequences of the adoption of the revision of the ETS Directive in 2008 and 2009. The assessment of the replies received so far reveals both minor and major issues of concern to the services such as on the scope of the implementing legislation or the absence of verification of actual emissions. The Commission services will take the appropriate steps to ensure full compliance.

Implementation and legal enforcement

Cases related to the ETS Directive - National Allocation Plans:

EU ETS NAP Implementation

The delays associated with the process of approving the NAPs drawn up by Member States led to an extended period of uncertainty in the market with respect to the overall cap of the EU ETS which was built bottom-up. Such uncertainty hampered the proper functioning of the allowance market and the ability of companies to decide on investments in clean technologies.

During 2009, all the NAPs have been assessed in accordance with the EU ETS Directive. The market price since 2008 shows that there is the scarcity of allowances on the market.

Use of credits generated under the mechanisms of the Kyoto Protocol (i.e. hydroelectric power production projects)

The application of harmonised guidelines and compliance report template has led to a harmonised approval of large hydroelectric project activities but it does not harmonise certified emission reductions' (known as CERs) acceptance. Whereas Member States have been applying the requirements of Article 11b (6) to the approval of project activities, a majority of Member States are reluctant to check already certified CERs surrendered for compliance against the approved project criteria. Partial harmonisation has been achieved in so far that CERs from projects approved in line with Article 11b(6) guidelines will be accepted for compliance in the ETS by all Member States.

The Commission has set up a website devoted to the co-ordinated approach to Article 11b (6) of the amended ETS directive in 2009 and will continue monitoring the implementation of voluntary guidelines by Member States.

(b) Preparing the implementation of the revised EU ETS

The revised EU ETS was adopted to improve some specific areas of the current EU ETS. These areas for improvement were identified through a review and extensive stakeholder consultations during the first trading period (2005-2007), as follow:

- Emissions trading can only exploit its environmental strength and justification, if there is scarcity on the allowance market. However, the lack of verified emissions data when setting up the National Allocation Plans (NAPs) for the first trading period (2005-2007) combined with over-optimistic projections of emissions led to the issuance of more allowances than was justified to ensure the necessary scarcity on the market.

- Member States had different levels of ambition for the emission reductions required of the sectors included in the EU ETS, and consequently different Member States set different levels of allocation for the same sector. They also applied widely differing allocation methods.

- The Commission's approval of NAPs turned out to be a long-lasting, cumbersome and complex process.

- Some sectors pass the market value of the allowances through to their customers in their product prices and received significant free allocations.

The issues identified during the review of the EU ETS justified a revision of the ETS design itself. They have been largely addressed in the revised ETS Directive. The Commission proposed a fully harmonised approach including an EU-wide and annually shrinking cap on allowances - to replace the prevailing bottom-up approach based on NAPs - leading to an emission reduction of 21% by 2020 as compared to 2005 levels, with reductions continuing thereafter. The Commission also proposed to phase-in auctioning over a period of time as the principal allocation method for all operators, and provided for harmonised rules for the transitional free allocation. These elements do not only guarantee that the required emission reductions are achieved, they also increase the certainty and predictability in the system, thereby fostering investments to reduce emissions.

Thus, the ETS revised Directive sets up the general framework for the corrective action to the problems identified with the current ETS. In 2009, the European Commission has started the preparatory work to define all the detailed implementing measures and further guidance to enable the revised ETS to work from 2013. Specific problems raised during the preparatory work have been intensely discussed with Member States (via informal meetings and Comitology) and stakeholders throughout the year. The Commission will endeavour to address these problems in the measures and guidance that it will propose in 2010 and 2011.

Examples of specific issues raised by the implementing measures' preparation are given below:

Benchmarking and carbon leakage

The publication of a comprehensive study carried out by a consortium of consultants on the general benchmarking methodology together with specific sector reports in November 2009 was a major step in the ongoing work on the allocation of free allowances. The consultants' proposal provides a solid basis in support of the Commission's benchmarking exercise. Throughout the work carried out, the Commission has maintained a transparent approach with frequent and in-depth consultation of relevant stakeholders. The same degree of transparency was followed in determining a list of sectors and subsectors deemed to be exposed to a significant risk of carbon leakage, which the Commission was able to adopt in a timely manner and in compliance with the provisions set out in the revised Directive.

Protection from insider dealing and market manipulation

Based on the current situation, the Commission sees four main options.

The first option would be to consider that the existing financial market and energy market legislation as well as planned legislation in these fields offer a sufficient level of protection of the carbon market, i.e. that the risks associated with any "gaps" in the coverage of the carbon market are not significant enough to warrant legislative action at this stage.

The second option would be to include the EU ETS carbon market under financial markets legislation, e.g. by defining EUAs as financial instruments, or by replacing the currently existing spot trade by trade in "spot futures" not for immediate delivery, which would then also be considered as trade in financial instruments under current legislation.

In case the trading of spot EUAs for immediate delivery is required by the carbon market, a third option would be for spot EUAs to be brought under the ambit of financial markets type legislation without actually defining the EUAs as financial instruments. This would amount to creating a tailor-made regime for the carbon market.

Finally, the EU ETS carbon market could be included in a future market transparency and integrity framework for wholesale electricity and gas markets to be developed by the Commission.

(c) Ensuring provision of climate-relevant data

Accurate, up-to-date information is an essential basis for fighting climate change. Under Decisions 280/2004/EC and 2005/166/EC, Member States must provide the Commission with annual reports on their actual emissions of greenhouse gases and biennial reports on domestic climate change policies and measures and emission projections, so that the Commission can accurately report on the progress made by the EU as a whole. .To that end the Commission has rigorously checked whether national reports are submitted on time and whether the data are correct and complete. As a result of the enforcement action, reporting continues to improve in terms of timing and content.

One of the challenges for the Commission will therefore be to ensure that reporting of national greenhouse gas emissions improves still further, so that all Member States communicate complete reports to deadline to ensure an effective follow-up to the United Nations Convention on Climate Change and its Kyoto Protocol.

In line with the above, further studies are being carried out to examine the revision of Decisions 280/2004/EC and 2005/166/EC in the light of the adopted Climate and Energy Package and the developments at international level.

6.9.3. **Evaluation results**

6.9.3.1. Priorities

Implementation and legal enforcement

Cases related to the ETS Directive: National Allocation Plans

The Commission will continue to defend its decisions and the integrity of the EU ETS Directive in ongoing court proceedings.

EU ETS NAP Implementation

As mentioned above, Estonia and Poland will have to submit a new NAP in 2010. The Commission will assess these NAPs in conformity with the Directive and the case law developed by the courts.

Benchmarking

The adoption of transitional Union-wide rules for harmonised free allocation (benchmarks) by the end of 2010 remains a high priority in implementing the revised ETS. In this context, securing political agreement with the EU institutions in comitology is essential.

Protection from insider dealing and market manipulation

Whether the existing financial markets legislation applies to transactions in the EU ETS carbon market depends on who is trading what and where. Transactions in the EU ETS carbon market relate both to the allowances themselves and to derivative products based on allowances, e.g. futures. In general, such derivatives qualify as financial instruments and are usually traded on one of a number of specialised exchanges. Some of these exchanges qualify as regulated markets. This means that a significant part of the trade in the EU ETS carbon market is already covered by the applicable financial markets legislation. However, financial market legislation does not apply to the spot market, and for some of the provisions there are exemptions for non-investment firms.

The Commission's ongoing work in the field of energy markets regulation and financial markets regulation will also affect the level of protection of the EU ETS carbon market.

The focus of the work going forward will be to assess whether additional measures are needed to protect the types of transactions in the EU ETS carbon market that are not covered by existing legislation or legislation in the pipeline in the field of energy and financial markets.

Improving and enforcing national reporting

Constructive collaboration with the Member States is essential. The Commission will continue to work closely with Member States to improve the quality and timeliness of their reporting. Nevertheless, in the coming years the Commission will continue to pursue legal enforcement action against Member States that fail to comply with their reporting obligations under the climate change legislation, including in relation to timely reporting and monitoring the Union’s greenhouse gas emissions and implementing the Kyoto Protocol.

EU ETS Directive

Transposition and implementation processes are well under way and according to plan.

6.9.3.2. Planned action (2010 and beyond)

During 2010, the auctioning regulation, the harmonised rules for transitional free allocation and the amended registries regulation are to be adopted:

- A proposal for the auctioning regulation is to be submitted to the Climate Change Committee in early 2010.
- During 2010 the Commission plans to continue holding a number of broad stakeholder meetings and further bilateral consultations with industry and NGOs as well as expert meetings with Member States' representatives on the topic of transitional Union-wide rules for harmonised free allocation (benchmarks). The work on benchmarks is to conclude, in case of a positive comitology vote, with the adoption of the decision by the Commission by 31 December 2010.
- The registries regulation needs to be amended to take account of both the revised EU ETS and the Effort sharing decision. The Regulation for a standardised and secured system of registries should be approved by the Climate Change Committee in the 1st quarter of 2010.

Concerning the list of sectors and subsectors deemed to be exposed to a significant risk of carbon leakage, the Commission will analyse further sectors and subsectors during 2010 and can, subject to the outcome of the analysis and following a comitology procedure, add them to the list. With a view to the international negotiations in Copenhagen at the COP15 in December 2009, the Commission will report by 30 June 2010 on the situation with regard to energy-intensive sectors or subsectors that have been deemed to be exposed to a significant risk of carbon leakage. This may be accompanied by any appropriate proposals.

If further examination shows that there is a need to adopt measures to ensure that the carbon market is sufficiently protected from insider dealing and market manipulation, then these would also be due by the end of 2010. A study will be launched in the course of 2010, the aim of which is to ascertain how a sufficient level of protection from market abuse, as well as a sufficient level of market integrity and efficiency, can be ensured in the parts of the EU ETS carbon market which fall outside the remit of the financial markets supervisory framework. This study will include wide stakeholder consultation and an impact assessment report.

In addition, the Commission is to determine and publish the total quantity of allowances for the year 2013 and the estimated quantity of allowances to be auctioned in September and December 2010, respectively. The Commission also plans to adopt guidance on free allocation to the power sector in 2010.

ESD

During 2010 the Commission will prepare for a decision to be adopted through comitology procedure (including a vote in the Climate Change Committee in order to determine the annual emission allocations expressed in absolute tonnes of CO_2 equivalents for the period between 2013 and 2020 in accordance with Article 3.2 of the Decision. The Commission will also prepare for a comitology decision to establish "modalities" for transfers of emission allocations between Member States and increase their transparency under the ESD as required by Article 3.6 of the Decision.

As stated in the introduction, the ESD is a new legal instrument with far-reaching consequences for Member States, including annual monitoring and reporting of greenhouse gas emissions in 2013-2020. It also gives new and challenging responsibilities to the Commission. The ESD will rely on both Union-wide and national measures for reducing emissions, of which the bulk of actions will have to be taken at Member States level. The Decision requires the Commission to establish a new EU-wide monitoring and reporting system and to monitor Member States' annual compliance and progress in meeting their national targets under the Decision.

CCS Directive

During 2010 the Commission will establish by Commission Decision a Scientific Panel to provide technical input into the Commission opinions on draft permit decisions and decisions on transfer of responsibility. The MRGs for CCS under the Emissions Trading Directive will be formally adopted, and guidance documents finalised on the key aspects of implementation. In addition, the Information Exchange process with the Member States will be continued.

The CCS Directive is one of the first and most comprehensive legal frameworks for CCS in the world. Together with the associated amendments to the OSPAR Convention and the MRGs developed under the Emissions Trading Directive, it provides clarity and confidence both for operators and regulators for the implementation of CCS in Europe. Priorities over the coming years will focus on the development and updating of guidance on implementation, the establishment of the Scientific Panel to provide technical advice, the sharing of experience on practical demonstration of CCS from the range of initiatives in the EU and Member States as well as the monitoring of the transposition and implementation of the Directive in the Member States.

6.10. Ozone-depleting substances and Fluorinated greenhouse gases

6.10.1. **Current position**

6.10.1.1. General introduction

The Regulation on Ozone Depleting Substances sets out controls on production, importation, exportation, supply, use leakage, recovery and lays down the phasing-out in line with the obligations under the Montreal Protocol. Regulation (EC) No 1005/2009 recast and replaced Regulation (EC) No 2037/2000 as of 1 January 2010, clarifying, simplifying and streamlining the previous provisions and procedures to the extent possible.

Finally, Regulation (EC) No 842/2006 on certain fluorinated greenhouse gases aims at reducing emissions of three groups of fluorinated greenhouse gases: hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF6) through a series of targeted sector-specific measures such as systematic checks for leakage and recovery from equipment by certified personnel; labelling of products and equipment ; the prohibition of placing on the market of certain products containing such gases and of the use of those gases in certain applications241.

241 The F-Gas Regulation is complemented by 10 Commission Regulations adopted between 2007 and 2008: see Annex.

6.10.1.2. Report of work done in 2009

Revision of the existing legal framework

The recast of the Regulation on Ozone Depleting Substances was adopted in September 2009 and the new provisions apply from 1 January 2010 (Regulation (EC) No 2037/2000 having been repealed from the same date).

The Commission conducted particular studies in the context of the preparatory phase for a comprehensive review of Regulation (EC) No 842/2006 (F-Gas Regulation), which is due by July 2011.

Compliance promotion and legal enforcement work

Implementation of the Regulation on Ozone Depleting Substances

During 2009 no new infringement cases relating to the Regulation on Ozone Depleting Substances were launched. A number of cases against Cyprus, Denmark, Greece, Malta and Italy however remained open from previous years and were further pursued regarding the failure to fulfil the obligations in relation to the decommissioning of halons used in fire extinguishers of ships. Nevertheless, it should also be noted that the Commission has observed an important progress in fulfilling this decommissioning requirement in all the above-mentioned Member States and already closed for cases in 2009.

Implementation of the F-Gas Regulation

The Commission monitored attentively the implementation by the Member States of certain requirements of the Regulation. Some delays observed in the establishment of national certification systems and in the adoption of rules on penalties by the Member States have required appropriate follow-up action from the Commission.

Petitions

In 2009 the Commission has received a number of new petitions concerning industrial emissions. In addition, it has been dealing with those which were received in earlier years, but follow-up with the national authorities has proved necessary to enable sending updated information to the Parliament. Particular attention has been paid on cases where potential serious or persistent breach of EU law could have been identified (e.g. alleged huge exceedance of emission limit values by ILVA steel plant in Taranto, Italy).

6.10.1.3. Evaluation based on the current situation

Regulation on Ozone Depleting Substances

Regarding the implementation of the Ozone Regulation, it can be said that while a number of infringement cases have remained open from previous years and individual issues may persist, in general Member States are in compliance with the Regulation.

7. INFORMATION SOCIETY AND MEDIA

7.1. General Overview

In *Information society and media* the regulatory framework for electronic communications continued to face a sizeable volume of incorrect implementation issues, despite genuine efforts on the part of most Member States. One challenge has been the independence of national regulatory authorities (NRA's) in certain Member States. Member States must ensure the independence and effectiveness of regulators, which are a prerequisite for ensuring fair and effective regulation of the sector. Ensuring the effective implementation of consumer protection rights, such as the ability to be located when calling the European emergency number 112, remained another key challenge for several Member States and the market players concerned. The increasingly challenging economic environment makes it more necessary than ever to ensure the correct implementation of the internal market *acquis*. 2009 amendments to the existing framework, as well as Commission guidance on e.g. tariffs for termination of calls on mobile networks, are expected to enhance predictability and legal certainty, and to create a level playing field in the EU's single market for electronic communications. In the audiovisual sector, while commercial communications continued to be an issue, preventive work was undertaken with Member States with a view to ensuring effective implementation of the Audiovisual Media Services Directive by the end of 2009. Regarding the Public Sector Information Directive, main challenges include licensing and charging models that facilitate the availability and re-use of public information resources.

7.2. Electronic communications

7.2.1. Current position

7.2.1.1. Existing measures in force

The EU **regulatory framework for electronic communications** came into force in 2002. Its five Directives are transposed into the national law of all 27 Member States242. 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 Directive covers protection of privacy and personal data communicated over public networks. Amendments to this regulatory framework for electronic communications were adopted in November 2009 (see section 1.2.2.1).

242 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).

The **Roaming Regulation**243, which entered into force in June 2007, has ensured that consumers continue to benefit from significant cost savings when making or receiving calls while in another Member State. The Roaming Regulation introduced maximum ceilings (Eurotariff)244 on retail prices for making and receiving calls in the EU and improved transparency for consumers by ensuring that operators send pricing information to their customers when they cross a border.

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243 Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC, OJ L 171, 29.6.2007, p. 32.

244 It is estimated that over 400 million EU citizens could benefit from the 'Eurotariff' which makes it the standard default tariff in Europe.

While most of the **radio spectrum harmonisation decisions** adopted until 2008245 on the basis of the Radio Spectrum Decision 626/2002/EC246 were implemented by the majority of Member States for some Decisions this was not yet the case. Regarding two Decisions that concern spectrum suitable for wireless broadband services[247] the Commission services sought

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245 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; 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; Commission Decision 2006/771/EC of 9 November 2006 on the harmonisation of the radio spectrum for use by short-range devices (SRD); Commission Decision 2006/804/EC of 23 November 2006 on harmonisation of the radio spectrum for radio frequency identification (RFID) devices operating in the ultra high frequency (UHF) band; Commission Decision 2007/90/EC of 12 February 2007 amending EC Decision 2005/513/EC of 11 July 2005 on 5 GHz WAS/RLAN; Commission Decision 2007/98/EC of 14 February 2007 on the harmonised use of radio spectrum in the 2 GHz frequency bands for the implementation of systems providing mobile satellite services (MSS); Commission Decision 2007/131/EC of 21 February 2007 on allowing the use of the radio spectrum for equipment using ultra-wideband technology in a harmonised manner in the Community (UWB); Commission Decision2007/344/EC of 16 May 2007 on harmonised availability of information regarding spectrum use within the Community; Decision 2008/294/EC of 7 April 2008 on harmonised conditions of spectrum use for the operation of mobile communication services on aircraft (MCA services) in the Community; Decision 2008/411/EC of 21 May 2008 on the harmonisation of the 3400 - 3800 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community, 2008/432/EC of 23 May 2008 amending Commission Decision 2006/771/EC on harmonisation of the radio spectrum for use by short-range devices (SRD); Decision 2008/477/EC of 13 June 2008 on the harmonisation of the 2500-2690 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community; Decision 2008/671/EC of 5 August 2008 on the harmonised use of radio spectrum in the 5875 - 5905 MHz frequency band for safety related applications of Intelligent Transport Systems (ITS); and Decision 2008/673/EC of 13 August 2008 amending Decision 2005/928/EC on the harmonisation of the 169,4-169,8125 MHz frequency band in the Community.

246 Decision of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision), OJ L 108, 24.4.2002, p.1.

247 Decision 2008/411/EC on the harmonisation of the 3400 - 3800 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community and Decision 2008/477/EC on the harmonisation of the 2500-2690 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community.

clarifications and additional information as regards completeness and correctness of implementation from several Member States. Such information is being assessed by the Commission services. Moreover, in October 2009 an infringement procedure was launched against Germany due to its failure to correctly implement Decision 2008/477/EC by including restrictions in the national frequency allocation ordinance with respect to the use of fixed wireless services in the 2500-2690 MHz frequency band.

7.2.1.2. Report of work done in 2009

Enforcing effective implementation of the regulatory framework for electronic communications continued to be a priority in 2009. In line with the Commission Communication on better monitoring of the application of Community law248, the Commission services have continued to avoid the need for recourse to infringement proceedings by making use of bilateral contacts with the relevant national authorities and also providing general guidance on implementation requirements via the Communications Committee (COCOM) and the Radio Spectrum Committee (RSC). During 2009, the Commission in particular discussed with the Member States in COCOM the implementation of the European emergency number '112' and of the reserved '116' numbers for harmonised services of social value and the market review procedure for consolidating the internal market for electronic communications.

In 2009, infringement priorities continued to focus on structural issues and consumer protection. Structural issues included in particular the functioning and the independence of the national regulatory authorities; increasing attention was also being paid to the full application of the Community consultation procedure involving national regulatory authorities and the Commission which aims to consolidate the internal market for electronic communications (Article 7 procedure). A second priority concerned the protection of consumer rights, with a special focus on the functioning of the European emergency number 112, and, increasingly, consumer privacy. Finally, compliance with judgments of the Court of Justice was another priority this year.

In particular, the Commission has systematically monitored the requirement for independence of NRAs, and has taken action when necessary. Member States should ensure that NRAs are legally distinct from and functionally independent of electronic communications networks and services providers. This requirement for structural separation between the regulatory function and activities associated with ownership and control is particularly relevant when Member States retain ownership or control of electronic communications undertakings. Concerns continue to exist in this regard in several Member States (e.g. Romania, Latvia, Lithuania). Clear rules regarding the formal establishment of the NRA structures should enhance the impartiality and the transparency of the NRA's functioning. The rules for dismissal of NRA management are fundamental in this regard. Infringements are pending in several Member States (e.g. Romania, Slovakia).

A key principle of the regulatory framework for electronic communications is that undertakings should not be subject to economic *ex ante* regulation unless they have been found to be dominant in a relevant market, on the basis of a thorough market analysis by their national regulatory authority (NRA). The absence of communication of mobile termination

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

rates and their methodology for comments to the Commission led the latter to open an infringement case against Germany in 2009.

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.

The general state of implementation of the regulatory framework, monitored in close contact with the national authorities and other stakeholders, is reflected inter alia in the Commission's sector specific annual Progress Report addressed to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions249. The Commission continued to monitor implementation of the Roaming Regulation, in particular of the new provisions introduced in June 2009, which in general ran smoothly. In that context, the Commission worked closely with the European Regulators Group which, by means of its extensive six-monthly roaming data collection exercise, provided a key input to the Commission's monitoring activities as well as the preparations for its review of the Regulation.

The Commission monitors the correct application of the provisions contained in the EU regulatory framework, also via contacts with stakeholders and complaints received from EU citizens. The online web tool 'EU Pilot', set up to provide quicker and better solutions to problems arising in the application of EU laws, has been increasingly used to facilitate the contacts with the 15 participating Member States on the implementation of the EU rules relating e-communications. Overall, since the launching of the project in April 2008, 11 cases concerning electronic communications have been opened in the EU Pilot, out of which 9 new cases were opened in 2009. Four cases have been closed in 2009, leading in three cases to the launch of an infringement.

As regards infringement proceedings, during 2009, the Commission opened eight new cases, while three pending cases were taken to the second phase with a reasoned opinion being sent to the Member States concerned. The Commission decided to refer two cases to the Court of Justice in 2009. At the same time, the Commission decided to close 14 proceedings following action by the Member States.

New proceedings opened in 2009 concerned the independence of the national regulatory authorities (Romania and Slovakia), administrative charges for controlling the usage of the radio spectrum (Latvia), fixed number portability (Bulgaria), lack of notification of mobile termination rates (Germany), non-implementation of the Commission Decision 2008/477/EC on 2.6 GHz spectrum harmonisation (Germany) and confidentiality of electronic communications (United Kingdom). With regard to the latter case, the Commission decided to proceed with the second phase of the procedure and sent a reasoned opinion to the United Kingdom. Two other reasoned opinions, concerning structural separation of regulatory

249 "Towards a Single European Telecoms Market (14th Progress Report)", COM(2009) 140 of 24 March 2009. The report covering 2009 is not yet available.

functions from activities associated with ownership and control in state-owned communications and network providers, were sent to Latvia and Lithuania.

Two cases which the Commission decided to refer to the Court of Justice in 2009 concerned the designation of the universal service provider in Portugal250 and must-carry rules on cable networks in Belgium251.

The Commission welcomed the progress made by Member States, even after the initiation of infringement proceedings, and continued to apply its policy of closing cases as soon as the problems were resolved. In 2009, thus, a total of fourteen cases were closed following progress in the implementation process. As the European emergency number 112 became available in Bulgaria at the end of 2008, the relevant case was closed by the Commission. Four cases regarding the availability of caller location information for 112 calls were closed following the adoption of corrective measures in Romania, Slovakia, the Netherlands and Lithuania. The Commission also closed two cases relating to must-carry rules (the Netherlands, Germany). A case against Luxembourg concerning structural separation of regulatory and managements functions was closed, as well as a case against Sweden relating to the right to appeal decisions of the telecoms regulator, as the issues raised by the Commission were resolved. As the appropriate steps were taken by national authorities, the Commission closed a case against Cyprus relating to rights of way. Finally, following the changes made in national law, the Commission was able to close four cases against Poland. These concerned the independence of the Polish regulator, consumer contracts, the obligation for operators to negotiate interconnection and the obligation to carry out market reviews.

On the other hand, not all the Member States have complied with the regulatory framework following infringement proceedings, and in 2009 the Court of Justice ruled on four cases [Poland (C-492/07), Portugal (C-458/07), Italy (C-539/07), Germany (C-424/07)]. The Commission was closely following whether the judgments of the Court of Justice were fully complied with. In several instances the Commission had to take the procedure to the next phase under Article 260 TFEU which allows imposing financial sanctions on Member States that have not complied with a judgement of the Court of Justice. In particular, letters of formal notice under Article 260 TFEU were sent to Poland, Portugal, Italy with regard to the above indicated judgments, and to Lithuania (with regard to a judgment delivered in 2008). Whereas the case against Italy was taken to the next phase with sending a reasoned opinion under Article 260, the Commission was able to close the case against Lithuania as the issues were resolved.

As regards spectrum harmonisation Decisions, the implementation of Decision 2007/131/EC was not yet ensured in Romania, Decision 2008/294/EC in Belgium and Spain and Decisions 2008/432/EC and 2008/673/EC in Spain. Moreover, the implementation of Decision 2007/344/EC is still under way in a number of Member States and Decision 2008/671/EC was yet to be implemented in Austria (temporary derogation granted until 31 December 2011), Belgium, Spain, Netherlands, Poland and Sweden.

250 C-154/09.

251 C-134/10

In addition to the pending infringement proceedings, there were nine complaints pending at the end of 2009. These complaints concerned issues across all five Directives of the regulatory framework for electronic communications.

In addition to closely monitoring the implementation of the EU provisions related to 112 in the Member States, the Commission has actively contributed to raising awareness of the European emergency number. In February 2009, the Commission, the European Parliament and the Council declared 11 February as the 'European 112 Day'. On that day, different awareness and networking activities will be organised every year in order to promote the existence and use of 112 throughout the EU. Furthermore, the Commission launched a website252 in several languages dedicated to the European emergency number that provides information on when to call 112 and how 112 works across the EU.

The Commission continues to frequently issue press releases at various stages of the opened proceedings. These press releases are available on the implementation and enforcement website dedicated to Information Society and Media sector253 together with overview tables for all cases, which are updated regularly.

In November 2009, the European Law Academy ERA and the Commission organised a seminar for national judges and the NRAs on legal issues related to the implementation of the regulatory framework. The principle aim was to raise awareness on (i) the impact of the review of the regulatory framework and the regulatory and economic challenges the review may entail and (ii) on the role of national courts in furthering consistency and legal certainty on the telecommunications markets.

Petitions

Nine petitions on the regulatory framework were registered in 2009. These petitions concerned Germany and Italy and involved mainly consumer protection issues e.g. the quality of service, telecom prices including of national and international SMS services, as well as transparency issues. All were answered without opening an infringement proceeding.

European Court of Justice

Finally, the European Court of Justice issued several important judgments on substance in the electronic communication area in 2009, in the context of infringement proceedings as well as on request for preliminary ruling by a national court or tribunal under Article 267 of the TFEU Treaty (formerly Article 234 of the EC Treaty). These covered among others caller location for 112 (C-539/07 – *Commission v Italy*), regulation of new markets (C-424/07 *Commission v Germany*), directory services (C-458/07 *Commission v Portugal*), definition of subscriber (C-492/07 *Commission v Poland*) or the obligation to negotiate on interconnection (C-192/08 TeliaSonera Finland).

252 http://ec.europa.eu/112

253 http://ec.europa.eu./information_society/policy/ecomm/implementation_enforcement/index_en.htm

7.2.2. **Changes underway**

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 the application of remedies in termination and broadband markets, spectrum management, swift number portability and privacy over electronic communications are needed. These needs were considered in the Review of the current regulatory framework.

7.2.2.1. New measures recently adopted

In accordance with Article 25 of the Framework Directive, the Commission proposed a review of the regulatory framework in November 2007254. The review aims to consolidate a competitive internal market through more consistent national regulatory approaches, reinforce consumer protection and users' rights, and provide for more effective spectrum management and implementation. The European Parliament and the Council adopted these reforms on 25 November 2009255. The Member States have to implement them by 25 May 2011.

Building on the Commission's proposal to the European Parliament and Council to extend the regulation by a further three years up to June 2012 and to include SMS and data roaming services (at wholesale level only) in addition to voice, the European Parliament and Council adopted the Regulation modifiying the Roaming Regulation on 18 June 2009256. These measures became applicable as of the 1 July 2009. The Commission will report on the functioning of the Regulation to the Council and European Parliament by 30 June 2011.

In September 2009, a Directive amending the GSM Directive257 on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community was adopted258. It provides for the introduction in the 900 MHz band of new wireless services, starting with UMTS services, and should be implemented by Member States by 9 May 2010.

In 2009, three spectrum harmonisation Decisions were adopted by the Commission: Decision 2009/343/EC of 21 April 2009 amending Decision 2007/131/EC on allowing the use of the radio spectrum for equipment using ultra-wideband technology in a harmonised manner in the

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254 Commission proposal for a directive of the European Parliament and of the Council, SEC(2007) 1472 and SEC(2007) 1473 and Proposal for a regulation of the European Parliament and of the Council establishing the European Electronic Communications Market Authority COM(2007)699, for an overview, see website of DG Information Society: http://www.ec.europa.eu/information_society/policy/ecomm/library/proposals/index_en.htm

255 OJ L 337, 18.12.2009, p. 37; OJ L 337, 18.12.2009, p. 11

256 Regulation (EC) No 544/2009 of the European Parliament and of the Council of 18 June 2009 amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/22/EC on a common regulatory framework for electronic communications networks and services, OJ L167, 29.6.2009, p. 12.

257 OJ L 196, 17.7.1987, p.85.

258 OJ L 274, 20.10.2009, p. 25.

Community, Decision 2009/381/EC of 13 May 2009 amending Decision 2006/771/EC on harmonisation of the radio spectrum for use by short-range devices and Decision 2009/766/EC of 16 October 2009 on the harmonisation of the 900 MHz and 1800 MHz frequency bands for terrestrial systems capable of providing pan-European electronic communications services in the Community. The process of verification of the state of implementation of the Decisions adopted in 2009 is on-going in the framework of the Radio Spectrum Committee.

Following the adoption by the European Parliament and the Council on 30 June 2008 of Decision No 626/2008/EC on the selection and authorisation of systems providing mobile satellite services (MSS)[259], a Community procedure for the common selection of operators of mobile satellite systems that use the 2 GHz frequency band was launched in August of the same year and was completed on 13 May 2009 by Commission Decision 2009/449/EC on the selection of operators of pan-European systems providing mobile satellite services (MSS)260. This Decision led to the selection of two operators and the identification of two times 15MHz to each of them. Implementation of the pan-European MSS framework has now been taken-over by the Member States. The Commission services will closely monitor measures taken at national level and will assist relevant authorities of Member States as appropriate, notably thanks to a dedicated working group of the Communications Committee on the implementation of Decision 2009/449/EC.

7.2.2.2. Volume of enquiries and priorities

While the 27 Member States have completed the formal transposition of the regulatory framework in 2007, there were still 23 proceedings for incorrect implementation pending at the end of 2009. The number of cases of infringements, complaints, enquiries and petitions is expected to stay at a level similar to previous years.

In the light of complaints and issues raised by market players and national regulatory authorities, the priorities remained the same as in the previous year: the functioning of the national regulatory authorities, the application of the Community consultation (Article 7) procedure, and consumer protection rights, including privacy. Compliance with judgments of the Court of Justice continued to be an issue as case law developed in the area.

7.2.3. **Evaluation based on the current situation**

Overall, the implementation of the regulatory framework is working to bring competition to electronic communications markets, to the benefit of consumers in terms of prices and innovation. While examples of best practice are available across the range of regulatory and market issues, there is considerable scope for further benefits to flow from a reinforced single market, strengthened competition and a reduction in the regulatory burden.

A significant number of non-conformity and incorrect application issues remains, which require attention and appropriate follow-up with a continued focus on the functioning of the national regulatory authorities and consumer protection rights.

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259 OJ L 172, 2.7.2008, p. 15.

260 OJ L 149, 12.6.2009, p. 65.

7.2.4. **Evaluation: priorities and planned action (2010 and beyond)**

Priorities for 2010 and beyond will likely remain similar to those of the reporting year. The number of cases is expected to remain about the same as in the reporting year.

In electronic communications, monitoring is expected to focus again on structural issues, such as the functioning and the independence of the national regulatory authorities. As independence of regulators is essential for the proper functioning of the electronic communications markets, attention is expected, in the run-up to the implementation of the revised regulatory framework, to continue to focus its attention on this issue. Greater attention is being paid to the full application of the Community consultation procedure involving national regulatory authorities and the Commission which aims to consolidate the internal market for electronic communications (Article 7 procedure).

A second priority concerns the protection of consumer rights. This issue is expected to remain a priority, if only as a result of the reinforcement of several consumer protection provisions in the revised regulatory framework. The Commission will continue to closely monitor the implementation of the Roaming Regulation which has ensured that consumers benefited from significant cost savings using mobile phones while in another Member State.

Priorities will evolve in accordance with the amendments to the regulatory framework. Preventive work, such as guidelines and technical meetings, is expected to start in early 2010. It is expected that prevention work in particular will focus in particular on new issues raised by the amendments to the currently applicable rules which require transposition into national law.

7.3. The Audiovisual and Media

7.3.1. **Current position**

7.3.1.1. Measures in force in 2009

The main instrument is the Audiovisual Media Services Directive261 (hereafter the "AVMS Directive"). It combines the country of origin principle with a minimum harmonisation of the laws applicable to all audiovisual media services (television and video on-demand). Non-binding measures include the Recommendation on Film Heritage262 and the

261 Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) as last amended by Directive 2007/65/EC of 11 December 2007, OJ L 332 of 18 December 2007.

262 Recommendation of the European Parliament and of the Council of 16 November 2005 on film heritage and the competitiveness of related industrial activities, OJ L 323 of 9 December 2005, p. 57.

Recommendation on the protection of minors and human dignity in audiovisual and information services263.

7.3.1.2. Report of completed work in 2009

For the first time, the monitoring carried out by independent experts of advertising restrictions took account of not only quantitative restrictions, but also of qualitative aspects of TV advertising, e.g. the rules on protection of minors.

Five cases were closed (two about excessive advertising, another two about broadcasting of programmes of apparent pornographic nature during day time, one about alleged incitement to hatred); in another case concerning the incorrect application of the quantitative rules on TV advertising in Spain the Court of Justice of the European Union was seized.In a judgment adopted on 5 March 2009 (C-222/07), the Court of Justice of the European Union ruled that the Spanish measure requiring television operators to earmark 5% of their operating revenue for European films, 60% of that funding being reserved for the production of original works in official languages of Spain, was compatible with Directive 89/552/EC ('Television without Frontiers Directive', the predecessor of the AVMS Directive) and the fundamental freedoms and that this measure did not constitute State aid.

On 26 June 2009, the Commission adopted the Seventh Report on the application of the "Television without Frontiers Directive" for the period 2007 – 2008; the report also adds analysis to the ongoing evolution of the television market.

One new case was opened referring to a national transposition of the AVMS Directive allegedly being disproportionately restrictive (the national law foresees a limit of three hours per day for teleshopping while the AVMSD does not include such a limit).

7.3.2. **Changes Underway**

7.3.2.1. Recently adopted measures

Member States had until 19 December 2009 to transpose the AVMS Directive. Questions faced by all Member States in the transposition process were continued to be clarified at two meetings of the Contact Committee set up under Article 23a of the Directive as well as at one meeting of the Working Group of EU Regulatory Authorities. By the end of the transposition period, only three Member States had notified the Commission of full implementation. In 2010, priority will be given to a thorough examination of national implementing measures.

The AVMS Directive changed the number and order of subsidiary jurisdiction criteria for satellite (re)transmissions. Therefore, the Contact Committee carried out an exercise to identify those audiovisual media services which would change jurisdiction at the end of the transposition period as a consequence of that reversal of criteria. The exercise will continue in 2010 due to some Member States' difficulties to identify all relevant media service providers

263 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 of 27 December 2006, p. 72.

The Commission proposed a codified version of the AVMS Directive which consolidates the original Directive with the two amending Directives. It was adopted on 10 March 2010264;

7.3.2.2. Volume of enquiries and priorities

In the light of complaints and parliamentary questions received so far, priority will most likely be on the following areas: television advertising, protection of minors, prohibition of incitement to hatred, and freedom of expression. The issue of events of major importance for society, with the cases brought before the Court of Justice against the UK and Belgian measures, will also be followed closely. In general, the number of cases of infringements and petitions is expected to stay at the same level as in previous years. The number of complaints on alleged pornographic content transmitted during daytime and without encryption via satellite broadcasts remained high. Cooperation between regulators, in particular with regard to transborder broadcasters where jurisdiction issues may arise, was improved with the help of the Commission. Complaints about alleged pornographic content can be addressed directly to the regulator of the complainant's country for appropriate follow-up. The monitoring of audiovisual commercial communication rules will continue at a high intensity.

7.3.3. **Evaluation based on the current situation**

The application of the provisions of the present regulatory framework in force has been satisfactory. However, it remains necessary to carry out a close monitoring of the application of audiovisual commercial communication rules in the Member States. Due to the high number of complaints with regard to alleged hate speech and pornographic content, it might become necessary to extend the monitoring by independent experts to these areas. Cooperation between national regulators and with the Commission should be further improved.

7.3.4. **Evaluation results: priorities and planned action (2010 and beyond)**

Priorities for 2010 and beyond will likely remain similar to those of the reporting year. The protection of consumer rights remains a key issue. Regarding TV advertising, monitoring will not only address quantitative restrictions but also qualitative rules e.g. the rules on the protection of minors and/or restrictions on alcohol advertising.

Since the transposition period of the AVMS Directive has elapsed the national laws will be examined very closely to ensure that they are compatible with the Directive. An interpretative communication by the Commission to provide more legal certainty on new terms and concepts of the AVMS Directive is envisaged for 2011.

264 Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), OJ L 95, 15.4.2010, p.1.

7.4. Public Sector Information

7.4.1. Current Position

7.4.1.1. General introduction

Public Sector Information (PSI) is the single largest source of information in Europe (e.g. maps and satellite images, legislation, statistics and company registers) and is used as raw material for a variety of added-value products and services. **Directive 2003/98 on the re-use of public sector information** (PSI Directive) aims at enhancing an effective cross-border re-use of PSI and to limit distortions of competition in the Community market.

The Directive is built around two pillars of the internal market; transparency and fair competition. It contains provisions on transparency of conditions and non-discrimination, on prohibition of cross-subsidies and exclusive arrangements, on procedures regarding handling of re-use requests, on upper limits for charging, 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 Commission applies the principles of the PSI Directive also to its own documents through a Commission re-use policy. Commission Decision 2006/291/EC, Euratom goes beyond the Directive by applying charges based on (at most) marginal costs and by making all documents re-usable. Examples are EUROSTAT's statistical data, Commission translation memories, the EC law database EUR-Lex and studies.

7.4.1.2. Report of work done in 2009

The deadline for implementing the PSI Directive by the Member States was 1 July 2005. By May 2008, all Member States had notified full implementation of the Directive.

The Commission pursued in 2009 infringement procedures for incomplete and incorrect implementation regarding Sweden and Poland, and opened one new case regarding Italy for failing to correctly transpose and implement the Directive. The evaluation of the conformity of the notified national transposition measures continued in parallel with the management of complaints. A complaint filed in 2009 against Denmark for non-compliancy with the Directive provisions on charges is being dealt with under the EU PILOT system.

In conformity with the Commission Communication on better monitoring of the application of Community law (COM (2002)725), the Commission continued to pursue various accompanying measures in addition to formal infringement procedures in 2009. It has been closely monitoring the implementation process and providing technical assistance.

In particular, the Commission pursued close bilateral contacts with Member States in view of ensuring correct implementation and application of the Directive. These have led to legislative changes in several Member States, which had originally notified insufficient implementation measures. The Commission also organised and chaired the PSI Group for Member State experts and stakeholders in order to provide assistance regarding implementation issues and to facilitate the exchange of good practices. In addition, the Commission contributed to awareness-raising and stimulation activities by participating in seminars and workshops organised in the Member States, networking across Europe and in a wider international context (notably the OECD) and co-funding a project for promoting pan-European PSI re-use

(ePSIplus, taken over in 2009 by the European PSI platform) to further stimulate action and monitor progress towards a stronger and more transparent environment for the growth of European PSI re-use markets. Finally, the Commission undertook studies on PSI re-use. A series of studies assessing the situation in Member States regarding the existence of possible exclusive agreements for PSI re-use were launched in 2009.

The Commission also carried out a review of the application of the PSI Directive, leading to a Commission Communication and Staff working document in 2009. In accordance with Article 13 of the Directive, the review addressed, in particular, the scope and impact of the Directive.

7.4.2. **Evaluation based on the current situation**

It should be noted that the PSI Directive was implemented by many Member States with considerable delay, requiring infringement procedures launched by the Commission and leading eventually to four judgments of the Court of Justice. The situation is in the process of development of new "acquis" as it is a first ever Directive in this area, with notification of implementation measures recently being completed in all Member States. The number of complaints is still scarce and there are no preliminary rulings based on the Directive.

A positive evolution and progress has taken place since the adoption of the Directive. The respondents to the public consultation considered that the PSI Directive has had positive effects on PSI re-use, which has also been confirmed by studies. However, the full potential of PSI re-use has not yet been realised, implementation of the Directive and measures to facilitate re-use in the Member States are uneven, and barriers to re-use still exist. Problems and action by Member States to redress them need to be carefully monitored and assessed.

Commission action carried out in 2009 through infringement procedures, bilateral cooperation with Member States, facilitating the exchange of good practices, and awareness-raising have led to positive developments in some Member States, notably on the process of legislative changes in view of ensuring correct implementation of the Directive.

7.4.3. **Evaluation results**

7.4.3.1. Priorities

Priority has shifted now from the first stage of adopting national implementation measures and notifying them to the Commission, to ensuring compliance and effective application of the Directive in all 27 Member States. In the light of the evaluation of the conformity of the notified national measures and complaints, the main substance issues remain the same and are related notably to the scope and definitions, non-discrimination, charging, exclusive arrangements, and transparency. Efforts should now focus on full and correct implementation and application of the Directive, terminating exclusive arrangements, applying licensing and charging models that facilitate the availability and re-use of PSI, and ensuring equal conditions for public bodies re-using their own documents and other re-users. Member States are encouraged to set up quick and inexpensive conflict resolution mechanisms.

7.4.3.2. Planned action (2010 and beyond)

It is important now to ensure compliance and effective application of the Directive in the Member States. The completion of implementation of the Directive in the Member States may have an impact on the number of complaints received by the Commission in the future.

Enforcement action through the launch of new infringement procedures for incorrect implementation and/or application of the Directive is likely in 2010 and beyond. One area concerns exclusive arrangements, for which the transitional period foreseen in Article 11 of the Directive expired at the end of 2008. An exercise investigating the extent of exclusive arrangements was launched in 2009 and results will become available in the second half of 2010. The Commission will continue to monitor closely implementation issues, to facilitate the exchange of good practices and to provide technical assistance especially through close administrative cooperation with the Member States, the PSI expert group, as well as through other accompanying measures such as the European PSI platform. In addition, a thematic network on the legal aspects of PSI is planned to be set up to identify and discuss legal barriers to re-use PSI in the digital environment and to suggest ways to overcome them. A further review of the PSI Directive is envisaged by the Commission by 2012 when more evidence on the impact, effects and application of the Directive should be available. Possible legislative amendments would be considered at that stage, taking into consideration progress made in the meantime.

7.4.4. **Sector summary**

A positive evolution and progress has taken place. However, the full potential of PSI re-use has not yet been realised and implementation of the Directive in the Member States is uneven. Problems and action by Member States to redress them need to be carefully monitored and assessed. The priority has shifted now from the first stage of adopting national implementation measures and notifying them to the Commission, to ensuring full compliance and effective application of the Directive in the Member States. The Commission will continue to closely monitor implementation issues, to launch infringement procedures where necessary, as well as to facilitate the exchange of good practices and awareness-raising.

7.4.5. **Measures in force**

More information on the re-use of public sector information:

http://ec.europa.eu/information_society/policy/psi/index_en.htm

7.5. Electronic Signatures

7.5.1. **Current Position**

7.5.1.1. Existing measures in force

The principal instrument is **Directive 1999/93/EC on a community framework for electronic signatures**265. The implementing measures include the Commission Decision on the minimum criteria for the designated bodies266 and the Commission Decision on the generally recognised standards for some electronic signatures products267.

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265 OJ L 13, 19.01.200, p.12

266 OJ L 298, 16.11.2000, p.42

267 OJ L 45, 15.07.2003, p.45

The general principles of the Directive were indeed transposed by all Member States. Currently there is no open infringement procedure. One complaint lodged in 2009 regarding the implementation of Directive 1999/93/EC in German law is currently being investigated.

Lastly, indirect aspects pertaining to electronic signature were identified in two additional complaints handled by other Commission services. The first complaint268 concerns the implementation of Directives 90/385/EC and 93/45/EC on the registration of medical devices in Italy. The Italian authorities amended the technical rules for on-line registration in compliance with the electronic signature Directive thus there is no infringement to Directive 1999/93/EC anymore. The second complaint269 concerns Directive 2003/96/EC and implementing Spanish legislation governing the refund of excise duties. This case is still under investigation.

7.5.1.2. Report of work done in 2009

Building on the Commission *Action Plan on e-signatures and e-identification to facilitate the provision of cross-border public services in the Single Market270,* whose main objective is to promote the implementation of mutually recognised and interoperable electronic signatures and e-authentication solutions in Europe, a Decision 2009/767/EC was adopted in 2009, which sets out measures facilitating the use of procedures by electronic means through the 'points of single contact' under Directive 2006/123/EC.

7.5.2. **Evaluation**

In 2006 the Commission acknowledged271 problems of mutual recognition and cross-border interoperability of electronic signature. The Commission's position is that it intends to address the legal, technical, and standardisation causes of these issues. Therefore a revision and update of Decision 2003/511/EC is foreseen and standardisation work is currently being planned by the relevant European Standardisation Organisation.

8. MARITIME AFFAIRS AND FISHERIES

The Common Fisheries Policy is based on the provisions of Article 3, 4 and 38 through 43 TFEU. The full set of rules adopted under the Common Fisheries Policy as well as new measures already proposed can be found on the following website: http://ec.europa.eu/fisheries/index_en.htm.

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268 2007/4516

269 2007/4715

270 COM(2008)798

271 Report on the operation of Directive 1999/93/EC on a Community framework for electronic signatures – COM(2006)120 of 15.3.06

8.1. Current situation

8.1.1. General introduction

By virtue of the provisions of Articles 3 and 32 of the EC Treaty, Member States have transferred competence to the Community with regard to the conservation and management of fisheries resources. Hence, in this field, legislative or prescriptive jurisdiction rests with the Community such that it is for the Community to adopt relevant conservation and management measures while it remains for the Member States to implement and enforce those measures. Consequently, the Common Fisheries Policy has been established in pursuance of the objectives laid down in Article 33 of the EC Treaty and, in its current version, it encompasses (1) a conservation regime together with a concomitant control and enforcement framework, (2) a structural policy through the new European Fisheries Fund, (3) a common organisation of the markets in fishery and aquaculture products and (4) the international dimension covering bilateral Fisheries Partnership Agreements, multilateral Regional Fisheries Management Organisations and conclusion of global international treaties such as the 1982 United Nations Convention on the Law of the Sea272 and the 1995 Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea relating to the conservation and management of straddling fish stocks and highly migratory fish stocks273. The full set of rules adopted under the Common Fisheries Policy can be found on the following website: http://ec.europa.eu/fisheries/index_en.htm.

The Lisbon Treaty entered into force on 1 December 2009. Under Article 4(2)(d) of the Treaty on the Functioning of the European Union (TFEU), fisheries is one of the areas of shared competence between the Union and the Member States. However, Article 3(1)(d) TFEU attributes exclusive competence to the Union for the conservation of marine biological resources under the common fisheries policy. This means that only the Union can legislate in this field unless Member States have been explicitly empowered to do so by the Union according to Article 2(1) TFEU. By virtue of the provisions of Articles 38 to 43 TFEU, the Union shall define and implement a common fisheries policy.

The conservation regime in its current version is governed by the basic Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy274, Article 2(1) of which spells out that the Common Fisheries Policy shall ensure exploitation of living resources that provides sustainable economic, environmental and social conditions. The control system is circumscribed by the provisions of Article 23 of Council Regulation (EC) No 2371/2002 and Articles 1 and 2 of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.275

272 OJ L 179, 23.06.1998, p. 1

273 OJ L 189, 03.07.1998, p.14

274 OJ L 358, 31.12.2002, p. 59

275 OJ L 343,22.12.2009, p.1.

8.1.2. **Work done in 2009**

As a priority issue, the Commission had prepared and presented a legislative proposal276 for a radical overhaul of the existing control and enforcement framework as laid down on Council Regulation (EEC) No 2847/93. The Council adopted on 20 November 2009 the new Regulation establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy.277 The new rules are designed to strengthen the existing regulatory framework, to ensure a level playing field and to bring about a true compliance culture all across the European Union.

The Commission initiated a full review of the entire policy in order to prepare the ground for a root-and-branch reform. A Green Paper has been issued on 22 April 2009 for the purposes of launching a broad public consultation on the reform of the Common Fisheries Policy278.

The Council adopted Regulation (EC) No 1010/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.279

In proceedings instituted on grounds of lack of an effective system of monitoring to ensure respect of the Community prohibition of drift nets of a length greater or equal to 2.5 km, the Court of Justice rendered a judgment on 5 March 2009280 declaring that France has failed to fulfil its obligations under Regulation (EC) No 2847/93 establishing a control system applicable to the common fisheries policy and Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under this policy, by failing sufficiently to monitor, inspect and supervise fishing activities in the light of prohibition of drift nets for the capture of certain species and by not ensuring that appropriate measures against those responsible for infringements of the Community legislation on the use of this kind of fishing gear were taken.

In proceedings instituted on grounds of non respect of the rules on conservation of fisheries resources through technical measures, the Court of Justice rendered a judgment on 15 October 2009 281 declaring that the Netherlands, by allowing fishing vessels to have a higher engine power than permitted under Regulation (EC) No 850/98 for the conservation of fishing resources through technical measures for the protection of juveniles of marine organisms, has failed to fulfil its obligations under Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy and Regulation (EC) No 2847/93 establishing a control system applicable to this policy.

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276 COM(2008) 721 final of 14.11.2008

277 OJ L 343,22.12.2009, p.1.

278 COM(2009) 163 final, 22.4.2009

279 OJ L 280, 27.10.2009, p.5.

280 Case C-556/07, Commission v. France.

281 Case C-232/08, Commission v. The Netherlands.

In proceedings instituted on grounds of failure to ensure compliance with the drift nets ban under applicable Community rules, the Court of Justice rendered a judgment on 29 October 2009[282] declaring that Italy has failed to fulfil its obligations under Regulations (EC) No 2241/87 and No 2847/93 by failing to control, inspect and survey in a satisfactory manner fishing activities within its territory and within the waters subject to its sovereignty or jurisdiction, in particular with regard to compliance with provisions governing the retention on board and use of drift nets, and by not ensuring in a satisfactory manner that appropriate measures are taken against those responsible for infringements to the Community rules on the retention on board and use of this kind of fishing gear, in particular by the imposition of dissuasive penalties on those persons.

The Commission adopted, on 2 April 2009[283], a proposal for a Council Regulation laying down a Scheme of control and enforcement in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries. This proposal contains the transposition of the new scheme of control adopted by the Northeast Atlantic Commission (NEAFC) with full support of the Community. The new Scheme is designed to improve the control and enforcement of the recommendations of NEAFC. The main change is the merge of the former Scheme and the Program to promote compliance by non contracting Parties vessels. The other change is the inclusion of a new Port State Control system which effectively closes European ports to landings of foreign fish which have not been verified to be legal by the flag State of the foreign vessel. The Scheme also provides new measures considering control of vessels engaged in illegal, unreported and unregulated fisheries.

The Council adopted, on 7 July 2009, Regulation (EC) No 679/2009[284], amending Regulation (EC) No 1386/2007 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation. This Regulation takes into account the modifications to conservation and enforcement adopted by this organisation at its 30th annual meeting hold in September 2008. The amendments relate to provisions on bottom fishing, closed areas ensuring seamounts protection, labelling requirements and additional port sate measures.

8.2. Evaluation

Fishery-related infringement cases are important because all of them, in varying degrees, do touch upon the conservation objectives of the Common Fisheries Policy. The success of a policy of sustainable management of fishery resources depends on effective implementation of the applicable EU rules in this area and, more particularly, on the implementation of effective control, inspection and enforcement system by the Member States. Yet, Member States' compliance records lack coherence and somewhat move in cycles.

There is also a link with the status of fish stocks and the endemic overcapacity of the Community fishing fleet. Where fishing opportunities decrease, Member States should step up their control and enforcement efforts. Yet, control and enforcement become politically

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282 Case C-249/08, Commission v. Italy.

283 COM (2009) 151 final of 2.4.2009.

284 OJ L 197, 29.7.2009, p.1.

unpopular in such situations and certainly so when dire fish stock situations become coupled with an economic crisis.

It is against this background that the Commission proposed a complete overhaul of the control and enforcement framework. The new control regulation will provide the European Union with the level playing field which has been so far lacking in the fisheries sector. The new system will encourage a culture of compliance among operators. It aims to ensure that, in a single market, operators cannot take advantage of the different sanction systems present at national level as means of undermining a common policy, and that the same offences are subject to the same sanctions, wherever an infringement occurs or whatever the nationality of the fishermen or the flag he flies. Furthermore, the new regulation introduces a new and common approach to control, covering every stage in the process that sees fish caught, landed, brought to market and sold. Harmonised standards for inspection activities and procedures will bring uniform implementation.

The new control regulation will also ensure that the Commission adheres to its core activity of controlling and verifying the implementation of the rules of the common fisheries policy by Member States, as it reinforces its capacity to intervene proportionately to the level of non-compliance by the Member States.

8.3. Evaluation results

8.3.1. **Priorities**

Based on the experience gained with infringement cases so far, the Directorate-General for Maritime Affairs and Fisheries continued to handle infringement cases on the basis of a new more focussed and systematic approach to infringement proceedings.

The corner stones of this new approach are priority-setting and anticipatory planning. The ultimate goal is to handle infringement cases in harmony with other novel control instruments, to focus on cases that can make a difference in terms of policy priorities and thus to cement a "culture of compliance" in the field of fisheries.

The new approach has been implemented trough administrative guidelines, regular sessions of a steering group and regular reporting to senior management. The handling of pre-contentious letters has largely resulted in a return to normal conditions in the respective areas of activity. The new approach also permitted closing a series of older infringement cases.

The new approach also reflects one particularity of infringement proceedings in the fields of fisheries, namely the absence of a notable number of complaints and the presence of instances of violations of regulatory requirements on the side of Member States, which require not only direct contacts with the respective authorities of the Member States concerned but also contacts at a certain level of representation.

Improvements shall still be sought in terms of more transparent and better synchronising between priority-setting for control and inspection activities and the particularities of ongoing and/or planned infringement proceedings.

8.3.2. **Planned action (for 2010 and beyond)**

The Commission will continue to handle the infringement proceedings according to the new approach, which is capable of securing a strengthened infringement policy and a genuine

compliance culture in the fields of the Common Fisheries Policy. Priority will be given to recurrent problems putting the Common Fisheries Policy particularly at risk (e.g. illegal driftnetting, infringements in connection with fish stocks which are subject to recovery plans).

The Commission will sum up the results of the public consultation on the reform of the Common Fisheries Policy in the first semester of 2010 and develop a proposal for a new basic regulation in the further course of 2010.

8.4. Summary

In the fields of *fisheries*, the finality of all preventive and repressive action is to ensure the effectiveness of conservation and management measures adopted under the Common Fisheries Policy. Yet, Member States much too often favours short-term solutions when it comes to compliance with and the enforcement of applicable rules. The Commission thus has proposed a complete overhaul of the control and enforcement framework. The Commission initiated a full review of the entire policy in order to prepare the ground for a root-and-branch reform. A Green Paper has been issued on 22 April 2009 for the purposes of launching a broad public consultation on the reform of the Common Fisheries Policy.

9. INTERNAL MARKET AND SERVICES

9.1. General overview

9.1.1. Efficient and effective enforcement of Community law – achievements in 2009

1. The prioritisation of infringements

Priority attention has been paid in the Internal Market and Services Directorate General to working within the benchmarks set by the Commission in its 2007 Communication "A Europe of results"285. These efforts have met with success, resulting in accelerated progress of cases concerning the non-communication of measures transposing directives. This Directorate General can also confirm its contribution to the continuing reduction in the average time taken to conclude infringement cases by a decision either to close or refer the matter to the Court of Justice.

Alongside the horizontal priorities set in the 2007 communication, the sector-specific priorities identified by the Internal Market and Services Directorate General in 2009 concern some key policy sectors, such as the freedom of establishment in the retail sector; important violations of public procurement rules in work related to relevant infrastructures; and special rights in privatised companies restricting investments and therefore capital movement.

Many priority cases require a significant investment of effort and resources. They are often legally or technically complex and must be treated fast so as to limit the negative effects of the national measure in question. They also usually concern politically sensitive issues. The policy of prioritisation has not yet produced an immediate impact on the length of proceedings on such cases.

285 Ref COM(2007)502

Part of the reason for this is the time needed by national authorities to implement the solution identified by the Member State as capable of correcting the infringement in a way compatible with EU law. Member States are requested to respect a clear and reasonable timeframe for the adoption of the necessary measures. The identification of solutions and the organisation of their implementation require informal contacts with Member States between formal steps in the proceeding, which can be suspended pending the introduction of satisfactory measures within a reasonable timeframe. Further formal steps in the proceeding are then taken if the Member State fails to maintain the promised progress.

Priority-setting does ensure the identification of the major problems and allowed a more thorough analysis of the underlying structural problems. There is room for further progress in the management of these cases is planned.

2. Preventive action: risk-based approach, pro-active guidance to MS and partnership

In 2009 substantial work has been devoted to accompany the transposition of remedies, payment services and services directives. More detailed figures on the intense activity carried out to accompany transposition are included in the sectoral description. Due to the importance of these directives, whose deadline for transposition expired at the end of 2009, 2010 will also be devoted to evaluate the results of transposition plans and take any appropriate measure to adapt them to future legislative initiatives.

The most effective initiatives within the transposition plans were handbooks for national authorities, the publication of specific scoreboards pending the transposition period to measure progress in member states, bilateral contacts to find targeted solutions to specific difficulties and workshops intended to achieve a convergent interpretation of EU provisions.

Transposition package meetings have been organised in 6 Member States: BE, EL, FR, PT; LU and ES. The choice of destination has been made looking at those showing more difficulties in terms of timely transposition in the area of internal market and services and where a package meeting had not been organised in the previous year. The major benefit of these package meetings has been to add visibility for Internal market legislation within the respective administrations, get more insight on the reasons of delay, learn about legislative process in member States, constitutional constraints and get some consensus on how to speed up compliance.

A Recommendation for a better functioning of the Internal market has been adopted on 29 June 2009286. Suggested actions range from market monitoring to better information to citizens; from training for officials to detailed follow up at national level on the application of EU law. This recommendation confirms that a well functioning Internal market needs more ownership of member States, more cooperation at national and EU level between national authorities and more focus on proper daily application of EU law.

3. As for Petitions

Regarding the number of petitions, in 2009 we sent 113 communications to the European Parliament and we received 82 new petitions. The recognition of professional qualifications remains the first field (33%), followed by services (26%), financial services and institutions

286 Ref. OJ

(17%), company law (12%) and public procurements (9%). The petitions related to the infringements have decreased in number and concern approximately a quarter of the petition files. The questions raised mainly individual situations for which there is no incorrect application of the Community law and which are governed by national law.

Regarding the recognition of professional qualifications, the number of petitions related to infringements is lower than in the past. Most of them concern individual situations - sometimes complex - for which petitioners cannot benefit from the rights to have their qualifications recognised or did not carry out the necessary formalities. Sometimes they concern a request for information on their legal situation.

In the field of the services, several questions are without any reference to infringements. Many are directly related to an ongoing Spanish infringement (2001/5261) on pharmacies. Sometimes they concern more in general restrictions on the activity of the pharmacists. The closure of the infringement related to the German legislation on chimney sweepers allowed the closure of the petitions related to this file. Some petitions concern the still ongoing infringements files related to the problematic of gambling and sports betting in the Member States.

As for financial services area, petitions mainly touch upon the questions of company law, credit institutions, securities, free movement capital and payments. Also in these areas questions mainly refer to individual or collective situations outside the scope of the Community law (particularly in the field of company law and means of payment).

Finally, in public procurement cases, the vast majority of the answers concern alleged infringements. Only a small percentage of infringements are opened following petitions. Numerous petitions connected to a Spanish infringement case which is currently before the European Court (C-306/08 Commission against Spain) concerning the urban law in Valencia were closed in 2009.

4. Informal problem solving mechanisms (SOLVIT and EU-Pilot)

In the area of Internal market and Services the use of informal problem solving mechanisms is strongly encouraged. They represent a valid complement to the prioritisation policy and serve the purpose of choosing the most suitable approach for each case.

Both SOLVIT and the EU Pilot are complementary instruments to the formal infringement procedure and apply to different situations.

SOLVIT provides fast and pragmatic solutions to citizens and businesses encountering cross-border problems caused by the incorrect application of EU-rules by public authorities.

The number of SOLVIT cases is constantly increasing: in 2008 it increased by 22% and reached 1,000cases, in 2009 it further increased by 50 % to 1540 cases. The resolution rate remained high at 86%. As in 2008, in 2009 the number of SOLVIT cases exceeds the number of registered complaints and opened infringement cases in the same area.

SOLVIT has become a very potent and efficient complementary instrument. In particular, it offers assistance and resolves many of the problems experienced by individual citizens and

businesses and helps to identify structural issues which may still need to be resolved in order to improve the operation of the Internal Market.

In 2009 both SOLVIT and Citizens SignPost Service received a high number of requests in the areas of social security, professional qualifications and free movement of persons. It is noticeable that late transposition or ineffective application of certain Internal Market rules tends to increase the number of cases submitted to these services.

Concerning the areas of Internal market and services, SOLVIT has played a useful role in particular to deal with regulated professions and freedom to provide services. However, while the rate of success is very high as for difficulties related to the recognition of processional qualification, more problematic appeared to solve cases where the exercise of the freedom to provide services was at stake. The situation will be closely monitored in 2010 following the application of the services directive

The *EU-Pilot* project has been introduced in 2008 as a working method for enquiries and complaints not involving cross-border problems in the internal market and services. In the area of internal market and services this instrument has been used for a very relevant number of potential infringements. About 75% of them could be closed without the need for further action (i.e. solution found or satisfactory clarification provided or assessment that no actual breach of EU law could be detected). Some others were transferred to the formal infringement procedure. This instrument has been frequently used in the public procurement area, where many complaints are of domestic nature. Although progress is difficult to measure, given annual circumstantial variations in the volume of issues arising, there are clear indications that the use of the EU-Pilot in this area determined a significant decrease in the need for recourse to formal procedures.

5. The Internal Market Scoreboard: transposition deficit and infringements reduction

Since 2004, the EU average transposition deficit decrease from 3.6% to 0.7% in November 2009. This remarkable improvement suggests that Member States made real structural improvements in the way they ensure timely transposition. In this context the Internal market Scoreboard proved to be a very effective instrument of peer pressure and an essential instrument to set commonly agreed moving targets to improve the implementation of EU law.

However, it appears that in some areas a renewed political commitment is needed from Member States. This applies in particular to the area of long overdue directives. Despite the 'zero tolerance' target set by the European Heads of State and Government there are still too many Member States write directives into their national law only two years or later after the deadline expired.. The new Treaty on the Functioning of the European Union (TFEU) provides the possibility for the Court of Justice to impose financial penalties at an earlier stage of the infringement procedure compared to the provisions of the EC Treaty. The Internal Market Scoreboard will introduce an additional challenge calling on all Member States to reduce transposition delays.

More efforts are also needed to ensure correct transposition. The number of directives not correctly transposed is significant for most Member States. The time needed to comply with Court rulings, for instance, is still considerable. Once the Court of Justice has ruled Member States' failure to fulfil its obligation under EU legislation, Member States must immediately take the necessary measures. Member States must therefore multiply efforts to provide fast remedies to breaches.

9.1.2. **Enforcement priorities and key challenges for 2010 - 2011**

1. Shortening the duration of infringement procedures

The duration of infringement procedures, in particular of cases identified as sectoral priorities remains of serious concern as too much time is still needed for a structural solution. The monthly decision making process provides a useful tool to manage the infringement caseload across the year. On the other hand, a number of factors tend to slow down the achievement of the objective. One of these is the way negotiations with Member states to develop and implement appropriate solutions influence the length of the procedure. This needs to be monitored and addressed. Unjustified delays should immediately lead quickly to the following step of the infringement procedure.

The complementary and informal problem-solving methods such as EU Pilot and SOLVIT could be more and better exploited. They have a natural vocation to satisfy the needs of non-priority cases and non-structural issues, particularly where the solution can be rapidly found at national level and where the citizen or business looks for pragmatic and fast answers to their problems. The key challenges for SOLVIT and EU Pilot in 2010/2011 will be to develop their full potential and ensure appropriate resources and political backing.

2. Ensuring timely transposition and proper conformity checking

Despite results achieved for Internal market directives in general, transposition deficit rate in the area of Internal market and Services is at the end of 2009 3.1% against 0.7% registered in Scoreboard n. 20 for overall Internal market legislation. The essential reason of this discrepancy is the entry into force of three major and very complex directives at the end of 2009. The objective is therefore to catch up the delay as quickly as possible and ideally within the first semester of 2010. In order to achieve the objective, infringement procedures will be pursued vigorously in parallel with technical assistance to member states – namely informal advice on transposing measures.

Focus will be not only on transposition delays, but also on good quality of transposing legislation, as well as on member States taking too much time to comply with EU law (e.g. excessive delay in transposing directives, time needed to comply with ECJ rulings).

Alongside the work on reducing the transposition deficit, the conformity checks represent a major task for 2009-2010: there is a substantial volume of national transposition measures to analyse in several areas. The transposition of the services directive – and the related mutual evaluation exercise – will constitute a complex and time consuming task, in addition to the remaining difficulties in particular in the area of company law but also in the area of mutual recognition of professional qualifications. A risk-based approach allows checking first those measures which correspond to key provisions or provisions likely to trigger interpretation problems, incorrect transposition or gold plating. This approach has already been used in the conformity assessment of measures transposing MIFID with satisfactory results. However, this approach is not sufficient to ensure complete and quick analysis as well as daily monitoring of measures adopted at national level in relation to EU directives. Transposition tables are often absent or of limited help due to excessively summarised information and do not allow monitoring of possible future modifications of the national legislation. Furthermore, in a EU-27 context, it is difficult to cover all measures and translation needs delay the process. The outsourcing of certain tasks related to this work is under consideration, in particular translations, the drawing up of transpositions tables and first conformity checks.

3. Empowering citizens and businesses

Citizens and business need to be enabled to make effectively use of their internal market rights. Practical information about these rights and possibilities is a first step to empower citizens and businesses. Secondly they need to be able to quickly find the right service if they need a more individualised advice or if they need assistance to solve a problem they encountered.

Over the years the Commission has created a multitude of web portals and information and assistance services. In this web it is not always easy for citizens and businesses to find their way. In addition too few citizens and businesses know of their existence and potential.

In order to facilitate the access to these services and help citizens and businesses to exercise their internal market rights, the Commission is streamlining and reinforcing the cooperation between all these services. In this context also the Your Europe portal for citizens (existing alongside the Your Europe business portal) is undergoing a wholesale revision. The aim is to provide citizens & businesses with practical information enabling them to make effective use of the rights and opportunities offered by the Single Market. At the same time, the revamped portal will also act as a 'one stop shop portal' directing citizens & businesses to more specific assistance or problem-solving when there is a need for it.

Besides helping citizens and businesses directly, improving coordination amongst assistance services will also provide valuable feedback on how the Single Market works in practice. All assistance services collect information on questions, queries, problems and complaints submitted by citizens and businesses. It is intended to use this material in a more systematic manner to provide input for the way the Commission develops its policies.

The different actions are outlined in the Single Market Assistance Services action plan, which the Commission adopted in 2008.

4. More Partnership with Member States: extending the use of the Internal Market Information System (IMI)

The Internal Market Information System (IMI), an IT-based information network, is being used in the context of the Professional Qualifications Directive287 since February 2008 and for the implementation of the Services Directive288 since 28 December 2009. In both areas, it has shown great benefits in facilitating administrative cooperation across borders.

IMI's multilingual search function helps competent authorities identify their counterparts in other countries. Using pre-translated questions and answers, they can exchange information across language barriers. A tracking mechanism enables them to follow the progress of their request. In the event of problems, IMI coordinators at national or regional level can intervene.

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287 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L255 of 30.9.2005, p. 22).

288 Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L376 of 27.12.2006, p. 36).

Around 800 authorities are now using IMI for the purposes of the Professional Qualifications Directive, and more than 3000 are already registered for the IMI services module. 2009 has seen a sharp increase in the usage of the system. In December 2009, on average 180 users logged on to IMI per day, compared to 40 per day in January.

Given the success of IMI, interest for using it in other areas is great. The Commission is examining for which further legislative areas IMI would be suitable.

9.2. Analysis by sector

9.2.1. Freedom to provide services and freedom of establishment (other than Financial Services)

9.2.1.1. General Introduction

The relevant legal framework consists of Article 49 of the Treaty on the Functioning of the European Union on the freedom of establishment as well as of Article 56 of the Treaty on the Functioning of the European Union on the freedom to provide services.

This framework is complemented by a number of Internal Market Directives which develop these freedoms as regards specific service activities or specific legal aspects (Postal Services Directive289, the Directive on the legal protection of conditional access services290 and the E-commerce Directive291).

It is also complemented by Directive 2006/123/CE on services in the Internal Market292, a horizontal instrument adopted in December 2006 which had to be implemented by the Member States by the end of 2009. In addition two Comitology decision have been adopted in 2009, one on the use of the Internal Market Information System ("IMI") for the exchange of information between administrations as foreseen in the Services Directive293 and another one on practical arrangements concerning the use of electronic procedures through the Points of Single Contact.294

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289 Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, OJ L 52, 27.2.2008

290 Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access - OJ L 320, 28.11.1998, p. 54–57.

291 Directive 2003/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), OJ L 178 of 17.7.2000, p. 1.

292 O.J. L 376/36 of 27.12.2006

293 Commission Decision 2009/739/EC of 2 October 2009, OJ L 263 of 7 October 2009

294 Commission Decision 2009/767/EC of 16 October 2009, OJ L 299 of 14 November 2009

9.2.1.2. Report of work done in 2009

(1) Management of legislation, including in committees and working groups

The Services Directive sets out a comprehensive modernisation programme for national administrations and is more than just a piece of European legislation to be implemented into national law. The Commission's commitment, taken in 2007 and following a request formulated by the Council, to provide guidance and assistance to Member States throughout the whole implementation process, continued in 2009. As concrete examples of the implementation strategy put in place, 20 bilateral meetings with Member States and 9 meetings of the "Expert Group on the implementation of the Services Directive" on specific questions of the implementation have to be mentioned. The main aim of those meetings was to ensure a similar level of understanding by all Member States of the work required and the priorities for action.

- As regards the Points of Single Contact, work continued to focus on the practical implementation work and on the exchange of best practices between Member States. Substantive work has been undertaken with Member States to facilitate the cross border use of electronic procedures through the Points of Single Contact (PSC). This includes the adoption of a Comitology decision295 obliging Member States to establish "trusted lists" with common information required for the cross border validation of e-signatures. Thanks to the work undertaken during the implementation period, a close cooperation amongst many Member States has emerged. They have developed a "common branding" and logo (which the Commission will register as a trademark) and have engaged into "mutual testing" of their PSCs (to check if they are easy to use for businesses from other countries). Also with this aim, a large number of Member States have decided to make information content on their PSC websites available in languages other than their own (which goes beyond the requirements of the Directive). In addition to that the Netherlands took the initiative in 2008 to bring together people working on the practical implementation of the PSC's for an informal meeting at EU level, a so called "Jamboree" gathering. A second meeting was organised by other Member States in June 2009 allowing experts from all Member States to discuss informally and to attend a series of practical workshops.

- Concerning the use of IMI, a pilot project was launched in January 2009 giving Member States the possibility to try and test the system during a year before the end of the implementation period. By the end of 2009 more than 3000 authorities had been registered in the system and were ready to use it when needed to comply with their administrative cooperation obligations under the Directive. In addition, a Comitology decision confirming the compulsory use of the Internal Market Information System ("IMI") for the purposes of administrative cooperation between Member States under the Services Directive and setting out some practical arrangements related to the exchange of information between Member States through IMI for the specific purposes of the administrative cooperation obligations under the Services Directive, was adopted in October 2009296.

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295 Commission Decision 2009/767/EC of 16 October 2009, OJ L 299 of 14 November 2009

296 Commission Decision 2009/739/EC of 2 October 2009, OJ L 263 of 7 October 2009

- At the end of 2008, the Commission had commissioned a study on business practices which may fall within the non-discrimination clause in Article 20(2) of the Services Directive. According to this article, Member States shall ensure that the recipient of services is not made subject to discriminatory requirements based on his nationality or place of residence. Looking specifically, although not exclusively, at services provided over the internet, the study focuses on four main sectors (car rental, tourism, on-line sale of electronic goods and download of music) with the objective not only of finding evidence of potentially discriminatory practices but also of exploring (mainly through interviews with businesses) possible reasons behind different treatment applied to consumers resident in different Member States. The results of the study will be used in 2010 to provide guidance to Member States in their implementation work as well as in the enforcement of this prohibition by national authorities.

- Concerning the assistance for recipients of services as foreseen in Article 21 of the Services Directive, a network of national bodies has been set up to assist recipients of services, business as well as consumers, when they want to have access to services from another Member State.

(2) Management of Infringements

The control of the application of articles 49 and 56 of the Treaty of the Functioning of the European Union remains an important task. Infringement proceedings in 2009 concerned restrictions in various areas of the Internal Market.

As in 2008, a number of procedures concerned **health services**, in particular the reimbursement of medical costs incurred in another Member State (the so-called mobility of patients). The Commission referred Portugal297 to the Court of Justice and sent a supplementary reasoned opinion to Spain298 recalling to both Member States that the Court had issued several judgments on the reimbursement of the costs of medical treatment in another Member States and that the right conferred to patients by the TFEU were not recognised in Spain. Luxemburg was referred to the Court of Justice299 over cases of refusal to reimburse the costs of biomedical tests carried out in other Member States. And finally a supplementary reasoned opinion was sent to the United Kingdom300 concerning its legislation on the recognition of medical prescriptions. The Commission considered in particular that the United Kingdom has failed to guarantee the recognition of medical prescriptions issued by health professionals established in other Member States in accordance with Article 56 TFUE. Even if the United Kingdom had undertaken some amendments to its legislation as a result of the infringement procedure, the Commission still considered that the recognition should be guaranteed also to so called "controlled drugs" not subject to a specific medical prescription. In addition the Commission insisted that the requirement to have the address and the age of the patient indicated on the medical prescription in order for the prescription to be recognized in the United Kingdom was not compatible with article 56

297 C-255/09

298 IP/09/1474

299 C-490/09

300 IP/09/1763

TFUE as it was disproportionate in relation to the objective of protecting public health. In another case, also related to health services, the Commission has referred France to the Court301 concerning the incompatibility of French legal restrictions on the ownership of capital in biomedical laboratories with the freedom of establishment as guaranteed in Article 49 TFUE. According to French legislation a non-biomedical firm may hold no more than one quarter of the shares of a company operating biomedical laboratories and any natural or legal person is prohibited from holding shares in more than two firms set up in order to jointly operate one or more biomedical laboratories. The Commission considered that the aim of protecting public health can be achieved with measures that impose less restriction on the freedom of establishment of natural and legal persons in France. For the protection of public health, the Commission considered that it is important that the biomedical tests are being carried out by competent staff with necessary qualifications. However, the Commission questions whether such qualifications are necessary to own or to have the right to operate biomedical laboratories.

In other areas, the Commission sent a reasoned opinion to Luxembourg302 on account of its regulations which require persons wishing to provide services temporarily to obtain an authorisation for establishment. The Commission considered that the legislation at stake made a too restrictive and inadequately precise **distinction between the establishment of an economic operator in Luxembourg and the temporary provision of services**. Following changes in the legislation the Commission was able to close this case at the end of 2009. In a similar case, Portugal has been taken to Court303 because the Portuguese rules on estate agent services and property mediation companies do not distinguish between establishment and temporary service provision. Requiring services providers from other Member States to comply with all requirements regarding establishment even if they are only providing their services on a temporary basis, and to operate solely as a property estate agent or mediation company is considered disproportionate in view of Articles 49 and 56 TFUE.

The Commission sent a letter of formal notice and a reasoned opinion to Bulgaria304 concerning restrictions on the **free movement of lawyers and law firms**. The Commission considered in particular that some provisions of Bulgarian legislation constitute a violation of the freedom of establishment of lawyers and law firms in Bulgaria as enshrined in Article 49 TFUE and also infringe Directive 98/5/EC, which aims to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained. The requirement of Bulgarian nationality for a person to obtain the qualification of Bulgarian lawyer is not justified, nor is the fact that EU lawyers do not benefit from the same rights as Bulgarian lawyers for the exercise of their activity. Furthermore, the Commission believes that the current inability of EU law firms to establish a branch in Bulgaria or use their own company name there breaches Article 49 TFUE.

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301 C-89/09

302 IP/09/153

303 C-518/09

304 IP/09/281 and IP/09/1625

A reasoned opinion was sent to the Kingdom of Belgium305 for applying its **regulations on the technical inspection** of lifting equipment to undertakings established in another Member State. The Belgian regulations stipulate that such equipment (including lorry mounted cranes) must be inspected by an approved Belgian body before being put into service in Belgium and again at periodic intervals thereafter. The Commission considered that those rules infringe Article 56 TFUE since such inspections duplicate unnecessarily the inspections already carried out in the Member State where the service provider is established.

The Portuguese rules on **patent agents** require any European patent agent established in another Member State who wishes to exercise his or her activities before the Portuguese trademark and patent office as a temporary service provider to be registered in advance with and be accredited by the Portuguese authorities. As these requirements breach Article 56 TFUE as well as Title II of Directive 2005/36/EC on the recognition of professional qualifications, a letter of formal notice and a reasoned opinion were sent to Portugal.306

The Commission has also decided to send a reasoned opinion to Belgium307 because of its **rules requiring self-employed persons established in another Member State to provide advance notification** (so called "*Limosa declaration*") if they wish to pursue professional activities on a temporary basis in Belgium. The Commission considers that the systematic requirement for services providers established in another Member State to provide advance notification before they can pursue a professional activity constitutes a disproportionate obstacle and breaches the basic freedom to provide services as guaranteed by article 56 TFUE.

The Commission has also sent a reasoned opinion to Cyprus308 in relation to certain provisions of the law regulating the establishment and operation of institutions of tertiary **education** and to Portugal concerning its legislation on **construction services**.309

The Commission could also close, among others, two important infringement proceedings. One against Austria which after a Court decision in 2008 stating that Austria has violated EU law because of the lengthy procedural rules imposed on nationals from Member States that joined the EU in 2004, changed its rules so that nationals from those Member States can now freely establish a company in Austria.310 The other case concerned the requirement for patent agents established in another Member State to have an address in Germany for any action at the German office of trademarks and patents. Germany has changed its rules so that patent

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305 IP/09/440

306 IP/09/1474

307 IP/09/1474

308 IP/09/1761

309 IP/09/1763

310 IP/09/1639

agents from other Member States can provide their services without any unjustified restrictions. 311

On 25 June 2009 the Commission decided to send to Greece a reasoned opinion concerning national provisions on **establishment of petrol stations**312. The Commission challenged in particular the incoherence of the provisions relating to the location of new oil installations; the need to provide a fire safety study certified by a sworn expert registered in Greece in order to be authorized to open an oil station; the lack of legal certainty and transparency for opening oil stations during the night, Sunday and public holidays; constraints regarding opening hours. These restrictions do not appear to be proportionate to relevant overriding reasons of general interest (public safety, protection of health). Greece replied in September 2009.

The Commission decided on 29 January 2009313 to withdraw from pending Case C-369/08, Commission v Germany, and close definitively the infringement proceedings against Germany relating to restrictions on freedom of **establishment of motor vehicles inspection centres**, notably the compulsory and exclusive affiliation on a full-time basis of at least 60 independent experts and the employment of at most 30 experts as inspection engineers. The Commission opened the infringement proceedings following written and oral questions of the European Parliament. In August 2008 the Commission referred the case to the Court of Justice, but in September 2008 the German authorities amended their legislation and repealed the restrictions. Inspection service providers form other Member States will now find it easier to establish their services in Germany.

The Court of Justice by its Judgment of 22 October 2009 in Case C-438/08, *Commission v Portuguese Republic*, declared that by imposing restrictions on the freedom of establishment of bodies of other Member States intending to carry on in Portugal the activity of vehicle inspection, namely, the making of the grant of authorisations subject to the public interest, the requirement of a minimum share capital of EUR 100 000, the limiting of the undertakings' company objects and the imposition of incompatibility rules on members, managers and directors, the Portuguese Republic has failed to fulfil its obligations under Article 49 TFEU.

The Commission decided on 8 October 2009 to close infringement proceedings against Portugal concerning restrictions on the **establishment of retail stores** which were incompatible with Article 49 TFEU, following the adoption of a new legislation on commercial establishments314. The Portuguese legislation in question subjected the establishment of retail stores to an authorisation procedure based on economic criteria, such as the contribution of the new establishment to 'competitive conditions in the retail sector' or 'regional sector-specific integration'. Moreover, the law provided for the consultation of competitors on a planned establishment and was not transparent on how exactly certain criteria applied. The new Portuguese regulatory framework for the establishment of retail stores still subjects planned establishments to an authorisation procedure. The new procedure, however, is based on non-economic criteria (such as those related to environmental and

311 IP/09/1639

312 IP/09/1002

313 IP/09/187

314 IP/09/1479

territorial planning), which have been made transparent in the implementing decree. Moreover, the new procedure does not provide for the consultation of competitors.

The Commission decided on 25 June315 to send a letter of formal notice to Germany concerning legislation that may restrict the establishment of retail facilities in Germany, in particular planning requirements for large-scale retail facilities laid down in the planning laws of Nordrhein-Westfalen and the region of Stuttgart, which limit the establishment of shops with a certain product range outside dedicated central supply areas and make it subject to the assessment of its economic effects. The Commission's objective was to verify whether these measures are compatible with Article 49 TFEU, and to draw attention to potential infringement of the Directive on services in the internal market, which had to be transposed by the end of 2009.

The Commission decided on 19 March316 to close infringement proceedings against Belgium, following the adoption of the Royal Decree introducing **instructions to pharmacists**, published on 30 January 2009, which removes the restrictions contested by the Commission under Articles 49, 56 and 34 of the TFUE. The contested legislation essentially prohibited pharmacists to deliver medicines to an agent acting on behalf of the patients of a community if the latter was not located in the same commune as the pharmacy in question or in a neighbouring commune.

The Commission decided on 25 June317to close infringement proceedings against Austria concerning restrictions on the free movement of **bovine artificial insemination services**, following the adoption of new legislation in the Federal States of Salzburg and Tyrol which repealed the restrictions in question. The Commission also decided on 8 October318to close infringement proceedings against France concerning restrictions on freedom of establishment and freedom to provide services for artificial insemination of bovines.

In 2004 the Commission decided to bring France before the Court of Justice319 on the grounds that its legislation on artificial insemination services for bovines interferes with two basic freedoms laid down in the Treaty – the freedom of establishment and the freedom to provide services (Articles 49 and 56 TFEU). At that time, French law required an authorisation system for the centres responsible for the storage, distribution and use of bovine semen, and these authorisations specified exclusive geographical areas in which only the approved centres may conduct these activities. Consequently, distributors and users of bovine semen legally established in other Member States were not able to set up permanently in France or provide their services on a temporary or occasional basis. Following the decision of the Court of Justice issued July 17, 2008 (Case C-389/05), France has now brought its legislation in conformity by repealing the restrictions in question.

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315 IP/2009/1002

316 IP/09/438

317 IP/09/1002

318 IP/09/1479

319 IP/04/1319

Following infringement proceedings against Germany, the Court of Justice on 29 November 2007 (Case C-404/05, *Commission v Germany*) declared that Germany was in breach of Article 56 TFEU, by requiring **private inspection bodies** of organically-farmed products approved in another Member State to maintain an establishment in Germany in order to be able to provide inspection services there. Germany complied with the Judgment of the Court by amending its legislation so that private inspection bodies in the field of organic production of agricultural products registered in other Member States are no longer obliged to establish themselves in Germany in order to be able to provide inspection services there. This will allow for cross-border provision of such services. As a result, the Commission decided on 29 January 2009 to close the infringement proceedings320.

The Commission sent on 9 October 2009321 a reasoned opinion to Cyprus concerning its national legislation restricting the **activities of real estate agents**, by applying conditions upon the recognition of the qualifications of professionals established in other Member States, an obligation to collaborate with a real estate agent established in Cyprus for the provision of services, and the requirements that legal persons active in this area to exercise this activity as their sole corporate purpose and that the person(s) exercising the activity of real estate agent in a company exercise this activity exclusively in the company that employs them and may not act independently of their employer either for other persons or companies, or on their own account.

On 19 March the Commission decided**322** to close the infringement proceedings against Austria, following the amendment in August 2008 of § 25 (3) of the **Austrian Gaming Act** which extended the protection offered by the Austrian legislation to casino players to all EU citizens and citizens of a Member State of the European Economic Area (EEA). On 8 October323 it decided to close the infringement proceedings against Austria relating to the prohibition of advertising of foreign casinos in Austria. Under Austrian legislation on games of chance, advertising of foreign casinos was prohibited in Austria, while Austrian casinos were not hindered by a similar restriction on how they should advertise nationally. This provision restricted not only the promotion and provision of casino services offered by operators established in other Member States but also the possibility for recipients of services located in Austria to receive such cross-border services. Following a letter of formal notice sent by the Commission, Austria amended its legislation on games of chance by introducing the possibility for casinos from the EU or the European Economic Area (EEA) to be granted an authorisation to be advertised in Austria, provided that they offer the same or similar standards of protection of players as those applying in Austria.

The European Court of justice issued some preliminary rulings or opinions in the area of establishment and provision of services.

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320 IP/09/187

321 IP/09/1476

322 **IP/09/438**

323 IP/09/1479

In its Judgment of 8 September 2009324, the Court of justice ruled that Article 56 TFEU does not preclude legislation of a Member State, such as that at issue in the main proceedings, which prohibits operators such as Bwin International Ltd, which are established in other Member States, in which they lawfully provide similar services, from offering games of chance via the internet within the territory of that Member State.

On 19 May the Court of justice ruled that prohibitions on non-pharmacist ownership of pharmacies in Germany and in Italy are compatible with freedom of establishment**325**. In two separate rulings (following infringement proceedings initiated by the Commission against Italy and in a request for preliminary ruling respectively), the Court ruled that the prohibitions at issue constitute a restriction on freedom of establishment which, however, is justified by and proportionate to the overriding reason in the general interest of protecting public health. In Case C-531/06, the Court of Justice dismissed the action of the Commission, while in Joined Cases C-171/07 and C-172/07, it ruled that Articles 43 EC and 48 EC (now 49 and 56 TFEU) do not preclude national legislation, such as that at issue in the main actions, which prevents persons not having the status of pharmacist from owning and operating pharmacies.

.On 1 June 2010 the Court of Justice ruled that Article 49 TFEU, in principle, does not preclude national legislation that provides for a minimum distance between pharmacies of 250 metres and for a minimum number of 2800 inhabitants per pharmacy. Nevertheless it considered that Article 49 TFEU precludes such national legislation in so far as the basic '2 800 inhabitants' and '250 metres' rules prevent, in any geographical area which has special demographic features, the establishment of a sufficient number of pharmacies to ensure adequate pharmaceutical services. It left it to the national court to ascertain this. Finally, the Court ruled that the Asturias provisions that benefited those applicants for a pharmacy licence with experience in Asturias are incompatible with Article 49 TFEU.

9.2.1.3. Evaluation based on the current position

The implementation of the Services Directive requires an unprecedented effort from all Member States. It necessitates the reviewing of the national legislation, implies important legislative changes in all Member States and the undertaking of a number of ambitious projects as the setting up of "Points of Single Contact" for businesses. As described in the section above a lot has been achieved. The Commission will first of all have to follow-up with the Member States not only on the timely transposition of the Directive, but will also have to assess the quality of the work done by the Member States.

9.2.1.4. Evaluation results

(a) Priorities

The main priority for 2009, as for previous years, was the timely and correct implementation of the Services Directive by the end of 2009. Even if the efforts undertaken by both the

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324 Case C-42/07, Liga Portuguesa de Futebol Profissional/ Bwin International Ltd v Departamento de Jogos da Santa Casa da Misericórdia de Lisboa

325 Ruling of 19 May in Case C-531/06, Commission v. Italian Republic, and in Joined Cases C-171/07 and C-172/07, Apothekerkammer des Saarlandes and Others, concerning prohibitions of non-pharmacist ownership of pharmacies

Member States and the Commission have been considerable it is clear that a lot of work remains to be done and that important progress needs to be achieved in 2010 as well. Having reached the end of the implementation period, the main focus will shift to the so called "*mutual evaluation process*" as foreseen by the Directive, and to the control of the correct implementation of the Services Directive by Member States.

Enforcement of the Treaty rules on the freedom to provide services and the freedom of establishment will continue to focus in particular on those areas which are not covered by the Services Directive, such as health services, as well as on all restrictions caused by the failure to distinguish between those two fundamental freedoms. Clear discriminations or cases concerning entire categories of services providers will also continue to be treated as priority.

(b) Planned actions (2010 and beyond)

The Services Directive foresees for 2010 a so called *"mutual evaluation"* exercise, in which Member States and the Commission will assess the results of the review of the regulatory framework undertaken to implement the Directive. The objective is to create transparency amongst Member States, exchange best practices and assess the resulting state of the Internal Market for services. During this "*peer review*" exercise, the Member States and the Commission will examine and discuss Member States' reports. At the end of the process at the end of 2010, the Commission will submit a report with the results of the exercise (with proposals for additional initiatives when required) to the Council and the European Parliament.

Work in 2010 will also continue

- to improve the functioning of the Points of Single Contact and develop them into fully fledged e-government centres (covering also aspects which are not under the services directive such as taxation)
- to further facilitate the use of electronic procedures across borders (to avoid the emergence of e-barriers);
- to monitor and improve the use of IMI for the administrative cooperation obligations under the Directive;
- to support the network of assistance to recipients of services and all other measures contained in the Directive to benefit consumers (e.g. obligation for business not to discriminate consumers because of their residence) and to improve the quality of services.

Concerning *infringement proceedings* and enquiries, alternative problem solutions mechanisms such as SOLVIT or EU-PILOT will be used according to set priorities. The efficient use of resources has to be taken in account, notably due to the vast variety of restrictions concerning the Internal Market.

In the area of postal services:

9.2.1.5. Current position

With the adoption of the 3rd Postal Directive in 2008 (2008/6/EC), the main focus in 2009 was continued market monitoring, the provision of assistance to Member States in the run up to full implementation of the postal acquis and proposing ways to enhance the operation of the current postal regulatory framework.

In keeping with the spirit of Commission's Recommendations on measures to improve the functioning of the Single Market, work on a wide range of transposition issues was taken forward in the framework of a series of Working Groups convened under the auspices of the Postal Directive Committee. In addition to promoting best practice and benefiting from input from sector experts, the Working Groups agreed on a set of operational conclusions notably on the provision of universal postal service, the functioning of national postal regulators and the calculation of the net costs of universal service.

As part of its ongoing activity of directly assisting Member States in the process of transposing the 3rd Directive, 13 bilateral meetings were held with ministries and national regulatory authorities. These meetings focused on delivering advice and guidance as well as providing preliminary evaluations of draft legislation under preparation by national authorities. In some instances, these meetings were the catalysts in persuading national authorities to amend and withdraw draft legislative texts.

9.2.1.6. Evaluation based on the current position

Two sector studies delivered at the end of 2008 and August 2009 respectively provided a clear overview of the adaptations underway in the postal sector, the impact of the Community's postal reform over the last ten years and identified shortcomings and persistent problems which need to be resolved in the run up to full market opening over the next two years. The key findings of these studies, combined with complaints from stakeholders focusing on an incorrect interpretation and uneven application of the Community acquis by some Member States, are being used to curtail bad practices (expanding the reserved area, predatory/excessive pricing), remove barriers to entry (excessive and burdensome licence conditions, access to the postal infrastructure) and ensure the correct implementation of the postal acquis (ensuring national regulators are fully operational/ timely transposition).

Market monitoring is being enhanced through the provision and publication of more comprehensive key data (in close co-operation with Eurostat) on the postal sector.

9.2.1.7. Evaluation results

1) Priorities: Enhancing the operation of the Postal Regulatory Model (Priority project)

Building on the conclusions of the 2009 Study on the Role of Regulators in a More Competitive Postal Market and after informally consulting key stakeholders, the service in charge has proposed the creation of a new entity to promote better market oversight. The grouping would be known as the European Regulatory Group for Posts (ERGP). The main tasks proposed for this Group are expected to include ensuring greater coherence in the operation of the postal regulatory model, exchanging best practice and "regulatory know how" notably with less well resourced national regulators and aiding and encouraging the growth of competition across the postal sector.

2) Planned actions

1. DG Markt proposed a High Level Conference of Postal Policy during the Swedish Presidency in 2009. The conference could not take place mainly due to organisational difficulties and was postponed to 2010. It will now go ahead in April, during the Spanish Presidency and will take place in Valencia.

2. The decision to go ahead with the proposal to create the Group of E.P regulators has not yet be presented to the incoming Commissioner and awaits his endorsement.

9.2.2. **Financial Services**

9.2.2.1. General introduction

The financial services sector includes three major areas for which similar European policies apply: **banking**326, **insurance**327 and **securities**328. The objective of the Community secondary legislation is to facilitate the establishment and the cross border provision of services for financial institutions on the basis of the home country control principle. In addition to these main areas, financial services legislation covers **occupational pensions**329 and **payment services**330.

BANKING

9.2.2.2. Current position

In the ***banking sector***, the Commission mainly dealt with non-communication cases. As regards the transposition of Directive 2007/44/EC which lays down the procedures and criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector[331], seven infringement cases against Greece, Spain, Italy, the Netherlands, Poland, Portugal and the United Kingdom due to non-communication of the national transposition measures before the deadline of 21 March 2009 were initiated in June 2009 and were still pending at the end of 2009.

The Commission also launched infringement proceedings against seventeen Member States for non-communication of the implementing measures of Directive 2009/14/EC which has amended the EU rules on deposit guarantee schemes[332]. In the course of 2009, it was possible

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326 http://ec.europa.eu/internal_market/bank/legislation/index_en.htm

327 http://ec.europa.eu/internal_market/insurance/legis-inforce_en.htm

328 http://ec.europa.eu/internal_market/securities/index_en.htm

329 http://ec.europa.eu/internal_market/pensions/directive_en.htm

330 http://ec.europa.eu/internal_market/payments/legislation_en.htm

331 Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (OJ L 247, 21.9.2007, p. 1–16)

332 Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ L 68, 13.3.2009, p. 3–7)

to close fourteen of these cases following the notification of the implementing measures by the Member States concerned, while three cases - against Slovenia, Finland and Greece - remained open at the end of 2009.

The case against Hungary for non-transposition of Directive 2006/48/EC (the so called 'Capital Requirement Directive', CRD)[333] pending before the Court was settled in 2009 further to the complete implementation of the Directive.

In 2009, the working group set up by the Commission in order to ensure a consistent implementation of the CRD (CRDTG - Capital Requirements Directive Transposition Group), continued its work of interpretation and clarification of the CRD provisions[334].

Building on the work of this group, the Commission adopted two comitology directives clarifying and completing technical provisions of the CRD[335]. A more extensive review refining and updating certain provisions of the CRD was adopted by the Council and European Parliament in 2009[336]. The whole package of amendments must be implemented in national law by the end of 2010. The CRDTG will continue to assist Member States in the transposition process via the on-line Q&As service and meetings, if there is a need to discuss more extensively specific issues.

In July 2009, the Commission proposed further changes to the CRD to strengthen rules on bank capital and on remuneration policies in the banking sector[337]. The Council found a political agreement on this proposal in November 2009. Negotiations with the European Parliament will continue in 2010.

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333 Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions (OJ L 177, 30.6.2006, p. 1)

334 http://ec.europa.eu/internal_market/bank/regcapital/transposition_en.htm

335 Commission Directive 2009/27/EC of 7 April 2009 amending certain Annexes to Directive 2006/49/EC of the European Parliament and of the Council as regards technical provisions concerning risk management (OJ L 94, 8.4.2009) and Commission Directive 2009/83/EC of 27 July 2009 amending certain Annexes to Directive 2006/48/EC of the European Parliament and of the Council as regards technical provisions concerning risk management (OJ L 196, 28.7.2009)

336 Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management

337 Poposal for a Directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies SEC(2009) 974 final SEC(2009) 975 final

A Directive improving depositor protection was proposed at the end of 2008 and adopted in March 2009[338]. It increased the level of covered deposits, reduced the payout delay and abolished co-insurance (a part of losses to be borne by depositors).

In preparation of future legislative proposals, the Commission launched two public consultations in 2009, concerning further amendments to the CRD and a possible EU framework for cross-border crisis management in the banking sector.

The report on the conformity of the national measures implementing the CRD was finalized and published in 2009[339].

9.2.2.3. Evaluation based on the current position

In the banking sector, the CRDGT has proved to be a useful cooperation tool with Member States with a view to ensure coherent implementation. The work of this group has also resulted in the amendments to the CRD proposed by the Commission in July 2009 on the prudential treatment of re-securitization operations.

The first package of amendments to the CRD covering both legislative and technical provisions was adopted in 2009. It represented a first response to the financial crisis by reinforcing rules on liquidity, large exposures and the quality of capital. The amendments to the Directive on Deposit Guarantee Schemes were an emergency quick-fix measure which helped maintain the confidence of depositors when the crisis aggravated.

The report on the implementation of the CRD provided a comprehensive and detailed overview of the implementation of this Directive in the 27 EU Member States and a preliminary check of the transposition. The main finding of the study is that most Member States have correctly transposed the Capital Requirements Directive.

(1) Priorities

The main priorities in the banking area concern the preparation of legislative proposals aimed at improving regulation, strengthening supervision and developing a crisis management regime and the co-operation with Member States to ensure a coherent implementation of the law, through Committee and working groups discussions, including further work of the CRDTG, Committee guidelines, and, if necessary, transposition workshops.

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338 Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ L 68, 13.3.2009, p. 3–7)

339 Study on the implementation of the Capital Requirements Directive (Directive 2006/48/EC and Directive 2006/49/EC), published at http://ec.europa.eu/internal_market/bank/studies/index_en.htm

(2) Planned actions

The Commission will continue to monitor the implementation and application of the CRD on the basis of the findings of the study and other available sources. Priority will be given to areas in which a coherent implementation is critical to maintain a level-playing field between credit institutions across the EU.

The recent crisis has demonstrated a number of critical shortcomings in both the risk assessment and management of financial institutions and the relevant regulation. The Commission must propose adequate remedies. The Commission has to prevent recent and present problems from re-occurring and ensure that risks posed by the financial sector to financial stability and to the real economy are kept under control.

In this context, in 2009, G-20 leaders committed in London and Pittsburgh to a set of important measures. These would build high quality capital, strengthen liquidity risk requirements, discourage excessive leverage, mitigate pro-cyclicality of capital requirements andrequire forward-looking provisioning for credit losses. All these measures, including a proposal to remove the exceptions, derogations and discretions provided for by the CRD which give rise to differences in national implementing legislation, will be part of a comprehensive package amending the CRD ('CRDIV'), expected to be adopted by end 2010.

A more comprehensive review of the Directive on Deposit Guarantee Schemes is planned in 2010. In addition, the Commission will propose a revision of the Financial Conglomerates Directive[340] designed to reinforce supervision of these institutions.

Other substantial preparatory and legislative work is envisaged in 2010 in the banking area. This work will focus on building up a EU framework for managing bank crises, including a regime for the resolution of banks in financial difficulties, in order to improve the ability of governments to deal with problems in cross-border banks.

INSURANCE AND OCCUPATIONAL PENSIONS

9.2.2.4. Current position

(1) Report of work done in 2009

In total 30 complaints and infringement cases were handled in 2009, a high number of them being for non-communication of the transposition measures concerning Directive 2005/68/EC. 3 cases were referred to the new EU Pilot tool and no cases were referred to the SOLVIT tool. 10 cases were closed (around 33% of the total of cases handled) and only 1 was referred to the ECJ (3% of the total approximately). Bilateral contacts were held with the Member States either through package meetings or in the relevant sector committees. Package

340 Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1–27)

meetings sometimes led to the closing of the infringement case within 6 to 9 months of being held.

As regards the *transposition of Directives* by the Member States, non-communication cases launched in the insurance sector against several Member States with regard to the failure to transpose Directive 2005/68/EC (the reinsurance Directive341) by 10 December 2007 which were still outstanding, were settled in 2009 (Belgium, Czech Republic, Greece and Portugal). The only case still under examination is the one concerning Poland (ECJ judgement of 29.10.2009 in Case C-2008/511).Some infringements were also launched concerning Directive 2002/92/EC (the insurance mediation Directive342), namely against Italy. As regards motor insurance, the ECJ found that the UK had not fully communicated the transposition of Directive 2005/14/EC (judgement of 3.9.2009 in Case C-2008/457). This infringement is still pending.

An important case highlighting non conformity of national legislation was lodged with the ECJ. It concerned the Belgian sickness funds ("mutualités/ziekenfondsen"), which offer complementary health insurance without respecting the solvency rules of directives 73/239/EEC and 92/49/EEC (1st and 3rd non-life insurance Directives), which the Commission decided to take to the ECJ on 19.11.2009343

By a judgement delivered on 28.4.2009 the ECJ dismissed a case brought by the Commission in 2006 (C-518/06) against Italy. The Court ruled that by having legislation pursuant to which premiums for insurance against civil liability in respect of the use of motor vehicles must be calculated on the basis of specific parameters, by controlling the detailed rules on the calculation of insurance premiums for insurance undertakings having their head office in another MS but doing business in Italy and by maintaining an obligation to provide coverage for third-party motor insurance for those undertakings, Italy had not breached Articles 43 and 49 EC (49 and 56 TFEU) or Directive 92/49/EC, the provisions in question being justified by an overriding requirement of public interest in the first head of count and not against the Directive in question in the two remaining ones.

As regards petitions a total of 17 petitions were handled on insurance and pensions. They dealt inter alia with motor insurance, life assurance and pension funds. Of course, petitions that show a breach of EU law have their facts "converted" in to infringements. About 165 queries of other nature concerned the insurance and pensions sector.

(2) Changes underway

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341 Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC, 88/357/EEC as well as Directives 98/78/EC and 2002/83/EC (OJ L 323, 09.12.2005, p. 1)

342 Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ L 9, 15.1.2003, p. 3)

343 Ref to press release

The key change and challenge ahead is the proposal for a directive called "Solvency II" Directive which was adopted in 2009344 and is to be transposed by late 2012. The Directive provides for a transposition period of about 3 years so that implementing measures needed to make the new framework completely operational are adopted beforehand. Intensive work intended to prepare its transposition and proper application started in 2009 and will continue through 2012. A key year will be 2011, when the Commission will table the proposal of the implementing measures. It is intended to modernise the evaluation and calculation of risks and therefore will provide for a new, prospective, and economic and risk based approach putting much greater emphasis on sound risk management and robust internal controls by insurance undertakings. In addition SII will also profoundly influence the way in which supervision is carried out by the competent supervisory authorities. It also contains a new approach as regards insurance groups. It is far too early to anticipate what will be the effects and consequences of the new Directive.

9.2.2.5. Evaluation based on the current position

Conformity check of Directives transposed remains a key challenge. In the insurance sector, the non-communication phase affords the opportunity to press home the need for a comprehensive and updated concordance table and then to check the substantive conformity of the transposition. This has been the approach followed for all Directives adopted since 2000 and also the initial/1st stage approach as regards the conformity assessment of Directive 2005/68/EC on reinsurance.

The implementation of the Directive on *Reinsurance* (2005/68/EEC) was due by 10.12.2007, but not all Member States had completed their transposition process by that date. In 2009 the checking of the completeness of the communication of the transposition of the said Directive was achieved. In 2010 work will continue the focus on pursuing infringements for those countries which appear not to have transposed in a correct way the Directive in question (only Poland and Romania would be prima facie concerned by this).

Insurance cases have generally a considerable impact in economic terms and in terms of proper functioning of the relevant market both for undertakings and final users. A level playing field is particularly affected because breaches either limit the possibilities of competitors to stay on the market or allow national companies to offer services without fulfilling the obligations imposed by EC legislation. It also has consequences for the services and products that are offered to the consumers.

The workload on complaints and infringements is likely to increase or at least remain broadly stable in 2010-2011 mainly due to increasing awareness of citizens of their rights in all 27 Member states. This implies a likely increase in flow of work and the corresponding need to define and establish priorities. The current economic/financial crisis may have repercussions on national measures and subsequently on complaints. Priority will be given infringements for non-communication of transposition measures, non-respect of an ECJ judgment and cases that show a breach of a fundamental freedom or principle of the EC Treaty or a breach of a Directive which is blatant.

The main structural problems (apart from the accession of new MS or political/economic crisis) result from the complexity of the legislation adopted sometimes in several steps

344 Directive 2009/138/EC of 17.12.2009, OJ L 335

according to the Lamfalussy process. To tackle this problem seminars explaining the legislation have already been organised and regular contact with Member States is maintained via the relevant Committees (mainly the European Insurance and Occupational Pensions one) and their working groups and also by using the package meetings. For the Solvency II proposed Directive a longer transposition period (of around 3 years) is planned (with the so called "level 2" measures under the Lamfalussy process adopted around 1 year before the final implementation date). The same complexity creates problems in transposition which may also be of substance (problems of interpretation, for instance, or of misapplication, either in general or in specific individual cases).

In overall terms the same can be said on the implementation of the acquis by the Member States in general.

9.2.2.6. Evaluation results

(1) Priorities

The main priority will be the ongoing work on the "level 2" measures as regards the Solvency II Directive. The checking of recently to be transposed Directives, notably Directive 2005/68/EC on reinsurance, will be continued.

To ensure timely and effective problem solving efficient co-operation with the Member states as well as an efficient management of infringement procedures will be reinforced

(2) Planned actions (2010 - 2011)

As for **insurance legislation,** Guidance on the transposition of Solvency II has started in close co-operation with the Member States and will continue through to 2012.

A detailed checking of the substance of the transposition of Directive 2005/68/EC by the Member States will be continued and completed by the Commission services. Failure to fully implement the reinsurance Directive prevents the creation of a level playing field and could conceivably affect reinsurance undertakings and the reinsurance market in a negative way.

The package meetings with Member States, as well as the referral of cases to the EU Pilot tool, will be continued.

SECURITIES

9.2.2.7. Current position

(1) General introduction

'Securities markets' legislation include the following (main) directives and regulations:

a. Directive on Markets in Financial Instruments 2004/39/EC345 (MiFID) and its implementing provisions (Commission Directive 2006/73/EC346 and Commission Regulation

345Directive 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)

1287/2006347), which regulate the provision of investment services in the EU and aim to create a level playing field for trading venues.

b. Market Abuse Directive 2003/6/EC (MAD)348 and its implementing texts (Commission Directive 2003/124/EC349, Commission Directive 2003/125/EC350, Commission Regulation 2273/2003351, Commission Directive 2004/72/EC352), whose aim is to prevent and to fight against insider dealing and market manipulation.

c. Prospectus Directive 2003/71/EC353 and its implementing Regulation 809/2004354 regulating the obligation to produce a prospectus and the content of the prospectus to be published when securities are offered to the public or admitted to trading in the EU.

d. Investor Compensation Scheme Directive 1997/9/EC355 (ICSD) introducing a compensation for investors having lost their assets as a result of the failure of an intermediary providing investment services.

e. Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies356 introducing a registration and supervisory regime.

346Commission 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)

347Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 1–25)

348 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 96, 12.4.2003, p. 16–25)

349 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. 70–72)

350 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. 73–77)

351 Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJ L 336, 23.12.2003, p. 33–38)

352 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. 70–75)

353 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. 64–89)

354 Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ L 149, 30.4.2004, p. 1–126)

355 Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997, p. 22–31)

356 Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1-31)

(2) Work done in 2009

In the area of ***securities markets***, concerning the MiFID, the Commission services obtained a favourable Court judgement357 in 2009 against Poland for non transposition of the implementing Directive 2006/73/EC of the Markets in Financial Instruments Directive (MiFID). Following notification by Poland of complete transposition of Directive 2006/73/EC in December 2009, the completeness check of the transposition by Poland has been finalised for MiFID in 2009 through closure of all infringements for non communication of level 1 and level 2 of MiFID.

The quality check for MiFID was continued and finalised in 2009 with the exception of three Member States for which investigations are ongoing, two of which are subject to open infringements. The Commission has furthermore closed in 2009 an infringement against Spain on the basis of the Investment Services Directive (ISD)358.

Moreover, the questions and answers database on MiFID, launched by DG Internal Market and Services in 2007, continued to be operated in 2009 to help provide all stakeholders with the possibility to clarify interpretational issues concerning MiFID. 220 questions were registered in the database until the end of 2009. The Commission services assisted regularly also to meetings of the Committee of European Securities Regulators (CESR) expert groups where a coordination approach in terms of application of MiFID is sought by national supervisors.

Concerning the MAD, the quality check of transposition for MAD continued. This check has lead to the opening of two infringement proceedings (reasoned opinion) in 2009 against Luxembourg and UK (Gibraltar). These infringements concerned provisions on the powers of competent administrative authorities and administrative sanctions. An infringement against Greece for incorrect application of MAD was closed in 2009. Finally, an important clarification on the notion of the 'use of inside information' in MAD was brought in 2009 by the ECJ in the Spector Photo Group case359, where the Court, in line with the interpretation of the Commission, considered that there was a refutable presumption that a primary insider who is in possession of inside information on a peculiar issuer uses it when he trades the financial instruments of this issuer. The Commission services have furthermore launched a call for evidence in April 2009 as a first step concerning the review of the MAD directives360 and regulation.

Concerning the ICSD, the Commission services closed in 2009 five infringement cases against Germany on the incorrect application of the ICSD, as well as an infringement based on a complaint against Poland on compensation before the entry into force of ICSD.

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357 ECJ, "Judgment of the Court (Eighth Chamber) of 19 March 2009 — Commission of the European Communities v Republic of Poland", case C-143/08 of 19 March 2009, OJ C 113, of 16 May 2009, p. 11

358 The Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ L 197, 6.8.1993, p. 58) (ISD) is the predecessor of MiFID which started applying in November 2007.

359 European Court of justice judgment C-45/08, "Spector Photo Group and Van Raemdonck (Approximation of laws)", of 23 December 2009

360 Commission call for evidence on review of Market Abuse Directive of 20 April 2009 available on http://ec.europa.eu/internal_market/securities/abuse/index_en.htm

The Commission services have dealt with three petitions in 2009. One petition alleged infringements of the ICSD by Poland. Another petition was received on the consequences of late transposition of MiFID by Greece. Finally, the third petition concerned the transposition of ICSD in Austria linked to the AMIS case. None of these petitions has lead to the opening of an infringement.

(3) Changes underway (2009-2010)

The legislative proposal to amend the Prospectus Directive Has been adopted on 23 September 2009361. This proposal, adopted in line with the Better Regulation Principles, aims at increasing legal clarity and efficiency in the prospectus regime and reducing administrative burdens for issuers and intermediaries while enhancing further investor protection. The Council has adopted a common approach on 17 December 2009. The Parliament Rapporteur's report has been presented on 27 January 2010. The vote within the ECON Committee should take place on 23 March 2010 and the vote in the Plenary should be in May 2010. The final adoption by the co-legislators is expected before summer 2010.

Concerning Credit Rating Agencies, the negotiations on the Regulation on credit rating agencies were finalised in April 2009, whereas formal adoption was completed on 16 September 2009. The Commission services have started the implementation work by publishing a mandate on 12 June 2009362 to the Committee of European Securities Regulators for technical advice on the equivalence between certain third country legal and supervisory frameworks and the EU Regulatory regime for credit rating agencies.

On 26 October 2009 the Commission proposed legislative amendments to several directives in the financial services sector, including MiFID, Prospectus and MAD in order to make targeted changes to ensure that the new supervisory Authorities can work effectively. In particular, these amendments intend to lay down in detail the scope for the new Authorities to exercise their powers, ensuring a more harmonised set of financial rules through the possibility to develop draft technical standards, settle disagreements between national supervisors and facilitate the sharing of micro-prudential information. The proposal is currently being negotiated according to the co-decision process.

9.2.2.8. Evaluation based on current position

The answers received from stakeholders to a call for evidence already in 2008363 indicate that the quality of transposition of MiFID is in general good. The MiFID quality check undertaken by the Commission services has not revealed major transposition problems in most Member States either. Particular attention has been and continues to be devoted to the practical application and effects of MiFID on securities markets in all Member States, with the aim of assessing, in the perspective of the forthcoming review, aspects such as investor protection, transparency, availability of data, fragmentation, the phenomenon of high frequency trading and regulatory framework applicable to different venues.

361 COM(2009) 491 final [2009/0132 (COD)]

362 Available at: http://ec.europa.eu/internal_market/securities/agencies/index_en.htm

363 The results of this call for evidence have been published on 4 November 2008 and can be seen on http://ec.europa.eu/internal_market/securities/docs/isd/mifidtr_en.pdf

As a result of the evolution of the overall regulatory framework, including in particular the Commission Communication of 4 March 2009 on "Driving European Recovery"364, as well as the changes to the Deposit Guarantee Schemes Directive and the entry into force of the MiFID, and in the light of these numerous complaints, the Commission services launched a call for evidence on ICSD in February 2009365 in order to determine the scope of the review of the directive, planned for 2010. This call for evidence helped identifying problems having emerged in some Member States on the application of some provisions of the directive. These results will be taken into account in the upcoming ICSD review.

CESR published a consultation paper on the MAD, called "Third set of CESR guidance and information on the common operation of the Directive to the market" 366 as well as an executive summary to the Report on administrative measures and sanctions, including the criminal sanctions available in Member States under the MAD.

Priorities and actions planned

In the area of financial services, priority will be given in 2010 to the review of MiFID, ICSD and MAD.

The MiFID review is intended to cover a broad range of issues including the assessment of the transparency provisions to non-equity markets, the functioning of MiFID provisions in the dynamic evolution of regulated markets and multilateral trading facilities, the evolution in market microstructure and practices such as high frequency trading. Further work will cover aspects such as the telephone recording option, the application of Article 4 of the Implementing Directive and other issues such as the availability of data and issues linked to broader investor protection. In its work, the Commission is involving CESR and the European Securities Committee367. Extensive consultation with stakeholders is planned for 2010.

The MAD review is intended to focus on three main items: the extension of the scope of the MAD to some markets and instruments which are not fully covered; fostering the efficiency of the rules on enforcement and sanctions; to help stakeholders by clarifying some provisions and by diminishing the regulatory burden when possible.

On the ICSD, the results of the call for evidence launched in 2009, as well as the changes brought to the Deposit Guarantee Scheme are expected to constitute the basis of the review which will be part of a package dealing with the review of the compensation schemes in the banking, insurance and securities sector.

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364 Commission of the European Communities, "Communication for the Spring European Council: Driving European Recovery", Brussels, 4.3.2009, Volume 1, available on http://ec.europa.eu/commission_barroso/president/pdf/press_20090304_en.pdf

365 Commission Call for evidence on Investor-Compensation Schemes Directive (Directive 1997/9/EC) of 9 February 2009, available no http://ec.europa.eu/internal_market/securities/isd/investor_en.htm

366 CESR, "Guidelines - MAD Level 3 – Third set of CESR guidance and information on the common operation of the Directive to the market", document [09-219], May 2009; www.cesr.eu

367 The European Securities Committee (ESC) fulfils both comitology and advisory functions in the securities field. It is composed of high level representatives from the Member States and is chaired by a representative of the Commission.

Concerning the Regulation on credit rating agencies, the Commission is planning to amend the Title of the Regulation dealing with the supervisory aspects in order to give exclusive supervisory powers to the European Securities and Markets Authority (ESMA), as foreseen in the Presidency compromise on the ESMA Regulation (general approach) agreed by ECOFIN on 2 December 2009*368*.

ASSET MANAGEMENT

9.2.2.9. Current position

(1) General introduction

In the area of asset management the Commission continued the verification of the transposition of the Directive 2007/16/EC (Eligible Assets Directive) by Member States (MS). Measures adopted by certain Member States to counter the negative effects of the financial crisis prompted the Commission to initiate a general transposition check with regard to legislative or administrative measures adopted by Member States which may have affected the implementation of the UCITS Directive. 2009 was also marked with new initiatives including legislative ones.

(2) Report of work done in 2009

Three work streams could be mentioned in the area of the application of EU law:

First, the successful end of the transposition checks concerning the Eligible Assets Directive. After having received the remaining notifications of transposition measures the Commission could close the infringement proceedings launched against those Member States which did not transpose the Directive on time.

Second, in the context of the financial crisis, the Commission services launched a process of verification of whether the UCITS Directive is properly interpreted and applied via national legislation of EU Member States. An administrative letter was sent to all Member States in November 2009 in order to gather information on any crisis-related legislative measure or administrative practice, which might impact the national rules implementing the UCITS Directive.

Finally, questions concerning the proper interpretation of this Directive were triggered also in the context of the Madoff scandal revealed in December 2008. In this case the Commission published a consultation paper to gather opinions of all stakeholders. It was a necessary step paving the way to the policy decision on the future work concerning the regulation on the Community level of obligations and responsibilities of depositaries with regard to competent authorities, UCITS and their management companies.

(3) Legislative changes underway

2009 was marked by important actions affecting the asset management regulatory landscape.

368 Presidency compromise on the ESMA Regulation (general approach) agreed by ECOFIN on 2 December 2009 http://register.consilium.europa.eu/pdf/en/09/st16/st16751-re01.en09.pdf

The proposal for a Directive on Alternative Investment Fund Managers (AIFM) was adopted by the Commission on 29 April 2009. It forms an important part of the EU's regulatory response to the financial crisis aiming at creating a comprehensive and effective regulatory and supervisory framework for AIFM in the EU. This Proposal was soon afterwards subject to intensive negotiations in the Council and with the European Parliament in view of its adoption in 2010.

The recast of the UCITS Directive was adopted by the Council and the European Parliament on 13 July. It includes over 20 delegated powers to the Commission to adopt level 2 measures. The Commission is under the legal obligation to adopt certain implementing measures by 1 July 2010 as they are crucial for the functioning of the management company passport. As the remaining empowerments constitute a very useful complement to the provision of level 1 Directive and would substantially facilitate their application the Commission services decided to adopt all implementing measures foreseen in the recast of the UCITS Directive by 1 July 2010. On 13 February 2009 the Commission sent a mandate to CESR asking for its technical opinion on those measures. CESR delivered first part of its opinion on 31 October 2009 and the remaining one in December 2009. The intensive drafting of the measures took place in the second half of 2009.

On 29 April the Commission published the Communication on Packaged Retail Investment Products (PRIPs) indicating the possible ways and means to improve regulatory protection for retail investors. A technical workshop was organised to enable all relevant stakeholders to express their views on the Commission approach with regard to possible horizontal (cross-sectoral) legislative measures.

Finally, on 3 July 2009 the Commission launched a public consultation on the tasks and responsibilities of the UCITS depositary. It should be seen as an important step towards the identification and shaping of the European response to vulnerabilities emanating from the UCITS depositary sector with a view to improving the level of protection for UCITS investors.

9.2.2.10. Evaluation based on the current situation

In terms of the application of Community law the priorities set out for 2009 were broadly reached. The infringement procedures concerning non-transposition of the 2007/16/EC Directive were closed as this Directive was fully transposed in all member States.

2008 brought few open questions with regard to the possible scope of interpretation of the UCITS Directive by Member States in the context of the financial crisis, e.g. introduction of side pockets, the liability of depositaries, waivers of certain UCITS obligations careful and comprehensive analysis was carried out in 2009. The reflections need to be continued in 2010 and they might result in new legislative proposals.

9.2.2.11. Evaluation results

a) Priorities

Assuring the timely and correct transposition of the Community law in the area of asset management will remain a priority for 2010. In addition, obeying the deadline of 1 July 2010 for the adoption of all level 2 measures would be a real challenge. The issue of PRIPs and depositary will continue to be on top of our agenda.

b) Planned action (2010 and beyond)

The Commission services will continue the examination of national measures enacted or administrative practice executed in an aftermath of the financial crisis and which may have impact on the proper implementation of the UCITS Directive. This may result in opening new infringement cases.

The extensive work on the level 2 measures will be carried out in 2010. Furthermore, more analysis would be needed with regard to the work on PRIPs and the depositary issue.

9.2.2.12. Summary by sector

In the asset management sector the work carried out in 2009 reflected the set priorities. By 31 December 2009 the 2007/16/EC Directive was fully transposed in all EU Member States. Important legislative work was carried out leading to the political agreement on the recast of the 85/611/EEC Directive. Its formal adoption in 2009 gave rise to the extensive work on its implementing measures to be enacted by the Commission in 2010.

Some measures adopted by certain Member States to counter the negative effects of the financial crisis call for the evaluation of the interpretation given by those countries to the UCITS Directive. The Commission services will devote proper attention to this issue as the consistent and uniform application of this Directive is a cornerstone for the successful functioning of UCITS in the EU.

PAYMENTS AND RETAIL FINANCIAL SERVICES

9.2.2.13. Current position

(1) General introduction

In order to ensure a timely and consistent transposition, the Commission services have continued to accompany Member States in their transposition process through transposition workshops369 and other activities to ensure the transposition of the Payment Services Directive 2007/64/EC (hereby referred to as 'the PSD')[370] by 1 November 2009. Thanks to these activities, as much as 21 Member States have passed legislation implementing the PSD, fully (15) or partially (6), by the end of 2009.

The negotiations to modernise the two other main pieces of legislation in this area have led to the adoption of the new cross-border payments' Regulation (EC) No. 924/2009[371] and the new E-Money Directive 2009/110/EC ((hereby referred to as 'the EMD')[372].

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369 A *Payment Services Directive Transposition Group* (PSDTG) was set up end 2007.

370 Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L319, 5.12.2007, p. 1)

371 Regulation (EC) No. 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No. 2560/2001 (OJ L 266, 9.10.2009, p. 11).

(2) Report of work done in 2009

The PSD Transposition Group (PSDTG) set up end 2007 continues its work allowing national representatives to discuss various interpretation issues. This Group met three more times during 2009 (10 in total since January 2008). One of these meetings was organized under the format of a 'stakeholders' day', allowing payment market and consumer representatives to attend and to share their views with the Group on some transposition issues linked to e-money and low-value payments. In total, the Group collected around 300 questions from Member States concerning the 96 Articles of the PSD and provided written observations which served as a basis for reaching a common understanding. In addition, several bilateral meetings took place during 2009, upon request of the Member States concerned. When necessary, political pressure was increased by preventive measures such as informal talks in the margins of the PSDTG meetings or sending letters to Member States pointing out particular aspects of the draft legislations which were considered not to be in line with the provisions of the PSD.

End 2009, an EMD Transposition Plan was set up. It envisaged specific actions based on a proper and comprehensive analysis of the challenges related to the implementation of the EMD. As a first step, all Member States have designated 'liaison contacts' for the implementation of the Directive. An EMD Transposition Group (EMDTG) has also been set up. Furthermore, in order to channel questions from Member States and other stakeholders and share responses with all interested parties, the scope of the web-based question-and-answer tool, which has proved its effectiveness during the transposition of the PSD[373], will be extended to include questions on the new EMD. The tool aims to improve the dialogue with all stakeholders including Member States, businesses and other users during the transposition period.

In the field of payments, the number of petitions, questions and complaints remained constant in comparison with previous years. Most of the enquiries (around 150) concerned cross-border payment services and the application of Regulation 924/2009 (which has replaced Regulation 2560/2001), probably due to the fact that knowledge of this Regulation and of its scope is often limited, incomplete or inaccurate. While in a very low number of cases the Commission services raised the issue with the Member State concerned, no infringement proceeding was launched during this period.

(3) Changes underway and preventive measures

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372 Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

373 http://ec.europa.eu/internal_market/payments/framework/transposition_en.htm This web-page, operated through a question and answers approach and open to everyone interested in the transposition process of the PSD, has received and answered 340 questions by end 2009. This web-page also contains the full text of the Directive and information on transposition-related issues including up-dated information on Member States' transposition plans with references to the forecasts for adoption of national measures implementing the PSD, the expected dates for entry into force of such measures and the intended use of the options.

As stated above, the transposition deadline in case of the PSD expired on 1st November 2009 and a vast majority of Member States have transposed it (in full or partially) on time. Despite the Commission services' efforts, some Member States are lagging behind. The oral information recorded during the transposition workshops and the written information received afterwards have served the Commission services to update the information available on the Commission's website[374]. In the thirteen Member States which have transposed in full the Directive on time, the national measures implementing the Directive have entered into force on the same date: 1 November 2009, as agreed within the PSDTG.

9.2.2.14. Evaluation based on current position

The actions covered by the PSD Transposition Plan have been praised by most of the Member States as being very helpful for ensuring a quick and consistent implementation. Other stakeholders have also expressed their support.

With regard to the 25 options contained in the PSD, Member States finally accepted to make publicly available through the Commission website the information available on the use of options well in advance.[375]

The impact of the current financial crisis has been one of the external risks which have played an important role in the delay of the transposition. In some cases, such as in Poland and Sweden, a lack of resources, reallocated in accordance with the new priorities, has contributed to the delay. In the case of Greece, the early elections have lead to a delay for submitting draft legislation to the national Parliament in accordance with the announced timetable.

Late transposition of the PSD provokes legal uncertainty for both citizens and the payment industry. Leaving aside the legal consequences of partial or incorrect implementation, some stakeholders have pointed out the issue of the non-implementation after the 1 November deadline with regard to branches and the provision of cross-border services. This could lead to a two-speed situation insofar certain branches and to higher costs related to different rules in force in Member States. In addition, it jeopardises the timely launch of SEPA products and, in particular, SEPA Direct Debit. Moreover, while most of the provisions on disclosure requirements and right and obligations of payment service providers and payment service users could be invoked directly by citizens before national courts, it is not the same for the provisions regarding a positive action from Member States (e.g., setting of registers, designation of competent authorities, etc.) so being late in the transposition of those provisions exposes Member States to the risk of actions for compensation of loses related to the Member State's failure to implement the Directive in time.

As for activities carried out in the area of retail financial services, one success has been the implementation of Common Principles on Bank Account Switching, a voluntary code of conduct that should help consumers to avail of their right to switch bank account provider and thereby bring the forces of competition to bear on the sector.

374 http://ec.europa.eu/internal_market/payments/framework/transposition_en.htm

375 http://ec.europa.eu/internal_market/payments/framework/options_en.htm

The Commission also brought to a close the evidence-gathering stage of its work on responsible lending and borrowing, with a consultation, a public hearing and the completion of wide-ranging studies on the policy options for mortgage credit and on credit intermediaries.

In the coming year, the Commission will bring forward proposals on responsible lending and borrowing, with additional measures addressing mortgage valuation, registration and foreclosure. It will take steps to ensure the access of every EU citizen to basic financial products, in particular a basic bank account; and will propose ways in which to improve consumer and investor input to the Commission's financial services policy making.

The main challenges that could present themselves in the coming year include a possibility that consumers and businesses will not be motivated to seek out the benefits of the single market, in an environment of increasing national focus and even protectionism. This could lead to a magnification of the current problems of access to financial services for non-residents. Significant efforts will have to be made if citizens' confidence in the financial sector is to be restored. In this context, it will be imperative to meet the challenge of involving consumers and investors fully in the European policymaking process, by enhancing their capacity to engage at EU level.

9.2.2.15. Evaluation results

a) Priorities

Priorities in the field of payment services will not change substantially in 2010. The Commission services will endeavour to keep their efforts to follow-up the transposition process and support Member States' work with the aim to ensure quick and consistent implementation of both the PSD and the new EMD. With regard to the PSD, the required steps have been taken to launch infringement proceedings linked to non-communication cases. The first step of the conformity assessment task (getting translations of national transposition measures) is going on.

b) Planned actions

As regards prevention, all the actions included in the Transposition Plan of the PSD have proved to be effective. Some of them will continue to be applied during 2010. In particular, and in parallel to the infringement proceedings, Member States will systematically be reminded of the importance of transposition in the context of SEPA. Bilateral meetings, press releases and political pressure via letters addressed to Member States will be used as well. Information on state of play will also be systematically provided through the Commission website. A leaflet on the main features of the PSD is being prepared and will be released by mid-2010.

Concerning the transposition of the new EMD, the first meeting of the transposition workshop will be held as soon as in February 2010. Up to two more other meetings of this Group might be called within 2010. The EMD will be also register in a dedicated website on Europa[376] allowing anyone to browse through existing questions and answers and also to submit new questions on the implementation of Internal Market Directives. When necessary and upon request, bilateral meetings will be held with those Member States having requested so in order

376 Your Questions On Legislation (YQOL), http://ec.europa.eu/yqol/

to support their legislative efforts, to closely monitor the implementation process and to spread best practice among Member States. Finally, a template for a concordance table will be provided by the Commission services facilitating the task of Member States to illustrate the correlation between the EMD provisions and the transposition measures adopted to implement them into domestic law.

9.2.2.16. Summary by sector

Based on the experience of the transposition of the PSD, we can conclude that a pro-active transposition approach has a positive impact and enhances a consistent implementation. Therefore, a similar – though slightly lighter – approach will be applied for the implementation of the EMD. Legal and political pressure will be kept up on Member States which are late with the transposition of the PSD.

9.2.3. **Free movement of capital (Articles 63 et seq. TFEU)**

9.2.3.1. Current position

1. General Introduction

The relevant Treaty provisions governing the freedom of capital movements are enshrined in Articles 63 to 66 TFEU. In particular, Article 63 TFEU provides that "all restrictions on the movement of capital between MS and between MS and third countries shall be prohibited". A list of transactions that are to be considered as capital movements can be found in Annex I of Directive 88/361/EEC.377 The legal framework governing this Treaty freedom can be found on the Internet.378

2. Report of work done in 2009

Work done in 2009 was based on the priorities set in 2008, namely continuing the pro-active approach by way of monitoring, concentrating on more important cases, diversifying the range of restrictions to the free movement of capital which are being dealt with and addressing these restrictions at an early stage.

Measures taken by the MS in the financial sector and related to the crisis were monitored from a free movement of capital perspective. These measures should not only be consistent with state aid rules but also with the other Treaty provisions. Two complaints related to the nationalisation of a British bank were closed in 2009 on the basis of the Treaty principle of neutrality vis-à-vis MS' systems of property ownership, the absence of discrimination between domestic/foreign shareholders and a clear general interest involved.

On other registered infringements cases, the Commission services prioritised efforts on tackling those with the most impact on the Internal Market. Three cases which required further attention were related to horizontal measures taken by MS (France, Greece and Poland) to control strategic foreign investment, one of which (Poland) was referred to the CJEU. A case on restrictions on investment by pension funds was referred to the CJEU

377 OJ No L178, 8.7.1988

378 http://ec.europa.eu/internal_market/capital/framework/index_en.htm

(concerning Poland). More than half of the cases closed in 2009 related to privatisation and special rights of the State in privatised companies. The golden share/special rights topic remained however a concern and represents still about 40 % of infringement cases. Complaints related to real estate covered a wide range of problems: purchases of holiday homes, pre-emption rights, purchase of agricultural real estate, rental prices, expropriation. Three of these complaints fulfilled the criteria for registration in EU-pilot. Steps were taken in two cases related to restrictions on the acquisition of agricultural land in Austria: for one case a letter of formal notice was sent and for the other a reasoned opinion.

For the two newest Member States, the evaluation of the Bulgarian and Romanian replies to the Questionnaire on Intra-EU Investment (sent to them after accession) did not lead to any particular follow-up action going beyond the already active pursuit of Romanian privatisation cases in the energy sector.

The CJEU delivered a judgment against Italy379 regarding a Decree Law attributing special powers to the Italian State in certain companies operating in the petrochemical and energy, telecommunications, electricity and defence sectors and thus confirmed earlier jurisprudence on special rights. Regarding the unique third country dimension of Article 63 TFEU, further guidance was given by three judgments on bilateral investment treaties (BITs). The CJEU held that the concerned MS (Austria, Finland and Sweden) did not take appropriate steps to remove incompatibilities of the provision guaranteeing free transfers related to investment in their pre-accession BITs with restrictive measures that the Council may take under the Treaty Articles on the free movement of capital, even though they had been required to eliminate incompatibilities by Article 351 TFEU.

Replies or contributions to replies were prepared for petitions on urban development and sales practices on the housing market in Spain, privatisation in Romania, shareholder rights in a Belgian financial institution, blocked savings accounts in Slovenia, tax representatives in Portugal, buying property in Cyprus, privatisation and deregulation of rents in Slovakia, nationalisation of a British credit institution, EU competence in the area of property law.

9.2.3.2. Evaluation based on the current position

Enforcement of EU rules on the free movement of capital took on a new dimension in the context of the crisis. Unilateral reactions and policies could have a negative impact on the functioning of the Internal Market. Nationalisations, rescue operations and guarantees, in particular in the financial sector, triggered the introduction of possible restrictions on the free movement of capital. The following potential issues for further monitoring have been observed: the right of the state to appoint board members, veto rights on certain management decisions and time limits of these veto rights, expropriation of shareholders.

For all registered cases related to strategic foreign investment control, progress has been made in the sense that the MS concerned have announced or prepared legislative amendments which could possibly solve the outstanding issues. The Commission has, however, a Treaty obligation to continue proceedings until the required measures are adopted and legislation which is compatible with the Treaty is implemented.

379 Ruling in case C-326/07, *Commission v Italy*, of 26 March 2009

On privatisation and golden shares/special rights of the State in privatised companies: almost half of the related cases are currently pending before the CJEU or subject of Art. 260 proceedings (concerning Italy, Germany and Portugal). The handling of these cases revealed that some Member States are rather reluctant to make a shift towards solutions which could secure their legitimate interest and that are compatible with the Treaty. This could indicate that such possible shifts will only take place after delivery of an Article 258 or even 260 judgment of the CJEU. In addition, the golden shares/special rights cases relate to important economic sectors: in the first place energy but also telecom and car industry. Also related to the energy sector is an Article 258 case in which restrictions of the free movement of capital have been identified in the regulatory framework (concerning Spain).

On BITs, while it is important that protection is maintained for investors, it is all the more important that all investors be put in a position of legal certainty in compliance with EU law. The CJEU judgments concerned three MS who must now remove the incompatibility found by the Court. However, many more Member States are likely to be in a similar situation (there around 300 other pre-accession BITs which were not subject to the Court rulings) .

9.2.3.3. Evaluation results

1. Priorities

On crisis measures taken by MS in key sectors (financial sector, automobile sector,…), further monitoring will have to cover the phasing out and exit strategies adopted by the MS. It is essential that the temporary support measures should not be maintained longer than strictly necessary and that as the state divests itself of any stakes or reprivatizes over the medium- to long-term, no restrictions on free movement of capital are introduced.

The Commission will continue working with MS to ensure that investment laws drafted in response to national security concerns are compliant with Article 63 of the TFEU on the free movement of capital between Member States and between Member States and third countries. After laws have been adopted, the Commission will have to continue monitoring their implementation and will not hesitate to act should infringements be suspected.

Procedures based on Art. 260 TFEU and the monitoring of the process of amendment of the incriminated provisions will be treated as a matter of priority.

Activity related to the 3rd country dimension of the free movement of capital will increase following the BITs judgements. The CJEU said that the Commission had a facilitation role towards MS to remedy the situation. The Commission will therefore explore with all MS ways to deal with problematical clauses in their BITs. These intensified contacts will also cover the issues of post-accession BITs and BITs between Member States.

2. Planned action (2010 and beyond)

As regards foreign investment, the Commission will cooperate actively with Member States that have updated or are in the process of updating their legislation to cater for perfectly legitimate objectives as foreseen in EU law.

To improve understanding of market trends and developments in the field of Direct investment and M&A, a study will be carried out focussing on the benefits of free movement of capital and open investment in cushioning the European economy from economic shocks such as occurred during the financial crisis.

For the two newest Member States, a study on transitional restrictions maintained by Bulgaria and Romania with regard to the acquisition of agricultural real estate will be carried out. The findings will serve as a basis for a report to the Council on possible review of the transition periods. The Commission will also continue monitoring legal developments relevant for the preservation of the free investment climate in these countries, including related legislative procedures and upcoming privatisations.

9.2.3.4. Summary by sector

In the area of free movement of capital the priorities will remain enforcement action in important sectors (energy) as well as close and permanent monitoring activities related to strategic foreign investment control by MS and to the specific measures taken in the context of the crisis. Increased activity related to MS' bilateral investment treaties will also be required.

9.2.4. **Public procurement**

9.2.4.1. Current position

(1) General introduction

European public procurement provisions are based on the fundamental principles of the EC Treaty, particularly the right of establishment and the freedom to provide services stemming from Articles 49 and 56 TFEU.

The secondary legislation in this field is three folds:

First, there are two Directives on the coordination of procedures for the award of public works, supply and service contracts, Directives 2004/17/EC and 2004/18/EC adopted in April 2004 replacing the previous Directives 92/50/EEC, 93/36/EEC, 93/37/EEC and 93/38/EEC.

Directive 2004/18/EC concerns most major award procedures carried out by public contracting authorities. Directive 2004/17/EC covers contract awards by entities operating in specific sectors (water, energy, transport, postal services).

Secondly, there are two Directives concerning the legal protection of bidders participating in public procurement procedures, Directives 89/665/EEC and 92/13/EEC. These Directives have been recently modified by Directive 2007/66/EC which has been adopted in December 2007 and had to be implemented by member States by December 2009.

Thirdly, a new special Directive for Defence and Sensitive Security procurement (Directive 2009/81/EC380 of 13 July 2009) has been adopted in 2009. Member States have until August 2011 to transpose these new procurement rules into national law.

(2) **Report on the** work **done in 2009**

(a) Management of the acquis through committees and expert groups

380 OJEU of 20 August 2009, L 216/76

Exchange with the Member States on the public procurement legal framework is well established. The Commission regularly convenes Committees. First, the Advisory Committee on Public Contracts (ACPC), which consists of the representatives of Member States authorities, met 3 times in 2009. Specialised working groups of the ACPC also met in 2009, i.e. 1 meeting of the Working Group on E-Procurement and 2 meetings of the Economic and Statistical Working Group. The Commission also organises meetings of the Advisory Committee on the opening up of Public Procurement (CCO), a technical expert Committee which consists of public procurement experts and other technical experts. The CCO met once in 2009.

In the context of the described Committees, the following topics were subject of specific discussions:

- Transposition of the new 'Remedies' Directive 2007/66/EC (i.e. national time-schedules, problems met) and actions of the Commission in the transposition context (i.e. preparation of the standard forms, bilateral meetings with Member States, etc).

- Transposition of the new "Defence" Directive 2009/81/EC of 13 July 2009 (i.e. national time-schedules, problems met) and actions of the Commission in the transposition context (i.e. bilateral meetings with Member States, etc);

- Discussion on actions to be taken by Member States to implement the European Code of best practices facilitating access by SMEs to public procurement contract;

- Implementation of Article 45 of Directive 2004/18/EC concerning the exclusion of bidders;

- National recovery plans to overcome the economic crisis and measures simplifying national public procurement legal systems;

- Electronic dimension of public procurement (i.e. actions in favour of SMEs, PEPOL project,…);

- Information on various negotiations with third countries which contribute to reinforce the role of the European public procurement legislation (i.e. GPA negotiations)

Bilaterally, package meetings are regularly held with Member States to discuss the most pertinent issues of the application of procurement law in the respective Member State. In 2009, 60% of infringement cases discussed during package meetings have been solved in a non-contentious way.

b) Implementation of Article 30 of Directive 2004/17/EC (specific exemptions)

Article 30 of Directive 2004/17/EC provides that the Directive does not apply to contracts that are awarded for the pursuit of one of the covered activities if, in the Member State in which it is performed, the activity is directly exposed to competition on markets to which access is not restricted. In other words, the Directive does not apply if there has been a liberalisation resulting in such a level of competition that the discipline of the Directive is no longer needed to ensure that procurement for the activity concerned will be carried out in a transparent, non-discriminatory manner based on criteria allowing the contracting entity to identify the solution which overall is the economically most advantageous one. This exemption will be applicable where the Commission, within short deadlines of up to a maximum of six months, has

adopted a formal Decision establishing that the conditions are met or in cases where the Commission has failed to do so within the applicable deadline.

In 2009, 8 requests for exemption were submitted to the Commission concerning electricity generation and sale in Spain, exploration for and extraction of oil and gas in the Netherlands and in England, Scotland and Wales, certain financial services in the financial sector in Italy and certain services in the postal sector in Austria (mainly parcel services). Commission Decision 2009/546/EC of 8 July 2009 exempted exploration for and exploitation of oil and gas in the Netherlands381, the Spanish request for exemption was withdrawn382 and the examination of the 4 Italian applications was finalised383. Decisions concerning the U.K. and Austrian applications must be adopted, respectively, by 11.3.2010 and 16.4.2010 at the latest.

(c) Enquiries, problems and complaints management

Enquiries and complaints in the field of public procurement have been increasingly treated within the new EU-Pilot system since its introduction in April 2008. As far as we can measure at present, there is a significantly higher use of EU Pilot in the field of procurement as in other areas. Public procurement EU-Pilot cases accounted for 43% of all the EU-Pilot cases in internal market and services area. In the public procurement sector, the EU-Pilot system has been used in a very proactive way with a result of 90% of the EU-Pilot cases closed in 2009.

A new complaint handling system, CHAP has been introduced in September 2009. It is too early to assess its effectiveness, but it is expected to change the workflow of complaints and information requests both for complainants and the Commission services.

(d) Management of infringements

In 2009, 258 public procurement infringement files have been handled. Of these, 127 cases (49%) could be closed (same percentage compared to 2008); only 6 (approx. 2.3%) had to be referred to the ECJ (same percentage compared to 2008).

(d) Petitions

In 2009 the sector of public procurement received 8 petitions concerning problems encountered in Spain (3), Italy (2), Germany (1), Greece (1) and Romania (1).

(e) New legislation

381 OJEU L 181 of 14.7.2009, p. 53.

382 See the relative notice published in the OJEU C 237 of 2.10.2009, p. 29.

383 See Commission Decision 2010/12/EU of 5 January 2010 exempting certain financial services in the postal sector in Italy from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, OJEU L 6 of 9.1.2010, p. 8.

Following the presentation of the so-called "defence package", a sector specific procurement Directive for defence and security has been adopted in July 2009 (Directive 2009/81/EC of 13 July 2009). It should be implemented in Member States by 21 August 2011.

A new Commission Regulation (EC) N° 1150/2009 of 10 November 2009 (OJEU L 313/3 of 28/11/2009) modifying the existing Regulation on standard forms in order to take into account the "Remedies" Directive 2007/66/EC was adopted.

Finally, the thresholds laid down in Directives 2004/17/EC and 2004/18/EC were modified by the adoption of Commission Regulation (EC) N° 1177/2009 of 30 November 2009.384

(f) Preventive measures in relation to recently adopted new legislation

Following the entry into force of Directive 2007/66/EC in December 2007, considerable time was still dedicated to the transposition of this Directive in 2009. The Commission held numerous bilateral meetings with individual Member States. Issues related to this transposition have been discussed at the ACPC throughout the year 2009. One particular aspect handled in 2009 was the elaboration of new/modified standard forms with a view to the Directive.

With regard to the new Directive 2009/81/EC on defence and sensitive security procurement, a transposition plan has been established and Member States have been invited to identify liaison contacts and inform the Commission on their planning and time frame for the transposition. The organisation of the transposition phase has been discussed at the ACPC meeting in October 2009. Following that meeting, an expert group for the transposition of the Directive has been set up.

9.2.4.2. Evaluation based on the current position

In 2009, the caseload of public procurement infringement cases could be reduced by an effective system of prioritisation of cases and of speeding up the infringement procedures particularly for priority cases. The new EU-Pilot has also been used in cases where clarification was needed or where it was considered possible to close the case before launching an infringement procedure.

9.2.4.3. Evaluation results

1. Priorities

– Ensuring smooth transposition of Directive 2009/81/EC in all Member States until the transposition deadline (21 August 2011).

– Verification of the quality of the national transposition measures of the Remedies Directive 2007/66/EC.

2. Planned actions (2010 and beyond)

384 OJEU of 1 December 2009, L314/64

– An Impact Assessment is presently being carried out on an initiative on concessions. This task is expected to be completed by the end of the first half of 2010. A new initiative on concessions will depend on the results of this evaluation and could be presented in late autumn 2010.

– Adoption of a Communication on Coherence between public procurement law and other policy objectives in the fields of environment, social inclusion and innovation. The aim of this communication is to provide public procurers with a comprehensive and coherent guidance across all policies on how public procurement can be effectively used to attain other EU policy objectives within the current legal framework.

– Further prioritisation of cases and continued reference of a considerable share of complaints to the EU-Pilot. This action depends on the level of cooperation of Member States and on the technical and administrative improvements of the EU-Pilot following its revision throughout the year 2010. Thus, no specific estimations can currently be made.

– Continued support and coordination of the transposition of Directive 2009/81/EC on defence and sensitive security procurement. Within the framework of the expert group on transposition, workshops on specific issues of the new Directive will be offered. Bilateral meetings with Member States on transposition related issues will also be organised. Moreover, the publication of guidance notes on important issues of the new Directive is intended.

- Monitoring of the phasing out of national measures in the field of public procurement to overcome the economic crisis. As most of these measures have been foreseen for the two-year period 2009-2010, this phasing out and the implementation of possible follow-up measures will be verified and discussed with the Member States in the second half of 2010.

- An evaluation study has been commenced in order to carry out an EU-wide overall evaluation of the impact of the procurement policy with a strong practical and operational focus on implementation of key provisions and experiences of contracting authorities, economic operators and other stakeholders. The evaluation should be finalised by mid-2011 and it will form part of the basis for a possible reform of the public procurement legislation.

List of acts

http://ec.europa.eu/internal_market/publicprocurement/legislation_en.htm

9.2.5. **Regulated professions (qualifications)**

9.2.5.1. Current position

(1) General introduction

This sector deals with Member States' requirements for professional qualifications which lead to barriers to the free movement of qualified professionals in the Single market. To alleviate

these barriers, Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications385 implements Articles 45, 49 and 56 of the TFEU Treaty for all regulated professions. Beneficiaries are all EU citizens holding a professional qualification. For lawyers, additional specific rules have been laid down at EU level (Directive 77/249/EC on the free provision of services of lawyers386 and Directive 98/5/EC on the freedom of establishment of lawyers387).

(2) Report of work done in 2009

The work carried out in 2009 concentrated on the transposition, implementation and accompanying measures to Directive 2005/36/EC with a view to enabling citizens to make use of the new rights offered by the legislation (in particular the free provision of services and the mutual recognition under the so-called general system for cases which were previously only covered by the Treaty). The Commission also dealt with all kinds of difficulties reported by citizens when applying for recognition, such as undue delays in decision taking, compensatory measures required by the host Member State, negative decisions and requests for supplementary documentation, using all available means and in particular the network of national coordinators for Directive 2005/36/EC, the EU PILOT and SOLVIT according to the nature of the problem, to find appropriate and EU law compliant solutions.

(a) Management of the acquis through committees and expert groups

The Commission held 9 meetings of its expert group composed of the national coordinators responsible for the application of Directive 2005/36/EC. In June 2009, the group adopted the Code of Good Conduct on the national administrative practices falling under Directive 2005/36/EC. The other main task has been to examine the compliance with Directive 2005/36/EC of new diplomas in architecture notified by Member States with a view to their insertion in the Annex to the Directive, granting the right to automatic recognition to the holders of these diplomas. In total, 30 diplomas were examined. This work has allowed the achievement of a good level of mutual trust between Member States avoiding subsequent problems of bad application.

A network of Contact Points for Directive 2005/36/E, whose role is to inform and assist citizens, met once.

In addition, the regulatory committee of Directive 2005/36/EC met twice. and voted on a Commission regulation amending Annex II to the Directive which was adopted by the Commission on 6 April 2009388. This is the third time an amendment to the Directive is introduced by a regulation avoiding transposition delays. These meetings also allowed for peer pressure to accelerate the transposition of Directive 2005/36/EC for which a large number of MS were late.

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385 OJ L 255, 30.9.2005, p. 22

386 OJ L 78, 26.3.1977, p. 17

387 OJ L 77, 14.3.1998, p. 36

388 Commission Regulation (EC) n° 279/2009, OJ L 93, 7.4.2009, p. 11

(b) Enquiries, problems and complaints management:

Due to the large number of beneficiaries (all EU citizens holding a professional qualification and who wish to work in another MS even temporarily), a large number of enquiries is received which do not necessarily reveal a problem of application of EU law. In those cases the Commission refers citizens who wish to enquire about the situation in MS to the national contact points under Directive 2005/36/EC whose task it is to give all information about regulated professions in their territory but also about procedural steps to be taken..

The new CHAP ("Complaints Handling – Accueil des Plaignants") database became operational as from 28 September 2009. Approximately 30 inquiries and 65 complaints from citizens have been registered in the new database. As far as the complaints are concerned, roughly a quarter have already been closed.

When enquiries reveal a potential problem of application of EU law, the Commission mostly refers citizens to the SOLVIT network and/or inserts their cases into the system with the citizen'sconsent. 15 % of the cases submitted to the SOLVIT network relate to the recognition of professional qualifications, i.e. 220 cases out of 1540 cases submitted to SOLVIT. Out of these 220 cases, 166 were solved (75,45 %) (see SOLVIT 2009 report).

In 2009, 19 cases were introduced in EU-PILOT.

(c) Management of infringements

The volume of complaints and infringements concerning restrictions in breach of Articles 45, 49 and 56 of the FEU Treaty and the directives on the mutual recognition of professional qualifications which were dealt with, remained broadly stable in 2009. Approximately 100 decisions (to proceed with or to close a case) were taken by the Commission.

Concerning the infringement proceedings opened against Member States *for non-communication of national implementing measures*, the situation is the following:

– For Directive 2006/100/EC providing for technical adaptations to the Directives on professional qualifications further to the *accession of Bulgaria and Romania* to the European Union389, the Court of Justice held that Portugal390 had failed to fulfil its obligations under this directive. The Commission decided to send a letter of formal notice under Article 260 of the FEU Treaty (ex-228 EC) to Greece and Portugal, and a reasoned opinion under Article 228 of the EC Treaty to Luxembourg.

– For Directive 2005/36/EC on the *recognition of professional qualifications*391, the Court of Justice held that Belgium392, Germany393, Greece394, France395, Luxembourg396,

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389 OJ L 363, 20.12.2006, p. 141

390 Judgment of 19.03.2009, Case C-245/08 *Commission v. Portugal*

391 OJ L 255, 30.9.2005, p. 22

392 Judgment of 9.07.2009, Case C-469/08 *Commission v. Belgium*

393 Judgment of 17.12.2009, Case C-505/08 *Commission v.Germany*

Austria397 and the United Kingdom398 had failed to fulfil their obligations under this directive. The Commission also decided to send a letter of formal notice under Article 260 of the FEU Treaty (ex-Article 228 EC) to Belgium, Greece, Luxembourg and the United Kingdom. The proceedings opened against Cyprus, Denmark, Estonia, Hungary, Ireland, Latvia, Lithuania, the Netherlands, Poland, Portugal, Spain and Sweden could be closed as they have completed transposition.

The infringements cases opened against Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia because of the *nationality condition for notaries* did not progress in 2009. This is due to the fact that almost all the Member States concerned intervened in 2009 to support the Member States already referred to the Court of Justice (Germany, Austria, Belgium, France, Greece and Luxembourg). In these circumstances, it was considered necessary to examine and take into account all new arguments which might be brought forward by these Member States including at the hearing of the Court (which did not take place in 2009) before moving to the next step in the concerned infringement proceedings. Estonia has abolished the condition of nationality but the Netherlands stopped the process of abolishing it waiting for the judgments of the Court. The Commission also decided to refer Portugal to the Court on the same issue, because even though Portugal formally abolished the nationality condition previously in force for notaries, this condition thereafter appeared to still be applied.

Concerning the measures taken by Greece to comply with the judgment of the Court of 21 April 2005399 regarding Greek legislation on the ownership, opening and operation of *opticians' shops* by companies, by judgment under Article 260 TFEU (ex-Article 228 EC) of 4 June 2009 in Case C-568/07 *Commission v. Greece*, the Court held that by failing to take, by the date on which the time-limit set in the reasoned opinion issued by the Commission expired, all the measures necessary to comply with the judgment of 21 April 2005 in Case C-140/03 *Commission v Greece*, Greece had failed to fulfil its obligations under ex-Article 228(1) EC, and condemned Greece to pay a lump sum of EUR 1 million.

In addition, under Article 260 TFEU (ex-article 228 EC), the Commission decided to send letters of formal notice and then reasoned opinions to Greece for non-execution of the judgments of the Court of Justice in cases C-274/05 regarding the *recognition of professional qualifications of engineers*. and C-84/07 regarding the *recognition of professional qualifications of opticians*. In particular, in both cases, Greece still refuses to recognise diplomas awarded by competent authorities of other Member States under franchise agreements. Consequently, holders of such diplomas are still unable to practise their profession in Greece.

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394 Judgment of 2.07.2009, Case C-465/08 *Commission v. Greece*

395 Judgment of1.10.2009, Case C-468/08 *Commission v. France*

396 Judgment of 2.07.2009, Case C-567/08 *Commission v. Luxembourg*

397 Judgment of 24.09.2009, Case C-477/09 *Commission v. Austria*

398 Judgment of 9.07.2009, Case C-556/08 *Commission v. United Kingdom*

399 Judgment of 21.04.2005, Case C-140/03 *Commission v. Greece*

As concerns the two judgments of the Court referred to in the previous report (judgment in case C-456/05 *Commission v. Germany* regarding *transitional provisions for psychotherapists*400 and judgment in case C-39/07 *Commission v. Spain* regarding recognition of professional qualifications of *hospital pharmacists401*), the Commission decided to close the corresponding infringement proceedings due to the EU adoption of EU law compliant measures by the Member States concerned.

(d) Petitions

In 2009, 17 petitions have been dealt with. These petitions in essence reflected the issues raised in enquiries and complaints which the Commission receives. Most cases concern complex individual situations.

(e) Preventive measures being taken in relation to recently adopted new legislation-conformity assessment of national transposition, transposition package meetings, development of guidelines, initiation of networking systems to manage the new legislation, etc

In order to monitor the appropriate and smooth application of this Directive, the Code of Good Conduct which specifies the good national administrative practices competent authorities should follow when processing applications, was adopted by the Group of Coordinators of Directive 2005/36/EC.

To enable citizens to make better use of the Directive, the Commission also published a "User's Guide" in which 66 questions and 66 responses are given depending on the individual situation a professional might be confronted with in terms of the recognition of his/her qualification when moving to another Member State. For instance, the guide explains to citizens how they can benefit from the Directive when they want to work temporarily in another Member State.

To ensure legal certainty for professions benefiting from automatic recognition, whose corresponding national titles are listed in Annex V to Directive 2005/36/EC, the Commission published twice402 the new titles and changes to existing titles notified by Member States on the basis of Article 21 (7) of Directive 2005/36/EC. These publications facilitate free movement as they give the right to the holders of the qualifications concerned to benefit from automatic recognition.

The Commission also published403 a new list of the associations or organisations notified by the Member States (Annex I of Directive 2005/26/EC). As the profession practised by the members of an association or organisation listed in this Annex shall be treated as a regulated profession, this allows the professionals concerned to benefit from the Directive when moving to another Member State where the profession concerned is regulated.

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400 Judgment of 6.12.2007, Case C-456/05 *Commission v. Germany*

401 Judgment of 8 May 2008, Case C-39/07 *Commission v. Spain*

402 Communication of 19 May 2009, OJ C 114 of 19.5.2009, p. 1 and Communication of 19 November 2009, OJ C 279, p. 1

403 Communication of 15 May 2009, OJ C 111, p. 1

9.2.5.2. Evaluation based on the current position

Directive 2005/36/EC had to be transposed by Member States by 20.10.2007. The number of Member States which had completed transposition has risen from 9 Member States on 31.12.2008 to 20 Member States on 31.12.2009. For Directive 2006/100/EC, which had to be transposed by 1.01.2007, 3 Member States still had not completed transposition on 31.12.2009. However, and as indicated in the previous report, due to the fact that Directive 2005/36/EC replaced 15 directives while maintaining their basic mechanisms of recognition, the non-transposition in due time by all Member States did not have a major negative impact on free movement and free establishment. In the large majority of cases, recognition of qualifications still took place on the basis of the national implementing measures adopted on the basis of the now repealed directives. The Commission intends publishing a report about the implementation of the Directive in the course of 2010.

Due to the non-communication proceedings, the analysis of the national measures transposing Directive 2005/36/EC in order to assess their conformity with Community law only started in 2009. Therefore it was not possible to publish the first evaluation report announced for the end of 2009 in the previous report. However the Commission published a *scoreboard* in December 2009 offering an overview of where Member States stand in implementing Directive 2005/36/EC into national law. As stressed in the previous report, the main challenge related to this directive is represented by the enormous number of national measures needed to transpose it (hundreds of texts). By the end of 2009, around 1050 measures had been notified.

The IMI system plays a key role in the smooth implementation of the Directive. It allows competent authorities from the host and home MS to exchange information linked with an application for recognition where doubts are raised in relation to the professional. Initially used for four professions during a pilot phase, the system was extended in 2008 in order to cover further seven professions including the main health professions. In 2009, twenty professions from the craft, industrial and commercial sector were introduced in the system. The number of requests sent through IMI rose considerably from 375 requests in 2008 to 1404 requests in 2009 (=370 % increase).

9.2.5.3. Evaluation results

(1) Priorities

As long as not all MS have achieved transposition there still will be the need to put pressure on them to complete their work. For some Member States, due to their structure, around 100 texts needed to be adopted.

As indicated in the previous report, the following are being identified as key issues: the new regime for providing services for professions falling under the general system of recognition because there was no specific regime for the provision of services for all the professions falling under the previous Directives 89/48/EEC and 92/51/EEC on the general system; the subsidiary application of the general regime, which did not exist either (recognition then fell under the Treaty) as well as principle questions under the Treaty such as partial access to a given profession.

(2) Planned action (2010 and beyond)

Directive 2005/36/EC is expected to be transposed by all Member States by mid 2010.

The main priority in this area, after the closure of all non-communication infringement proceedings, remains the *analysis of the national measures* transposing Directive 2005/36/EC in order to assess their conformity with Community law. A complete translation of the notified texts is the first step, which may take some time in view of the enormous number of national measures needing to be transposed (see above). A first evaluation of the transposition in Member States' regulations should be available in Summer 2010.

Work will also be continued in order to overcome difficulties encountered by a significant number of nurses from Bulgaria and Romania in particular, who should be recognised under the general system as they do not fulfil the conditions to enjoy automatic recognition (see above, "subsidiary application of the general system"). However these nurses cannot undergo the compensatory measures (i.e. adaptation period) which are being required, as no posts are offered in the host Member State, which should organize them.

9.2.5.4. Summary by sector

Transposition of Directive 2005/36/EC has been completed in most Member States. The Commission intends therefore focusing on how Member States have implemented the Directive into their national regulations. A Code of Conduct agreed with Member States in June 2009 should facilitate the implementation for citizens. Citizens also received user-friendly guidance via a so-called "User's Guide" published in December 2009. The key challenges for the Commission will be first to ensure that Member States accurately transpose the Directive and second to evaluate how the Directive works and whether it delivers the effects compared to the objective of simplification. The evaluation could also take account of swiftly changing conditions, such as labour market, public health and others.

9.2.6. **The business environment**

COMPANY LAW, CORPORATE GOVERNANCE AND ANTI-MONEY LAUNDERING

9.2.6.1. Current position

(1) General introduction

In the field of company law and anti-money laundering the transposition deadline has recently passed in case of eight Directives: Directives 2004/109/EC, 2005/56/EC, 2005/60/EC, 2006/70/EC, 2007/14/EC, 2006/68/EC 2007/36/EC and 2007/63/EC. Directives concerned are aimed at ensuring the stability and reputation of the financial sector (Anti-Money Laundering Directives, Directives 2005/60/EC and 2006/70/EC), harmonizing transparency requirements in regulated markets (Directives 2004/109/EC and 2007/14/EC), ensure shareholders' rights (Directive 2007/36/EC) and facilitate cross border mergers as well as easing administrative burden of companies by simplifying the current acquis (Directives 2006/68/EC and 2007/63/EC). Taking into account the importance and impact of the acquis in the concerned field, the Commission established an Action Plan in 2008 to reduce transposition deficit and complete conformity assessments in the field of company law and anti-money laundering.

(2) **Report of work done in 2009**

In the absence of national transposition measures, more than 140404 infringement procedures were handled by the end of 2009, but monitoring the transposition measures have required particular efforts as well. Considering that the lack of concordance tables and the fact that assessment of long and comprehensive national instruments (for example Civil and Commercial Codes) have significant implications in terms of resources, the Commission outsourced first phase of conformity assessments in the course of 2009 (translation of national transposition measures and preparation of concordance tables). Within the frameworks of a pilot project, conformity assessment of a high volume of national transposition measures will be concluded during the first half of 2010 as a first step.

As mentioned above, an Action Plan had been established in 2008 in the field of company law, and anti-money laundering on the basis of which the Commission continued to apply a number of complementary measures in 2009 in order to reduce transposition deficit and conclude conformity assessments. The Commission put particular emphasis on straightforward management of infringement cases and identified priorities such as to ensure compliance with judgments of the European Court of Justice. The Commission continued to publish scoreboards on state of play of transposition and package meetings were used to raise the issue of transposition. It also kept up pressure on Member States through meetings of committees and national expert groups, in particular the Company Law Experts' Group and the Committee on the Prevention of Money Laundering by requesting delegations to justify their bad transposition record. Through the rigorous action and comprehensive range of initiatives taken by F2 in accordance with the Action Plan, noteworthy progress has been achieved: the transposition of four Directives405 have been completed in the course of 2009.

The Court of Justice issued 11 Court rulings for the unit's non-communication cases in 2009406. As infringement procedures based on Article 260 TFEU (ex-Article 228 EC) aim at ensuring compliance with Court rulings, these cases have been **treated as** a **priority** and followed-up closely by the Commission. At the beginning of 2009, all concerned Member States received letters of formal notice in compliance with Article 260 TFEU.

Letters of formal notice were sent to Member States immediately after the transposition deadline of Directive 2007/36/EC expired on 3 August 2009. Despite the efforts of the Commission in terms of application of a wide range of preventive measures (transposition workshop, identification and close contact with national contact points, technical assistance at committee and experts' meetings) twenty new infringement cases were opened for non communication of national measures in 2009. It should be underlined that at the beginning of 2010, twelve reasoned opinions have been addressed to Member States in compliance with the new rules of the Lisbon Treaty.

As regards external submissions in the filed of company law and anti-money laundering the number of enquiries, petitions, complaints has not been increased and a limited number of infringement procedures have been opened on the basis of non-compliance with EC acquis.

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404 in the field of company law and anti-money laundering only 0.7% of the cases were non-conformity cases

405 Directive 2004/109/EC, Directive 2005/56/EC, Directive 2006/68EC and Directive 2007/14/EC

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(3) Changes underway

One new Directive and two codification Directives have been adopted in 2009:

Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and division

Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (*Before 21 October 2009:* **First Council Directive 68/151/EEC** of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community)

Directive 2009/102/EC of the European Parliament and of the Council of 16 September 2009 in the area of company law on single-member private limited liability companies (*Before 21 October 2009:* **Twelfth Council Company Law Directive 89/667/EEC** of 21 December 1989 on single-member private limited-liability companies)

As regards other proposals pending in the course of 2009, the Simplification of the 1st and 11th Company Law Directives has been blocked since March, while the proposal for the Statute of a European Private Company, adopted on 25 June 2008, has been blocked since December 2009. The new Commission will decide on any eventual steps to be taken in relation to these proposals.

9.2.6.2. Evaluation based on the current position

Through the rigorous action and comprehensive range of initiatives taken by the Commission in accordance with the Action Plan, very positive results have been achieved and the transposition of four Directives407 could be completed in 2009. By the end of 2009, 84 % of infringements in the filed of company law and anti-money laundering have been closed and all cases in relation to which the transposition deadline expired before 2009 were referred to the Court.

The most significant success in 2009 was the completion of national transposition of four Directives. Implementing the Cross-Border Mergers Directive408 is an important step

407 Directive 2004/109/EC, Directive 2005/56/EC, Directive 2006/68EC and Directive 2007/14/EC

408 Directive 2005/56/EC

forward as delays in transposition could have had a direct effect on companies of Member States which transposed the Directive on time, but wished to merge with companies of a Member State in delay. In addition, a late transposition of the Transparency Directives409 could have jeopardized the effective protection of investors, weaken investor confidence and create barriers to cross-border investment. Moreover, in the context of the financial crisis, full transposition of the simplification of the Second Company Law Directive410 was crucial in terms of facilitating the raising of capital, the restructuring of capital ownership in public limited liability companies and ensuring harmonised safeguards for protection of creditors and minority shareholders.

In relation to the completion of the national transposition of several Directives in the field of company law, the Commission drew up conclusions on the effectiveness of measures taken on the basis of the Action Plan. The analysis of the transposition procedure concluded that there might be a systemic problem in some Member States which are consistently late with implementation. From our experience, these are **Spain, Belgium** and **France411**, and to some degree **Luxembourg**, **Portugal, Sweden, Ireland** and **Greece412**. We have kept and will keep up the pressure on them, but there were still serious concerns in 2009 for 2 Member States in particular. Belgium413 is still late with the transposition of four Directives, while Spain414 is still due to transpose three Directives. The situation can be potentially problematic in the case of France415, Greece416 and Ireland417, which are late with the

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409 Directive 2004/109/EC and Directive 2007/14/EC

410 Directive 2006/68/EC

411 In 2008, **Spain** was late with the transposition of the Cross-border mergers Directive (2005/56/EC), the modifications to the 2nd CL Directive (2006/68/EC) and the modifications to the 3rd and 6th CL Directives (2007/63/EC), as well as with the transposition of the two Anti-MoneyLaundering Directives (Directives 2005/60/EC and 2006/70/EC). Also in 2008, **Belgium** was late with the transposition of Directives 2005/56/EC, 2007/63/EC and the two AMLD, and **France** was late with the transposition of the Transparency Directive (2007/14/EC) and the two AMLD.

412 In 2008 **Luxembourg** and **Portugal** were late with the transposition of Directives 2005/56/EC, 2006/68/EC and 2007/63/EC. Also in 2008 **Sweden** was late with the transposition of Directive 2005/56/EC and the two AMLD. Currently, these three Member States are late with the transposition of Directive 2007/36/EC. For its part, **Ireland** is still late with the transposition of the two AMLD and **Greece** with the transposition of Directives 2007/63/EC and 2007/36/EC.

413 Anti-Money Laundering, Shareholder's rights and Simplification Directive (Directives 2005/60/EC, 2006/70/EC 2007/36/EC and 2007/63/EC)

414AntiMoney Laundering and Shareholders' rights Directives (Directives 2005/56/EC, 2005/60/EC, 2006/70/EC,)

415 Anti-money Laundering and Shareholders' rights Directives (Directives 2005/60/EC and 2007/36/EC)

transposition of two Directives each. But as Cyprus, Hungary, Italy, Luxembourg, the Netherlands, Portugal and Sweden have not yet transposed Directive 2007/36/EC, there are only fifteen Member States which have no transposition deficit anymore at this stage.

The highest transposition deficit can be identified in the case of the Anti-Money Laundering Directives (three Member States are late with the transposition of both Directives) and the Directive on Shareholders' Rights (11 Member States are late). It should, however, be noted that the transposition deficit was reduced substantially in the course of 2009 and almost 60 % of the currently pending cases were open in September 2009 for the purpose the Shareholders' Rights Directive. In this regard, the Commission accelerated the procedure and sent reasoned opinions to the defaulting Member States in February 2010. Member States will be referred to the Court before summer 2010 in accordance with Article 258 TFEU. Nevertheless, a late transposition of the Anti-Money Laundering Directives is particularly problematic since it may jeopardize the fight against money laundering and terrorist financing as well as the stability and reputation of the financial sector and the single market. Moreover, delayed implementation might create difficulties for the banking sector in terms of costs related to the different rules in force in Member States.

In the field of company law the Shareholder's Rights Directive aims at introducing minimum standards to ensure that shareholders of companies whose shares are traded on a regulated market have a timely access to the relevant information ahead of the general meeting (GM) and simple means to vote at a distance. It also abolishes share blocking and introduces minimum standards for the rights to ask questions, put items on the GM agenda and table resolutions. Late transposition might jeopardize the objective to enable shareholders of listed companies throughout the European Union to exercise their rights and have their say by introducing minimum standards.

9.2.6.3. Evaluation results

a. Priorities

Priorities in the field of company law and money laundering will not change substantially in 2010. The Commission will endeavour to reduce further transposition deficit, keep up pressure on Member States to ensure compliance with Court rulings, follow up closely non-communication cases and complete conformity assessment of national transposition measures.

A particular emphasis will be put on the transposition deficit in the field of Anti-Money Laundering as all judgements issued by the Court in the field of company law and anti-money laundering relating to Directive 2005/60/EC and Directive 2006/70/EC.

b. Planned actions

In the field of company law and anti-money laundering, the first phase conformity assessments already outsourced in 2009 will be completed. Remaining conformity checks will

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416 Simplification of the Third and Sixth Company Lax Directives and Shareholders' rights Directives (Directives 2007/36/EC and 2007/63/EC)

417 Anti-money laundering Directives 2005/60/EC and 2006/70/EC

be continued in the course of 2010 requiring efficient management of facilities provided by DGT and external contractors, if necessary.

As complementary instruments included in the Action Plan resulted to be effective in reducing the transposition deficit in the field of company law and anti-money laundering, they will continued to be applied. A particular emphasis will be placed on the management of infringement procedures based on Article 260 TFEU in order to ensure compliance with Court rulings. According to the provisions of the Treaty, letters of formal notice were sent in all relevant cases at the beginning of 2009, and Member States concerned will be referred to the Court as soon as the deadline expired. Concerning non-communication cases, Member States will be requested to provide detailed information on the state of play of transposition at relevant committee and experts' meetings. A scoreboard in the field of company law and anti-money laundering will be published every month and as required, package meetings, press releases and political pressure will be used as well.

In the case of Directive 2007/36/EC, reasoned opinions in accordance with the provisions of Article 258 TFEU were addressed to the defaulting Member States at the beginning of 2010. The Commission will refer the cases to the Court as soon as possible proposing to impose a fine as envisaged by the Lisbon Treaty. In general, in the field of company law and anti-money laundering the Commission is committed to make use of the accelerated procedure envisaged for non-communication cases (Article 258 TFEU) and in cases where a Court of Justice ruling already exists (Article 260 TFEU).

9.2.6.4. Summary by sector

In the field of company law and anti-money laundering, the focus remained on reducing the transposition deficit, and ensuring compliance with Court rulings and complete conformity assessment of national measures will also be treated as priority. The Action Plan established in 2008 has brought very positive results , therefore actions and instruments identified in it will be applied in 2010 as well with a view to reduce further transposition deficit and complete conformity assessments. In order to overcome the remaining difficulties related to conformity checks, risk-based assessments will be continued and first phase conformity checks will be outsourced, if needed. Infringements will be followed up strictly and political pressure will be kept up on Member States which are late with transposition.

AUDITING –STATUTORY AUDITS

9.2.6.5. Current position

(1) **Report** on 2009

In the field of auditing, the Commission worked on preparing a correct implementation of the Directive 2006/43/EC418 on statutory audits of annual accounts and consolidated accounts of 17 May 2006 ("the Directive"). The transposition deadline was 29 June 2008. The preparation of a correct implementation of the Directive was mainly done by discussing potential problems that might arise from the transposition of the Directive at the meetings of the Audit Regulatory Committee.

418 OJ L 157, 9.6.2006, p.87.

Member States were alerted on a regular basis at the meetings of the Audit Regulatory Committee of the need to transpose the Directive. Since 1 July 2008, a transposition scoreboard was drafted and has been updated regularly and published on the Commission's website.

In 2008, the Commission sent sixteen reasoned opinions to the Member States that failed to communicate their transposition measures for the Directive 2006/43/EC. Four Member States communicated their transposition measures in 2008, so the infringement cases in their respect have been closed in 2008. In 2009, amongst the sixteen Member States to which reasoned opinions were sent the previous year, six of them, namely Cyprus, Czech Republic, Germany, Poland, Sweden and United Kingdom-in respect of Gibraltar- have communicated their national transposition measures. Consequently, the infringement cases against Cyprus, Czech Republic, Germany, Poland, Sweden and United Kingdom-in respect of Gibraltar- have been closed in 2009. Six other Member States, namely Austria, Estonia, Ireland, Italy, Spain and Luxemburg (the decision to send Luxembourg before the Court of Justice was decided with 3 months *délai d'exécution* expiring on 20 February 2010) have been referred to the Court of Justice for non communication of the transposition measures for the Directive 2006/43/EC.

In 2009, the Commission Services started to check the transposition measures communicated by the Member States. In the cases where clarifications were needed in order to have a better view on how some of the Directive's provisions have been transposed in the Member States, the Commission Services sent administrative letters to the ministries responsible to request additional information. Fifteen such administrative letters have been sent to the Member States. In some cases, bilateral meetings have been organized to discuss the transposition of the Directive.

To facilitate the establishment of auditor public oversight bodies in Member States, as required by the Statutory Audit Directive, and to help the existing ones become operational the group of national experts "European Group of Auditors' Oversight Bodies" (EGAOB) continued its work on exchanging good practices on the establishment of those systems. Three meetings were organized in 2009.

Within the EGAOB, the Sub-group on Cooperation which became the Sub-group on Cooperation on Third Countries, held six meetings in 2008. At the meetings held in 2009, issues related to the transposition of Articles 45, 46 and 47 of the Directive 2006/43/EC in Member States were discussed as well as implementing measures to be adopted by the Commission under Article 47 of the Directive.

Another sub-group established within the EGAOB, the Sub-group on Intra-EU Cooperation held five meetings in 2009. The issues discussed at the meeting of this sub-group related to the practical implementation of some articles of the Directive 2006/43/EC.

(2) Changes underway (2010-2011)

In the area of statutory audit, in 2009, the Commission Services tabled a draft decision to allow a good implementation of the provisions of Article 47 (1) of the Directive 2006/43/EC. Article 47 (1) of the Directive requires the Commission to assess the adequacy of the third country auditor oversight competent authorities that wish to cooperate with the Member States' auditor public oversight authorities on the exchange of audit working papers, in cooperation with the Member States. The adequacy refers to the capacity of the third country competent authorities to fulfil the criteria set out in Article 47 (1) of the Directive. The

Member States voted, via a written procedure, in favour of a draft decision which proposes to recognize as adequate under Article 47 (1) of the Directive the competent authorities from Canada, Japan and Switzerland. As the European Parliament made no objections on the proposal, the draft decision will be proposed for formal adoption by the Commission end January 2010. Therefore, we expect this decision to be adopted during the first week of February 2010. A similar decision based on Article 47 of the Directive might be follow with respect to other third country auditor oversight authorities.

In 2010/2011, the Commission might also use the comitology powers conferred on it by Article 46 of the Directive 2006/43/EC to assess the equivalence of third country auditor oversight, external quality assurance, investigations and penalties systems. Such decision would concern the audit oversight systems from some/all of the third countries to which the Commission granted a transitional period for audit activities in 2008 by the Commission Decision 2008/627/EC concerning a transitional period for audit activities of certain third country auditors and audit firms419. If the Commission recognizes the auditor oversight system of a third country as equivalent to the Member States' audit oversight systems, the auditors and audit firms from the third country concerned will be allowed to carry out audit activities in the Member States without being subject to the external quality assurance, investigations and penalties systems of the Member States where such activities would be performed.

9.2.6.6. Evaluation based on current position

The transposition deadline for the Directive 2006/43/EC was 29 June 2008. The obligation for Member States to establish independent competent authorities to ensure a public oversight, external quality assurance, investigations and penalties of statutory auditors and audit firms raised a high number of issues in many Member States and slowed down the transposition process.

However, the work carried out by the Commission to prepare a timely and correct transposition of the Directive gave results, as amongst the sixteen the Member States which did not transpose the Directive in 2008, ten Member States did so in 2009. Moreover, amongst the remaining six Member States that did not transpose the Directive in 2009, five Member States committed to do so in 2010. In 2009, only one Member State has not yet established an auditor public oversight body. Twenty six Member States have already established public oversight bodies and most of these authorities became operational in 2009.

a) Priorities

The main priority concerns efficient co-operation with the Member States to ensure that the six Member States which have not yet transposed the Directive 2006/43/EC will fully transpose it in 2010/2011.

Member States will be regularly alerted during the Audit Regulatory Committee meetings on the importance of transposing the Statutory Audit Directive especially in the current context of financial crisis. Member States will continue to be invited to provide updates on the transposition process of the Directive on a regular basis.

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419 OJ L 202, 31.7.2009, p. 70.

Another priority is to ensure that auditor public oversight bodies pursuant to the Directive are operational in the Member States and cooperate with each other.

b) Planned action

For the Member States that communicated their transposition measures to the Commission, the Commission will determine the list of Member States for which infringement cases for bad transposition of Directive 2006/43/EC will be initiated before the Court of Justice in April/May 2010.

Regarding the conformity check in respect of the laws that Member States communicated into their national languages, this depends on the availability of translations. At this stage, we estimate the translation needs at about two hundred pages for five languages. For four of these languages we have been provided with concordance tables. Where necessary, bilateral meetings will be organized with the Member States to discuss the transposition process. Also, it will be examined whether the Member States have set up auditor public oversight bodies according to the Directive and that these bodies are operational.

The transposition scoreboard will continue to be updated regularly and to be published on the Commission website.

The expert group "European Group of Auditors' Oversight Bodies" (EGAOB) and the existing subgroups will also continue their work on facilitating co-operation between public oversight bodies established by the Member States pursuant to Directive 2006/43/EC.

ACCOUNTING

9.2.6.7. Current position –

(1) report on 2009

In the field of accounting, 9 Directives were in force in 2009. Two of them have not yet been transposed in all Member States: the transposition deadline of Directive 2006/46/EC expired on 5 September 2008, whereas the Directive 2009/49/EC will have to be transposed by 1 January 2011 at the latest. The Commission services control the application of the relevant Community law by the means of infringement procedures and discussions in meetings with the Member States.

The majority of infringement cases and the petitions received stem from the non-communication/non-adoption of national transposing measures. In December 2008 and July 2009, the Commission sent Letters of Formal Notice to 16 Member States on the basis of not having communicated the full transposition of Directive 2006/46. The Commission services have been keeping the pressure on Member States for encouraging the swift transposition mainly via the Accounting Regulatory Committee. As a result, by January 2010, 12 cases could be closed. Thus, as expected, the transposition deficit has been considerably reduced in the course of 2009. The remaining cases have been referred to the Court and full transposition is expected to be achieved in the near future.

Already three Member States communicated the full transposition of Directive 2009/49, even though the transposition deadline expires one year later. As an early warning measure, the Commission services intend to remind Member States of the deadline in the regular meeting of the Accounting Regulatory Committee.

(2) Changes underway

In February 2009 the Commission adopted an additional simplification proposal to amend the 4th Company Law Directive establishing a Member State option to relieve so-called micro entities from the obligation to prepare annual accounts. This proposal is being discussed by the European Parliament and the Council. Currently, the Commission services are working on a larger simplification and modernisation proposal to review the 4th and 7th Company Law Directives which is expected to be adopted by the Commission in 2011.

9.2.6.8. Evaluation

At the beginning of 2009, the transposition deficit in the accounting field initially appeared rather high compared to other areas in DG MARKT's competence based on the number of infringement cases pursued and the number of Directives in the field. However, this deficit has been reduced significantly in the course of the year. The delay in transposition was not due to political difficulties but rather to administrative delays in the Member States' legislative procedures.

a) Priorities

The main priority in the field of accounting remains to ensure the timely transposition of adopted Directives. Furthermore, as mentioned above, the Services are working on a general comprehensive overhaul of the accounting acquis (4th and 7th Company Law Directives).

b) Planned actions

In the case of the Directives whose transposition deadline expired, the Commission Services are closely monitoring the transposition status of the Community Law by pursuing infringement cases. In the case of newly adopted Directives, the Commission services will continue to use complementary measures such as possible transposition workshops, bilateral meetings and discussions within the Accounting Regulatory Committee.

As regards the planned overhaul of the 4th and 7th Company Law Directives, the Commission services are pursuing a public consultation, meetings with stakeholders, targeted questionnaires, an external study aimed at evaluation of the cost burden reduction potential of certain proposed simplification measures, in order to be able to present the amending proposal accompanied by a corresponding Impact Assessment.

9.2.7. **Protection of rights**

9.2.7.1. Current position –

(1) Report on 2009

Copyright and related rights

The Commission proposal to extend the term of protection of performers and record producers420 enjoyed a successful vote (377 vs 178) in the European Parliament on 23 April

420 COM 2008/464 final, 16 July 2008

2009. The main difference with the original Commission proposal is that the term of extension has been reduced from 95 to 70 years. The proposal text, as voted upon by the European Parliament, is still being considered by Member States in the first reading procedure.

As a follow on from the 2008 Green Paper on "Copyright in the Knowledge Economy"421, the Commission published an eponymous Communication on 19 October 2009422. After examining the main findings of the consultation the Commission identifies two priority areas for further action: the digitisation of orphan works and out-of-print books and access to knowledge for persons with disabilities. Action will be taken to facilitate the digitisation of orphan books (books whose authors cannot be contacted) while a stakeholder dialogue will seek consensus on increasing access to knowledge in favour of disabled persons.

The Commission also decided to voice no opposition to Member States extending a derogation allowing them not to apply the so-called artists' resale right to heirs of deceased artists. The derogation will now expire by 1 January 2012.

Trademarks and designs

The Commission adopted on 31 March 2009 Commission Regulation (EC) No 355/2009 amending Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) and Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark. These legislative changes to the trade mark acquis implied a substantial (40%) reduction of the fees for obtaining a Community trade mark and a significant simplification of the registration process by abolishing the registration fee.

Moreover, on 22 July 2009 the Commission published a call for tender for a study on the overall functioning of the trade mark system in Europe. The aim of this study is to identify potential areas for improvement, streamlining and future development of this overall system covering both Community and national level. The results shall provide the basis for the future review of both the Community Trade Mark Regulation and the Trade Mark Directive. The contract for the Study was awarded to the Max Planck Institute for Intellectual Property, Competition and Tax Law on 16 October 2009. The final report is due by end of October 2010.

As regards patents the Commission adopted on 20 March 2009 a Recommendation to the Council (SEC (2009) 330 final) aimed at authorising the Commission to open negotiations for the adoption of an Agreement creating a Unified Patent Litigation System. The Recommendation set out the next steps for the creation of a mixed agreement on the creation of a common patent Court and enabled the Council on 28 May 2009 to agree on a consultation of the Court of justice concerning the compatibility of the draft agreement with the treaty (opinion 1/09).

In relation to infringements it is important to mention the complaint related to legal restrictions of parallel imports of medicinal products in the Slovak Law on Medicinal

421 COM 2008/466 final, 16 July 2008

422 COM 2009/532 final, 19 October 2009.

Products. The Commission considered these restrictions to be contrary to the Community principle of exhaustion of rights conferred by a trade mark as defined in Trade Mark Directive 89/104/EEC. Consequently, the Slovak authorities amended their law and thus brought it into compliance with Directive 89/104/EEC.

In the area of the enforcement of *intellectual property rights*, the monitoring of the transposition of Directive 2004/48/EC was done. The Directive had to be implemented by Member States by 29 April 2006. Infringement procedures against 10 Member States over their failure to notify their implementing measures were also pursued. The ECJ took three decisions in 2007 against Germany, Luxembourg and Sweden for failure of transposition of the Directive according to Art. 258 TFEU. Sweden and Luxembourg notified their national measures beginning of the year. All Member States have notified their national implementing measures.

The Commission adopted a Communication "Enhancing the enforcement of intellectual property rights in the internal market" in September 2009.

The Commission in April launched the European Observatory for Counterfeiting and Piracy. Subsequently, the Commission in September and in December organised the two first meetings respectively with private and public sectors. In March, the Commission launched a stakeholders' dialogue on the sale of counterfeit goods over the internet. In June, it launched a similar dialogue for the illegal down loading and illegal up loading. The objective of these dialogues is to foster voluntary inter-industry agreements between the relevant stakeholders; such agreements, given the quick development in the digital economy, often provide for quicker and more flexible solutions than legislation.

Finally a study on a possibility to establish an electronic exchange system on counterfeit goods has been launched in July.

9.2.7.2. Evaluation based on current position

In the context of a highly political area and due to the complex nature of the Directive 2004/48/EC, the main problem encountered by the Commission was the late transposition by some Member States. The monitoring was done through a constant dialogue with the Member States not having transposed the Directive yet. The last two Member States adopted the transposition measures during this year. Subsequently, proceedings according to Art. 260 TFEU were abandoned.

As far as the follow up of the European Counterfeiting and Piracy Observatory is concerned, three working groups have been set up which meet on regular basis (one working group on statistics, one on legal framework and one on public awareness).

As far as the stakeholders' dialogues are concerned, several meetings have taken place. A drafting of a Memorandum of Understanding between participants has started for the stakeholders' dialogue on the sale of counterfeit goods over the internet.

a) Priorities

The priorities identified in the 2008 Annual Report were the same also for the year 2009. The monitoring of the Directive 2004/48/EC and the planning for the enhancement of administrative cooperation were duly performed.

b) Actions planned

On 4 December 2009 the Council unanimously adopted conclusions on an enhanced patent system in Europe. The package agreed covers major elements to bring about a single EU patent and establish a new patent court in the EU. Both together will make it less costly for businesses to protect innovative technology and make litigation more accessible and predictable. This major breakthrough may pave the way for solving the outstanding issues to achieve a major reform of the EU patent system in the near future. On the basis of the Council conclusions and pursuant to Article 118 (2) TFEU the Commission intends to present in 2010 a proposal for a Council Regulation concerning language arrangements for the single EU patent whereas the European Parliament and the Council are expected to proceed further with the other components of the EU patent reform package.

In 2009, Member States were expected to submit to the Commission a report on the implementation of Directive 2004/48/EC. On the basis of the national reports, the Commission is preparing a report on the conformity of the national measures with the provisions of the Directive.

Following the creation of the European Counterfeiting and Piracy Observatory, the first annual report, which will include the methodology for the collection of statistics as well as a report of the legal sub-group on civil measures are expected to be delivered in the next two years.

As far the stakeholders' dialogue the Commission will keep working with the stakeholders on a possible adoption of the Memorandum of Understanding.

In addition the Commission will follow-up the study on how to set up an information system for the rapid exchange of information on counterfeit goods. Those and other measures were presented by the Commission in its Communication "Enhancing the enforcement of intellectual property rights in the internal market".

Finally, subsequently to this Commission Communication, the Council is preparing a Resolution on the enforcement of intellectual property rights in the internal market.

10. REGIONAL POLICY

10.1. Current situation

10.1.1. General introduction

Based on Article 158 of the EU Treaty423, European regional policy aims to reduce disparities between the levels of development of the various regions and the backwardness of

423 All applicable secondary legislation being based on the EU Treaty, the Articles in the Treaty on the Functioning of the European Union are only quoted in the footnotes; Article 158 of the EU Treaty corresponds to Article 174 of the Treaty on the Functioning of the European Union.

the least favoured regions by actions supported by the Structural Funds424 (the European Regional Development Fund425, ERDF, and the European Social Fund426, ESF) and the Cohesion Fund427 (CF). ERDF and CF are under the responsibility of the Directorate General for Regional Policy, ESF is under the responsibility of the Directorate General for Employment, Social Affairs and Equal Opportunities. These Funds are managed by means of operational programmes (ERDF and ESF) or projects (CF) by the Commission and the Member States under shared management arrangements, as are similar programmes under the European Agricultural Fund for Rural Development428 and the fisheries sector429. In addition Directorate General for Regional Policy is responsible for programmes under the Instrument for Pre-Accession Assistance (IPA)430. Rules covering the programming period 2007-2013 were adopted in 2006; all 317 operational programmes financed by the ERDF and CF were negotiated in partnership and adopted by the Commission in 2007 or early 2008431. The new programmes of the Member States overlap with those of the period 2000-2006 for which the final date for expenditure was the end of 2008 (in February 2009, 385 of the 555 Cohesion Policy programmes were extended until 30 June 2009 in order to add another six months to cope with delays due to the international financial crisis).

In accordance with Community law432, assistance under the Funds is provided according to an approach of complementarity and partnership between the Commission and the Member

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424 Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ L 210, 31.7.2006, p. 25).

425 Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 laying down general provisions on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999 (OJ L 210, 31.7.2006, p. 1).

426 Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 laying down general provisions on the European Social Fund and repealing Regulation (EC) No 1784/1999 (OJ L 210, 31.7.2006, p. 12).

427 Regulation (EC) No 1084/2006 of the European Parliament and of the Council of 5 July 2006 laying down general provisions on the Cohesion Fund and repealing Regulation (EC) No 1164/94 (OJ L 210, 31.7.2006, p. 79).

428 Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (OJ L 277, 21.10.2005, p. 1).

429 Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund; (OJ L 223, 15.8.2006, p. 1).

430 Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA) (OJ L 210, 31.7.2006, p. 82).

431 In addition 17 programmes under IPA were adopted. The following is focussed on ERDF and CF progammes.

432 Article 9 of Regulation (EC) No 1083/2006.

States, with due regard to their respective powers. In this context, implementation on the ground is the responsibility of the Member States, meaning in particular that the Commission is normally not responsible for the selection of individual projects (exceptions being the approval of CF projects and of major projects within ERDF programmes), as this comes under the competence of the national authorities.

To be eligible for co-financing from the EU budget, projects must be selected and implemented in accordance with the principles laid down in the programming documents adopted by the Commission, and must comply with the specific legislation governing Cohesion Policy expenditure and generally applicable rules on public procurement, state aid, the environment, etc, and also with relevant national rules. The control system put in place by the Member States seeks to ensure the regularity of all expenditure and the Commission supervises its effective functioning. When the rules are found to have been breached making expenditure ineligible, the irregular expenditure has to be excluded by means of "financial corrections". If the Member States fail to correct irregular expenditure or to remedy deficiencies in the management and control system, the Commission itself may impose financial corrections or require improvements in the control system. In the event of serious deficiencies, the Commission can suspend its interim payments to a programme until the weaknesses are corrected.

Most complaints tend to arise when an operator or member of the public considers that individual projects do not (fully) respect relevant Community and/or national rules and prefers to address the complaint to the Commission rather than to his/her national authorities. Such complaints can only be resolved with considerable support from the national authorities. From one year to another, the number of complaints dealt with by the Directorate General for Regional Policy is relatively stable and does not normally lead to infringement procedures, but the complaints are resolved by application of the normal control and financial correction provisions specific to Cohesion Policy by the national authorities or by the Commission.

10.1.2. **Report of work done in 2009**

10.1.2.1. New legislation

Simplification of existing legislation is in itself an additional means to promote a reduction in errors and irregularities while reducing administrative burdens. In 2009, the eligibility of energy efficiency and renewable energy investments in housing was clarified and extended to all Member States; at the same time simplification concerning the records of the expenditure incurred was introduced for certain cost categories433. One example is the simplification of eligibility rules to allow flat-rate reimbursements for overheads, an area where in the past there have been a large number of errors. Furthermore certain provisions relating to financial management such as the use of financial engineering instruments or the pre-financing mechanism were modified434. In parallel, the Commission implementation Regulation435

433 Regulation (EC) No 397/2009 of the European Parliament and the Council of 6 May 2009 amending Regulation (EC) No 1080/2006 (…), as regards the eligibility of energy efficiency and renewable energy investments in housing (OJ L 126, 21.5.2009, p. 3).

434 Council Regulation (EC) No 284/2009 of 7 April 2009 amending Regulation (EC) No 1083/2006 (…) concerning certain provisions relating to financial management (OJ L 94, 8.4.2009, p. 10).

was simplified considerably. A Commission proposal for further simplification is for the time being with the legislator (see below section 1.3.2.1).

10.1.2.2. Preventive measures taken (Comitology and cooperation with Member States)

In 2009, eleven documents providing technical guidance in order to facilitate the implementation of operational programmes and to encourage good practice(s) were prepared by the Commission and then presented, discussed and finalised during the ten meetings of the Committee for the Coordination of the Funds (COCOF)436, although this Committee was formally only informed about these documents.

In addition, a training seminar on best practices for the managing and certifying authorities was held in June 2009 as a continuation of the seminar held in June 2008 entitled "Control of structural actions – meeting the challenge". Three technical meetings were held and training sessions were given on simplified costs and two technical meetings were held with the audit authorities.

10.1.2.3. Main actions being taken to control the correct application

Financial corrections

Financial corrections by the Member States themselves437 and by the Commission438 are applied where expenditure for a project is irregular or where there are serious deficiencies in the management and control system of the operational programme (under the Member States' responsibility) which has put at risk the Community contribution paid to the programme at stake. In 2009 total financial corrections carried out by the Member States and by the Commission, following Commission audit work (ERDF and CF; periods 1994-1999 and 2000-2006) amounted to approximately EUR 2 billion439 (plus EUR 173 million for the ESF). This amount is a marked increase on the EUR 288 million corrected in 2007440 and the EUR 1 billion (plus EUR 522 million for the ESF) corrected in 2008. The corrections reflect the completion of the follow-up of previous audit work and an acceleration of financial

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435 Commission Regulation (EC) No 846/2009 of 1 September 2009 amending Regulation (EC) No 1828/2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 (…) (OJ L 250, 23.9.2009, p. 1).

436 Article 103 of Regulation (EC) No 1083/2006.

437 Article 23 of Regulation (EEC) No 4253/88 for the 1994-1999 period; Article 39(1) of Regulation (EC) No 1260/1999 for the 2000-2006 period; Article 98 of Regulation (EC) No 1083/2006 for the 2007-2013 period.

438 Article 24 of Regulation (EEC) No 4253/88 for the 1994-1999 period; Article 39(3) of Regulation (EC) No 1260/1999 for the 2000-2006 period; Articles 99 to 100 of Regulation (EC) No 1083/2006 for the 2007-2013 period.

439 EUR 2,064,506,922.

440 See Report on the implementation of the action plan; COM(2009)42 of 3 February 2009.

correction procedures under the "Action plan to strengthen the Commission's supervisory role under shared management of structural actions"441 (hereinafter referred to as "Action Plan").

Compliance assessment

In order to improve the management and control of the 317 programmes for the 2007-2013 period, the Member State authorities have to undertake an assessment of the description of the national management and control system per programme accompanied by an independent report giving an opinion on their compliance with the regulatory requirements to be submitted before the first intermediate payment can be made. This compliance assessment is a new element442 seeking to ensure that the set up of management and control systems is in conformity with applicable rules. By end of 2009, 311 compliance assessment reports regarding national systems had been received (98% of the total due) by the Commission, of which 271 (85% of those received) were judged acceptable as of 31 December 2009.

Audits

In 2009 the Commission carried out 19 on-the-spot audit missions for the 2000-2006 period and 28 for the 2007-2013 period concerning ERDF and Cohesion Fund in 15 Member States focusing on the remaining risks in management and control systems, the review of bodies responsible for the closure of the 2000-2006 programmes, audit of operations on a representative sample of projects for the 2007-2013 period and the review of the work of the audit authorities for the 2007-2013 period. Deficiencies uncovered typically concerned organisational problems in the systems themselves or breaches in public procurement or eligibility rules. The outcome of these audits may take the form of action plans to improve performance, and possibly also suspension of payments or the launch of financial corrections procedures, where necessary.

10.1.2.4. Management of the acquis through committees and expert groups

Beyond the development of guidelines presented to the COCOF committee and the technical meetings held in 2009 (see above section 1.1.2.2.), no other committees or expert groups meetings linked to the legality of the expenditure of the Funds have been organised.

10.1.2.5. Enquiries, problems and complaints management

13 complaints were introduced into the EU PILOT system. The great majority of complaints concerning Regional Policy do not lead to an infringement procedure.

A first category of complaints concerns the selection process of individual projects under the different programmes. The principal motivation for complaints was the rejection of the complainant's application for financial support. As indicated above, under shared management such complaints are examined by the competent national administrative or judicial authorities. A second category of complaints concerns alleged non-compliance of individual projects with Community law, mostly relating to environment or public procurement policies and rules. A third category of complaints concerns the alleged defects in selected projects (examples

441 COM(2008)97 of 19 February 2008.

442 Articles 71 and 72 of Regulation (EC) No 1083/2006.

include allegations that a particular infrastructure project is not in the right place (e.g. roads), does not work properly (water sewage treatment plants) or constitutes poor value for the European tax-payer's money. In such cases, there is generally no specific allegation of a breach of Community law.

For all categories, the Directorate General for Regional Policy uses the EU-PILOT System, as the Commission in most cases can only react in substance having consulted the national authorities primarily responsible for the programme implementation. Where the examination of the allegations leads to the conclusion that Community law has been breached, this may lead to the opening of a financial correction procedure.

As indicated in previous reports, concerning the new Council Regulation on a European Grouping of Territorial Cooperation (EGTC)[443], which entered into force on 1 August 2006, Member States have been required to make provisions to ensure the effective application of the Regulation and to inform the Commission of these provisions. By the beginning of 2009, sixteen Member States had adopted national rules, against a regulatory deadline of 1 August 2007. By the end of 2009 the Commission was informed of national rules adopted in another seven Member States. By the end of 2009, national rules and rules on the level of the federal entities were adopted in Belgium and Austria, leaving only two Member States still to adopt them. These results were achieved through political dialogue and cooperation with the national authorities without recourse to infringement procedures.

10.1.2.6. Petitions

Directorate-General for Regional Policy has treated as "chef de file" 18 petitions involving projects possibly co-financed by the Funds and has been associated/consulted on 20 petitions, mostly led by Directorate-General for Environment. For the 18 petitions where Directorate-General for Regional Policy was in charge, ten concerned Spain. In general, petitions concern the misuse of EU funding, deterioration of environment linked to the construction of infrastructure projects, or other possible infringement of Community law.

10.1.2.7. Management of Infringements

One infringement proceeding was officially opened during 2009, whereas two cases were closed after the parallel financial correction procedure had been closed. Adding two other proceedings already opened before 2008, as of 31 December 2008, five current infringement proceedings concern Directorate General Regional Policy.

10.2. Evaluation based on the current situation

10.2.1. Assessment of the current situation (satisfactory or problematic nature of the current situation)

In January 2005, the Commission made it a strategic objective to strive for a positive statement of assurance (DAS) from the European Court of Auditors. To make progress towards this goal it introduced an Action Plan towards an Integrated Internal Control

443 Regulation (EC) No 1082/2006 of the European Parliament and of the Council on a European Grouping of territorial cooperation (OJ L 210, 31.7.2006, p. 19).

Framework444. In 2008, the Commission adopted a specific Action Plan445 to strengthen its supervisory role in the structural actions area, in order to address the Parliament's concerns arising from the weaknesses identified by the Court of Auditors in its 2006 Annual Report. The structural actions Action Plan addressed both the causes and effects of the high rate of error found by the European Court of Auditors in structural actions expenditure. The Commission's focus has been on increasing the effectiveness of the controls undertaken by the Member States and of its own supervisory activity, in order to ensure that by the time the 2000-2006 programmes and projects are closed, most of the irregular expenditure is corrected and the residual risk of error is as low as possible. For the 2007-2013 period, the Commission's preventive actions aim to ensure that the Member States' management and control systems function effectively from the beginning of the programme implementation and that deficiencies are detected as early as possible.

Concerning the EGTC Regulation, the fact that national rules were adopted in seven more Member States during 2009 is regarded as satisfactory.

10.2.2. **Importance of the impact of the identified problems on the objectives of the acquis**

Achieving the aims of cohesion policy in reducing geographical disparities of the programmes depends on effective implementation and requires that projects are selected and implemented correctly. Moreover, the image of this policy is negatively affected by high error rates, especially when the public's attention is drawn to such errors when the yearly DAS is published and discussed in the media. Reduction of error rates is vital and the planned actions set out below contribute to this overall priority.

10.2.3. **Underlying reasons for problematic areas**

Even under shared management (see following section), according to Article 274 of the Treaty446 "(t)he Commission shall implement the budget, in accordance with the provisions of the [Financing Regulation], on its own responsibility (…), having regard to the principles of sound financial management". Consequently any item of expenditure co-funded from the Funds shall comply with the provisions of the Treaty and of acts adopted under it447. Compliance with the *acquis* on as different matters as single market (EU Directives on public procurement), competition (state aid rules), environment, research, transport or energy puts the national authorities in front of a genuinely complex task when implementing operations on the ground together with a huge number of public or private final beneficiaries spending the contribution from the Funds.

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444 COM(2006) 9 and SEC(2006) 49.

445 "Action Plan" (COM(2008)97 of 19 February 2008).

446 Article 274 of the Treaty corresponds to Article 317 of the Treaty on the Functioning of the European Union, where "on its own responsibility" is replaced by "in cooperation with the Member States".

447 Article 9(5) of Regulation (EC) No 1083/2006.

10.2.4. **Responsibility for the problems and their correction**

Under shared management, the Commission is responsible for the execution of the Community budget, but the Member States are responsible for the implementation of the individual projects. Errors and irregularities (which in practice contain very few cases of fraudulent behaviour) concerning the projects are matters outside the direct control of the Commission. Member States are responsible in the first instance to correct these errors (mainly by financial corrections on project level). The Commission seeks to ensure, through its supervisory role, that the management and control systems set up by the Member States are effective and, in cases where the systems are dysfunctional or where the corrections undertaken by Member States are not sufficient, applies financial corrections on programme or - in the case of CF for the 2000-2006 period – on project level.

10.2.5. **Corrective action required (priority character, timing and scale)**

From the different actions carried out in 2009, it is evident that the respect of the regional policy *acquis* requires actions of a different nature: corrective (financial corrections, action plans, infringement and complaints procedures), preventive (simplification of the *acquis*, compliance assessment, audits and controls, guidance notes, seminars) and informal/political (comitology, direct dialogue).

The implementation of the Action Plan and the Joint Audit Strategy of the Directorates-General in charge of Cohesion Policy, which focus on measures to strengthen the supervision of the correct implementation of the programmes and projects, further simplification and the finalizing of the compliance assessment, have been key elements in order to reduce as far as possible errors linked to the closure of the 2000-2006 programmes and to avoid errors under the new programming exercise.

Key actors linked to the Action Plan are the some 90 staff (out of a total in the DG of 745) carrying out control activities in the Directorate General Regional Policy. Financial corrections and infringement/complaints proceedings involve of course a lot of other staff from the Resources Directorate, the "Legal advice, procedures" unit and the operational units. Consequently, an important part of Directorate General Regional Policy's staff is involved in the respect of the Regional Policy *acquis* in a broad sense compared to the few number of staff dealing with infringement and complaints procedures *strictu senso*.

10.3. Evaluation results

10.3.1. **Priorities**

As indicated in its "Annual Management Plan 2010" (18 December 2009) one of the specific objectives identified448 is to seek reasonable assurance that the management and control systems in the Member States and beneficiary countries comply with the requirements of the Community regulations and are functioning effectively, so as to prevent and detect errors and irregularities and assure the legality and regularity of the expenditure declared to the Commission. To this end, the Directorate General for Regional Policy will seek to ensure through its supervisory role that Member States and regions have established the appropriate structures for management and control and will advise on measures to tackle weaknesses in

448 See section 5.5.

administrative capacity for delivery, as well as provide appropriate support for setting up a sufficient stock of projects.

10.3.2. **Planned action (2010 and beyond)**

10.3.2.1. New legislation in preparation (simplification)

The Directorate General for Regional Policy will also follow-up and where possible contribute to the "European Action Programme on the reduction of administrative burdens" adopted in January 2007 as part of the Better Regulation programme. The global target is to cut red tape for businesses by 25% by 2012 in the different policy areas. As indicated above (see section 1.1.2.1), in July 2009 the Commission adopted a further set of measures amending two Council Regulations449 proposing further simplification of the rules governing the financial management of the Structural Funds, in the context of efforts to provide more support in face of the international financial crisis and to improve the effectiveness of the delivery system of cohesion policy. These proposals should be adopted in the first half of 2010.

The informal preparation of the new legislation concerning the 2014 to 2020 programming period will be intensified in 2010, but formal proposals will be transmitted to the legislator in 2011.

10.3.2.2. Preventive measures taken (Comitology and cooperation with Member States)

In order to help the national and regional authorities with implementation a number of guidance notes were presented in the years 2007 to 2009. A small number, less than ten, will be presented to the Committee for the Coordination of the Funds (COCOF) in 2010. Due to the amendments to the legislation adopted in 2009 and 2010, seven guidance notes will have to be revised accordingly.

Concerning the national rules on the EGTC Regulation, political dialogue and cooperation with the national authorities will be continued as this approach has led up to now to positive results.

10.3.2.3. Main actions being taken to control the correct application

Financial corrections

The current estimate of potential financial corrections likely to result from the financial correction procedures underway at the end of 2009 is approximately EUR 600 million (plus EUR 345 million for ESF). Due to the audit work (see below section 1.3.2.3.3) executed, financial corrections are necessary only in cases that recommendations for remedial actions for deficiencies identified in the systems have not been taken up by the Member States or where irregularities have been found.

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449 Commission's Proposal amending Regulation (EC) No 1080/2006 on the European Regional Development Fund (ERDF) (COM(2009)382 final; adopted on 17.7.2009); Commission's Proposal amending Regulation (EC) No 1083/2006 (COM(2009)384 final, adopted on 22.7.2009.

Compliance assessment

Concerning the 2007-2013 period, the compliance assessment exercise will be completed as quickly as possible, provided the Member States submit the necessary and revised documents in due time.

Audits

In terms of audit and control activities, the Directorate General for Regional Policy will maintain the momentum generated by the Action Plan to strengthen the Commission's supervisory role under shared management of structural actions and continue rigorous actions in 2010 under its multi-annual audit strategy. Overall, it will continue to seek to make progress towards a positive declaration of assurance (DAS) on expenditure under Cohesion policy through preventive and corrective measures focused on the closure of the programmes for 2000-2006, and the start up and functioning of the programmes for the 2007-2013 period. Concerning the 2000-2006 period, the completion of financial corrections, the completion of the follow-up of the review of bodies responsible for the closure of the 2000-2006 programmes and the review of closure declarations will be the main priority in 2010. Concerning the 2007-2013 period, audits will be continue to be focused on the work of the audit authorities to obtain assurance on the reliability of their work and on the functioning of the management and control systems.

10.3.2.4. Enquiries, problems and complaints management

The Directorate General for Regional Policy will continue to apply the EU PILOT system and to follow similar procedures with those Member States not participating in EU PILOT. Involving national authorities in a very early stage of a complaint is important in this respect in a system of shared management of Community Funds.

10.3.2.5. Petitions

Given the few cases, no systematic action needs to be planned.

10.3.2.6. Management of infringements

Given the few cases, no systematic action needs to be planned.

11. TAXATION AND CUSTOMS SERVICES

11.1. Situation in the sector of CUSTOMS

11.1.1. Current position

11.1.1.1. General introduction

In continuation with previous years, the strategy was to put the emphasis on the prevention of the infringements, fully in line with the Communication450 on a strategic review of better

450 COM(2006)689 of 14.11.2006

regulation in the European Union, and moreover with the Communication451 on a better monitoring of the application of Community law, the attention is devoted to a better and simplified legal environment. Due to its responsibilities in the area of the EU legislation, the Commission continued its efforts aiming at enhancing the correct and uniform application of the Community customs legislation.

Member States are fully committed to apply correctly Union customs rules, helped in this crucial task by a close cooperation with the Commission. The key element of this process is the priority given to preventive approach aimed at involving all parties concerned. To enable a comprehensible approach, the multi-annual programme of monitoring the compliance of customs legislation in different Member States has been satisfactory continued and developed. This pro-active strategy follows a planning process, targeting a selection of legislative sectors presenting, according to the risk criteria, actual or potential risk of incorrect or non uniform application, thus damaging main interests of Trade and of financial importance.

Existing measures in force: see Annex I

11.1.1.2. Report of work done in 2009

In 2009 the Court of justice delivered 17 judgments related to customs, which represents a clear increase compared with 2008 (13).

Most of the Court's judgments in this area concerned references for preliminary rulings.

The following case was of particular relevance:

The judgement of the European Court of Justice in case C-349/07, *Sopropé – Organizações de Calçado Lda* was delivered on 18 December 2008. In deciding the case the ECJ made clear that fundamental rights form an integral part of the general principles of law, the observance of which the Court ensures. Turning to the core of the matter, the Court stated in an unambiguous manner that observance of the rights of the defence is a general principle of Community law which applies where the authorities are minded to adopt a measure which will adversely affect an individual. Once such general principle was established, the ECJ went on to clarify that it also applies, as seems obvious, in customs related matters. Therefore, in accordance with that principle, the addressees of decisions which significantly affect their interests must be placed in a position in which they can effectively make known their views as regards the information on which the authorities intend to base their decision. They must be given a sufficient period of time in which to do so. Having regard to the fact that their decisions come within the scope of Unionlaw, the customs authorities of the Member States are subject to that obligation, even though the Community legislation currently applicable, which is the Community Customs Code, does not expressly provide for such a procedural requirement. The future Modernised Customs Code instead already foresees such a procedural requirement.

Volume of enquiries, complaints, infringements work and petitions, and prioritization among them

Regarding parliamentary questions, 5 have been treated, while no petition has been registered.

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451 COM(2002)725 of 16.05.2003

As regards customs, the Commission opened one own investigations regarding presumed infringements, and 3 on the basis of complaints.

Besides, 17 requests that constitute potential infringements have been received, alike 2 potential own initiative cases.

No reasoned opinions (Art 258) (ex Art 226) have been sent. Thus, the total number of infringement cases (4) is lower than in 2008 (17) and is also lower for reasoned opinions (2 in 2008).

During 2009, 32 opened infringement cases were closed after the Member States concerned modified their legislation or practice to comply with EU law.

Most of enquiries and complaints in this area relate to the application of customs legislation in general. No prioritisation was necessary to deal with the cases as regards clear and serious infringements of EU legislation.

11.1.2. **Evaluation based on the current situation**

In the customs field, EU legislation is mainly adopted in the form of Regulations. Therefore the correct and uniform application of EU customs law is a clear obligation for the Member states.

The policy on infringements should be envisaged in a larger framework. The control of the correct application of EU customs law should be seen as one of the instruments of a wider policy of the harmonisation of Member State legislation and the implementation of EU legislation (committees, working groups, soft law, comitology, proposing a modifying act).

This is clear in the area of customs, where a uniform-application of EU rules is dependent on both clear and accurate legislation and strong cooperation between the Member States. The practical application of Community customs legislation to individual cases is particularly important, which accounts for the high volume of requests made by national courts to the ECJ for preliminary rulings that become a major guarantee of the uniform application of the Community law in the customs field.

In the case of complaints or presumed infringements, a distinction has been made between isolated failures affecting a specific individual and more general failures affecting groups of individuals. Isolated failures do not confirm the existence of national legislation or a general practice contrary to EU customs law. Isolated cases are more appropriately and effectively addressed through administrative or judicial appeal processes provided for by national law. More general failures have been subject to an analysis of the scope and permanence of their impact, in terms of the extent to which they are likely to affect in a serious and sustainable way the objectives set by EU customs law.

As a result, there has been no significant increase in the number of infringements over recent years and the overall situation in the area of customs may be seen as stable and this tendency is expected continue.

Another way of improving the correct application of customs legislation is through increased use of informatics. Thus, in recent years, customs authorities have developed and introduced the extensive application of electronic instruments, through the package called 'E-Customs'.

The introduction of this computerisation involves both a harmonisation and standardisation of data and procedures that should contribute to improved application.

11.1.3. **Evaluation results**

11.1.3.1. Priorities

As far as customs are concerned, the situation has not significantly changed regarding the volume of infringements work and the number of references to the Court. Therefore, priorities set for 2009 remain unchanged for 2010. Considering that the overall volume of infringements and complaints remains relatively stable compared with previous years, and that this situation is likely to continue in 2009, no specific action regarding prioritization should be envisaged.

11.1.3.2. Planned action *(2009 and beyond)*

Given this evaluation of the current situation, no additional specific planning is required. Nevertheless, the fact that the volume of problems in the application of the law being identified has not increased does not necessarily mean that the situation is satisfactory and that EU customs legislation is evenly and correctly applied. For instance, economic operators and citizens may be facing problems which, for whatever reasons, they are not reporting to the Commission. As a result, a pro-active and horizontal approach has been adopted.

The focus is put on ensuring that Member States orientate their efforts towards the correct and uniform application of EU customs legislation. The strategy is based on closer cooperation with Member States and oriented towards new tools enabling improved monitoring of the application of EU customs law. With this end in view, a multi-annual programme of monitoring the compliance of customs legislation in the whole EU territory has been introduced in 2008.

In order to help Member States to ensure the correct and uniform application of EU customs legislation, TAXUD operates in a proactive manner. The main option targets preventive action aimed at reducing the number of situations likely to give rise to infringements. In this context attention is paid to the identification of areas of legislation which seem to present higher risks of incorrect application that may require special monitoring in the framework of an annual and targeted programme. The justifications for targeting specific areas have to be based on selection criteria, according to risk criteria (financial, economic, administrative, legal, security and safety).

In 2009, the selected areas concerned: the role and functions of Authorised Economic Operators (AEO); the provision of Binding Tariff Information (BTI); decisions on non-recovery, remission or repayment of customs duties; and the management of tariff quotas and surveillance of goods.

This strategic and horizontal approach, based on the principles of coordination and partnership between the Commission and Member States, has confirmed a strong commitment from all concerned and produced a clearly improved legal environment.

11.1.4. **Sector summary**

During the year 2009 in the area of **customs**, the volume of enquiries, complaints and references for preliminary rulings has been stable compared to the other years. Considering the likeliness of this tendency to continue, no specific urgent action needs to be decided.

Like previously, the strategic emphasis was put on the prevention of the infringements so to act upstream instead of increasing the intervention at the downstream level, through the infringements process.

11.2. Situation in the sector of INDIRECT TAXATION

11.2.1. **Current position**

11.2.1.1. General introduction

Establishing an internal market supposes the application in Member States of legislation on indirect taxation that distorts neither conditions of competition nor free movement of goods and services.

Therefore it is necessary to achieve harmonisation of legislation in line with the changes in the economy by means of proposals for new directives although that achievement is often compromised by the rule of unanimity.

Existing measures in force (situation on 31/12/2009: see Annex I)

11.2.1.2. Report of the work done in 2009

a) New legislation in preparation or already proposed and in the course of being adopted, impact assessments and implementation plans being developed in connection with new proposals, etc.

Value added tax (VAT)

In the context of the fight against VAT fraud, the Commission worked on two legislative proposals. On 1 December 2008 the Commission adopted a proposal for a Council Directive amending Directive 2006/112/EC (COM (2008)805 final). This Directive on one hand clarifies the conditions for an already specific exemption at importation which is currently the subject of abuse through fraud schemes and on the other hand to provide tax administrations with a tool for recovering VAT from non-established traders in cases where the non compliance of these traders with regard to their reporting obligations has facilitated the fraud. In June 2009 the Council adopted the part on importation (Council Directive 2009/69/EC of 25 June 2009), but is still discussing the proposed recovery measure.

On 18 August 2009 the Commission adopted a proposal for a Council Regulation on administrative cooperation and combating fraud in the field of Value Added Tax (Recast) (COM (2009) 427 final). The aim of this proposal is to give Member States the means to combat cross-border VAT fraud more effectively. A first discussion in Council took place under the Swedish Presidency.

Measures for a consistent response to carousel fraud in certain sectors

In order to allow Member States to take rapid action against this kind of fraud, the Commission has adopted a proposal for a Directive allowing the application of a reverse charge mechanism on supply of five categories of particularly fraud sensitive goods and services, namely: computer chips, mobile phones, precious metals, perfumes and greenhouse gas emission allowances.

The possibility for all Member States to opt for the application of a reverse charge under the same conditions to a limited list of goods and services provides Member States with the necessary tool to tackle worrying fraud phenomena in a flexible manner while ensuring consistency in the response Member States give to carousel fraud and to avoid fraud relocation. It will also produce valuable information for evaluating the efficiency of such a measure.

On 3rd December the Council agreed on a general approach on this proposal, based on limiting the scope of the measure to greenhouse gas emission allowances. Discussions will continue on the remaining part of the proposal.

Invoicing

On 28 January, the Commission adopted a proposal to change the VAT Directive 2006/112/EC with respect to invoicing rules, based on a Communication on technological developments in the field of electronic invoicing. The aim of the proposal is to increase the use of electronic invoicing, reduce burdens on business, support small and medium sized enterprises (SMEs) and help Member States to tackle fraud. The proposal simplifies, modernises and harmonises the VAT invoicing rules. In particular, it eliminates the current barriers to e-invoicing in the VAT Directive by treating paper and electronic invoices equally. The proposal is a key element of the Commission's Action Programme to reduce burdens on business by 25% by 2012, and is part of the Commission's strategy to combat VAT fraud more efficiently.

The Communication and the proposal reflect the real concerns of the business community and tax administrations, as indicated in their replies to the public consultation. The proposal addresses not only the VAT obstacles which hamper the up-take of electronic invoicing and storage, but it also addresses difficulties that businesses face due to the diversity of national rules on the content of invoices.

This proposal is currently under discussion in Council.

Technical amendments of the VAT Directive

The Council adopted on 22 December 2009 a Directive amending several elements of Council Directive 2006/112/EC based on November 2007 Commission proposal. These amendments concern notably: the scope of the scheme applicable to natural gas and electricity since 2003 in order to bring legislation into line with economic developments; the tax treatment of joint undertakings set up pursuant to Article 187 of the TFEU; the taking into account of certain consequences of EU enlargement; and the arrangements for exercising the right to deduct VAT for mixed-use immovable property and business assets. .

Comments from the business world and the Member States had demonstrated the need to amend several elements of the VAT Directive.

Mutual recovery assistance

On 2 February 2009, the Commission adopted a proposal for a new Council Directive concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (COM(2009)28). The aim of this proposal is to facilitate the recovery assistance and to make it more efficient. It is expected that this Directive will be adopted by the Council in the first half of 2010, to enter into force on 1 January 2012.

Excise duties

In the area of excise duties, Council Directive 2009/55/EC of 25 May 2009 concerning tax exemptions applicable to the permanent introduction from a Member State of the personal property of individuals (codified version of Directive 1983/183/EEC), was adopted. Since the initial version of Directive 1983/183/EEC has been substantially amended several times, a codified version proved to be necessary in the interest of clarity and rationality.

The Commission continued preparatory work on a possible revision of Directive 2003/96/EC ("the Energy Taxation Directive") to better combine fiscal and environmental goals. In the wider context of that work, the Commission also organised an one day conference on "*What taxation for a low carbon economy?",* which focused on the role that taxation could or should play with respect to emissions not included in the EU emission trading system.

b) Preventive measures being taken in relation to recently adopted new legislation – conformity assessment of national transposition, transposition package meetings, development of guidelines, initiation of networking systems to manage the new legislation, etc.

Value added tax (VAT)

Since the Council Directive 2009/69/EC of 25 June 2009 regarding tax evasion linked to imports requires some implementing measures, discussions have started within the framework of the Standard Committee on Administrative Cooperation (SCAC) and the Customs Directorate within DG TAXUD. The Commission also organised a seminar under the Fiscalis Programme to examine together with the participants from all Member States the new rules provided for by this Council Directive. Regarding the implementation of Council Directive 2008/117/EC of 16 December 2008 amending Directive 2006/112/EC on the common system of value added tax to combat tax evasion with intra-Community transactions (reducing of timeframes for submitting recapitulative statements) the Commission monitored the progress made by the Member States in order to adjust their IT systems to the required standards in time.

The Commission also organised a seminar under the Fiscalis Programme in order to discuss with the Member States the changes that result from the new legislative measures and their impact on administrative cooperation.

Implementation of the "VAT package"

From 1 January 2010, the new "VAT Package" enters into force across the EU, including new provisions which will see VAT for business-to-business services paid in the country of consumption rather than the country where the supplier is located, while for business-to-

consumer services, VAT will continue to be paid in the Member State in which the supplier is established. On the same date, a new electronic procedure is put in place in order to allow taxable persons to claim back the VAT they paid in another MS directly to their own Member State.

Directives 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services and 2008/9/EC of the same date laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State, have been discussed several times in the VAT Committee.

On 1st December the Commission adopted an implementing regulation on Refunds of VAT laying down the detailed rules for the electronic submission of refund request and exchange of information on these requests.

In preparation for the entry into force of the new rules on supply of services, the Commission adopted on 17 December a proposal on implementing measures for the VAT Directive 2006/112 (COM(2009) 672 final), which includes a number of measures related to the VAT Package, in particular to prevent situations of double taxation that could arise as a result of diverging interpretations of the new rules. For example, there are guidelines for suppliers on establishing the location and tax status of the customer, as this will determine the rate of VAT that must be paid. Other guidelines focus on the provisions within the VAT Package which complement or provide exceptions to these general new rules. The VAT Package, which was adopted by Member States at the ECOFIN Council in February 2008, also provides for a faster, more effective electronic procedure for businesses to reclaim the VAT that they pay in a Member State other than the one in which they are established.

Reduced VAT rates

Following the ECOFIN political agreement of 10 March 2009, the Council adopted on the 5th of May Directive 2009/47/EC essentially allowing all Member States – on a permanent basis – to opt for the application of reduced rates of value-added tax (VAT) to certain labour-intensive local services, including restaurant and catering services.

EU rules on VAT rates, set by the Council Directive 2006/112/EC, require Member States to apply a minimum 15 % standard rate to the supply of most goods and services. As a general rule, Member States are however allowed to apply one or two reduced VAT rates of at least 5% to a limited number of supplies.

The current rules are the outcome of a variety of initiatives over the years, including the 1992 Council Directive on the harmonisation of VAT rates in the context of the EU single market, and subsequent Council Directives and Decisions to allow reduced VAT rates on labour-intensive local services with a view to stimulating employment and reducing fraud.

As a follow up to the entry into force of the new scope of reduced rates, the Commission has, by means of a letter, invited all Member States to carefully consider the precise scope of the 10 March 2009 political agreement (ECOFIN), having regard notably to the options to apply reduced VAT rates and the changes unanimously agreed. In addition, the Commission invited all Member States to analyse their national legislation and, if need be, take rectifying measures. The Commission also, acting in its role of guardian of the Treaties is examining Member States' legislation in order to establish whether EU rules on reduced rates of VAT are

correctly applied and will undertake the necessary steps in order to ensure a correct implementation of the new scope of reduced VAT rates as agreed by the Council.

VAT grouping

On 2nd July the Commission adopted a Communication setting out its position on VAT grouping schemes. The EU VAT legislation gives Member States the option, for the purpose of administrative simplification, to regard as one single taxable person those who, while legally independent, are closely bound to one another by financial, economic and organisational links. The Communication includes guidelines which aim at ensuring a correct, coherent and uniform application of the VAT grouping option.

Excise duties

Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC, which will enter into force on 1 April 2010. It will provide the legal base for EMCS (the Excise Movement and Control System), which is a computerised system for monitoring the movements of excise goods under suspension of excise duty within the EU. Directive 2008/118/EC provides the legal basis for EMCS, which enters into application as of 1 April 2010 as well. The entry into application of EMCS and of the Directive on 1 April 2010 has been actively prepared and monitored by the Committee on Excise Duties as well as by its subcommittee responsible for EMCS, the ECWP (Excise Computerisation Working Party).

c) Main actions being taken to control the correct application of the law – conformity assessments, reports on the application of legislation, studies, etc

Value added tax (VAT)

On 18 August 2009 the Commission adopted its report on the application of Council Regulation EC no 1798/2003 concerning the administrative cooperation in the field of Value Added Tax (COM (2009) 428). This report assesses the functioning of the administrative cooperation between Member States and announces a range of measures which will substantially affect the way administrative cooperation will function in the future. Part of these measures is taken on board in the legislative proposal for a Recast of Council Regulation 1798/2003.

The Commission has checked the correct implementation by the Member States of the extension, after 31 December 2008, of the e-commerce special scheme, according to Directive 2008/8/EC of 12 February 2008.

d) Management of the acquis through committees and expert groups

Value added tax (VAT)

As regards administrative cooperation in the field of VAT, several expert groups, funded through the Fiscalis 2013 budget, discussed specific problems that are either related to specific fraud problems or targeted at exchanging best practises or enhancing cross border administrative cooperation. These groups dealt with multilateral controls, e-auditing, internet monitoring, new means of transport (cars and yachts), risk management and e-learning.

The VAT Committee, an advisory committee set up by Article 398 of the VAT Directive 2006/112/EC of 28 November 2006, has competence to examine questions raised by the

Commission or the representatives of the Member States, which concern the application of Community provisions on VAT. At least twice a year, but often more, the VAT Committee examines questions raised on the interpretation and application of the existing VAT legislation. Given the adoption of the new rules on the place of taxation of supplies of services, the VAT Committee held 5 meetings, spread on 7 days, in 2009, with a view of agreeing common guidelines concerning the implementation of the new rules. The work of the VAT committee has lead to the recast proposal on implementing measures for the VAT Directive 2006/112 (COM(2009) 672 final) to be adopted unanimously by the Council.

Mutual recovery assistance

The Recovery Committee examines matters concerning the application of the Directive on mutual recovery assistance (Arts. 20 and 21 of Council Directive 2008/55/EC). Two meetings have been held in 2009.

e) Enquiries, problems and complaints management

Within the area of **indirect taxation**, the criteria of prioritisation were fixed in line with the Communication of the Commission of 2002 on the improvement of the control of the application of the Community legislation. The Commission has increased its efforts to ensure alignment of Member States' indirect tax legislation with the requirements of primary and secondary Community law, by intensifying its infringement action following the adoption of new Directives and by pursuing a more targeted infringement approach in support of ongoing policy initiatives such as the Commission's initiative on tax policy coordination; inter alia in the area of VAT grouping Commission issued a Communication452 and has opened infringement procedures against Member States violating the VAT Directive. Infringement procedures affecting the Community own resources and specific infringement procedures related to VAT on postal services, travel agents and reduced VAT rates were launched in this context.

In the Commission Communication 'A Europe of results-Applying Community law'453, the Commission decided on the introduction of an arrangement for monthly decision-taking to allow for the quicker progress of infringement cases about 2 years. The results of this new decisional method were particularly significant within this domain where considerable efforts were made in order to carry out the objective laid down by the Commission. A significant number of cases is currently before the ECJ.

Another important element of the Commission Communication was the starting up of a pilot project to test and improve working methods between Commission services and Member States on information exchange and problem solving (EUPILOT).In the course of the year the overwhelming majority of files have reached a satisfactory conclusion, even if improvements have been identified in the way the process could operate, with 75 percent of Member State responses provided within the 10week benchmark.

452 COM(2009)325

453 COM(2007)502

Reference to the system SOLVIT will remain an important means for resolving the problems confronting citizens and taxpayers in a Member State different then the Member State of their residence.

f) Petitions

Regarding the 33 **petitions** treated **in the area of indirect taxation, in 2009,the most recurrent issues remained in the area of taxation of cars.**

g) Management of infringements

Within the area of indirect taxation, 2009 was another successive year with a considerable number of infringement cases, closed after bringing their legislation into conformity with Community Law by the Member States during the different steps of the 258-(ex 226-) procedure, and a considerable input related to new Court cases. The following cases merit extra attention:

In the judgment in the case *Commission v. Poland454,* the Court declared that, by failing to adapt, by 1 January 2006, its system of electricity tax with regard to the time at which the electricity tax becomes chargeable to the requirements of the Council Directive 2003/96/EC the Republic of Poland has failed to fulfil its obligations under that directive and the Court ordered the Republic of Poland to pay the costs.

In the judgments *Commission v. Ireland455* and *Commission v. Spain456* the Court decided that Ireland and Spain failed to lay down in its national legislation requirement or a criterion for a framework that bodies governed by public law acting in their capacity as a public authority are to be subject to value added tax where their treatment as non-taxable persons gives rise to significant distortions of competition as well as that where they are engaged in activities listed in Annex I to Council Directive 2006/112/EC they are to be subject to tax.

In the judgment *Commission v. Finland457* the Court declared that, by deducting the tax on vehicles from value added tax as well as by retaining, when taxing vehicles, the same taxable value for vehicles under three months old as for new vehicles, the Republic of Finland has failed to fulfil its obligations under the first paragraph of Article 90 EC (Article 110 TFEU) and Article 17(1) and (2) of Directive 77/388/EEC.

Finally in the case *TNT458* the Court decided that as 'public postal services' (exempted from VAT) must be regarded all operators, whether public or private, who undertake to supply not individually negotiated postal services which meet the essential needs of the population and therefore, in practice, to provide all or part of the universal postal service in a Member State.

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454 Judgment of 12.02.2009, case C-475/07

455 Judgment of 16.07.2009, case C-554/07

456 Judgment of 12.11.2009, case C-154/08

457 Judgment of 19.03.2009, case C-10/08

458 Judgment of 23.03.2009, case C-357/07

11.2.2. **Evaluation based on the current situation**

It is important to recall that unanimity is and will remain the rule for the adoption (and thus the adjustment of the principles in the area of VAT) of the texts towards harmonization **in the field of taxation**. This situation makes harmonization by legislation more complex and often leads to the granting of options to Member States thereby creating differences leading very often to prejudicial consequences.

Furthermore, the important proposal of 5 July 2005459 , for a directive which, inter alia, includes the abolition of registration taxes and would have positive effect on free movement of persons consequently could not be adopted.

Hence, the infringement policy constitutes a major instrument to contribute in a non-negligible way to uniform application and thus towards harmonization simplifying the situation for taxpayers. For example the existing provisions of EU-law concerning travel agencies and VAT exemption on postal services were interpreted differently by the Member States and this fact led at the end to opening of infringement procedures. Therefore the infringement policy ensured harmonized interpretation of concerned rules by all Member States.

The overall situation in the **area of indirect taxation** is changing as infringement action and references to the Court have steadily increased in recent years and this trend is still likely to continue. The key challenges will be to achieve correct application of Community law in this area within acceptable deadlines. The position needs to be monitored continuously.

A number of measures have already been taken to improve the situation and to rationalize action. This includes a more strategic approach to infringement action by focusing on specific priorities and adopting a more horizontal approach to similar infringements in different Member States. In addition, a lot of emphasis is put on prevention by better co-ordinating the preparation of national legislation translating Community legislation into national law.

Finally, it is welcomed that during 2009, 57 infringement cases have been closed because the Member States concerned decided to bring their legislation into conformity with Community Law without any referral to the Court of Justice. These figures reveal clearly that the alignment of Member States' legislation with Community law is being achieved through the work done by the Commission and Member States in the context of infringement proceedings following the adoption of new directives. As stated in its 2007 Communication, the Commission has started to work with Member States to try to ensure quicker results without recourse to infringement proceedings always being necessary.

11.2.3. **Evaluation results**

11.2.3.1. Priorities

Our existing pro-active infringement policy and prioritisation of specific issues has been maintained and further developed as a strategy in order to persuade Member States to approve ongoing legislative proposals and mostly to try to push back the increasing number of

459 COM (2005) 2641 final

complaints year after year. Unfortunately this policy has not always reached the stated goal (for example, on travel agencies).

On the control of the implementation of Directives, the implementing national provisions were checked routinely by the officials responsible for the follow-up of national legislation. However, the introduction of an obligation for the Member States to provide systematically, for each Directive, correlation tables to the Commission services would increase transparency and user-friendliness of national legislation, would facilitate the dialogue with the Commission on transposition of directives and could represent a useful tool for both administrations and stakeholders, but unfortunately is not yet entirely applied.

A second priority concerns the Community own resources. Those resources within the area of indirect taxation include those accruing from VAT and are obtained through the application of a uniform rate on a uniform to basis of assessment in accordance with Community rules. Cases detected through "own investigation" with a possible impact on own resources continue to be initiated by the Commission. For example the Commission has initiated several procedures concerning the correct application of VAT exemptions according to Article 137 of the VAT Directive. Their purpose is to ensure of the equal treatment of the Member States in their contributions to the Community "own resources".

A third pillar regarding the prioritisation policy within the domain of indirect taxation, is that the Commission has increased its efforts to ensure alignment of Member States' indirect tax legislation with the requirements of primary and secondary Community law, by intensifying its infringement action following the adoption of new Directives and by pursuing a more targeted infringement approach in support of ongoing policy initiatives.

Lastly, in the field of car taxation, object of many complaints and petitions, the Commission uses article 110 of the EU Treaty (ex article 90 of the EC Treaty) as interpreted by the Jurisprudence of the Court of justice, to ensure that the Member States do not tax in a discriminatory way, at the time of registration, second-hand vehicles bought in the other Member States (Bulgaria, Greece, Ireland, France, Cyprus, Hungary, Malta, Portugal, Romania).

For **indirect taxation** issues, the Commission opened 136 new infringement cases 99 of which related to VAT, 14 related to excise duties and 23 regarding car, energy and environmental taxation.

During 2009, 57 opened infringement cases were closed after Member States modified their legislation and therefore complied with Community Law; most of the time we had to refer the case to the Court of Justice before compliance was achieved.

The infringement policy of the Commission was reflected both in a considerable number of infringement cases and a considerable input related to new Court cases. During the year 2009, the Court of justice has delivered 30 judgments related to indirect taxation (24 in the domain of VAT and 6 regarding other indirect tax issues), mostly judgments in consequence of a request for a preliminary ruling from a national court in pursuance of which the Commission has given its advice.

The volume of petitions in this sector is relatively moderate and stable (24 petitions have been handled during 2009).

11.2.3.2. Planned action (2010 and beyond)

One of the specific objectives planned for the mid-term is to create a simpler and transparent tax environment for individuals, SME's and other businesses in cross-border transactions through the control of the application of Community law, modernisation, better coordination and harmonisation of tax systems in the Internal Market.

Since VAT has been identified as causing a high level of administrative burden for business, the Commission is seeking to book results in simplifying and rationalising the VAT legislation. The 'production' of legislative proposals are likely to reduce the administrative burden.

And last but not least the challenge of correct transposition of new rules on place of supply starting on 1 January 2010 in scope of VAT package implementation as well as the new system of reimbursement of VAT allowing the taxpayer to submit the documents to the tax authorities of the Member state where is he registered. All these measures require a coordinated and instant legislative as well as technical implementation in all Member States.

11.2.4. **Sector summary**

Regarding **indirect taxation**, the Commission continues to be confronted within this area with a marked increase in enquiries, complaints and references for preliminary rulings. The Commission has concentrated its efforts to ensure alignment of Member States' indirect tax legislation with the requirements of primary and secondary Community law, by pursuing a more targeted infringement approach in support of ongoing policy initiatives such as the Commission's initiative on tax policy coordination. Infringement procedures affecting the Community own resources and specific infringement procedures related to VAT on postal services, travel agents and reduced VAT rates were further followed up in this context. Despite the good figures for notification regarding the transposition of the existing secondary Community Law, our existing pro-active infringement policy and prioritisation of specific issues should be maintained and particular attention will be devoted to the important modifications which will come into force on 1.1.2010 (VAT package).

11.3. Situation in the sector of DIRECT TAXATION

11.3.1. Current position

11.3.1.1. Existing measures in force

See Annex

11.3.1.2. Report of work done in 2009

New legislation in preparation or already proposed and in the course of being adopted, impact assessments and implementation plans being developed in connection with new proposals, etc.

On 2 February 2009, the Commission adopted a proposal for a new Council Directive concerning administrative cooperation in the field of taxation (COM (2009)29). The aim of this proposal is to enhance and streamline the mechanisms of administrative cooperation for all taxes that are not yet covered by Community legislation relating to administrative cooperation and mainly for direct taxes. It especially provides for the abolition of bank

secrecy for administrative cooperation purposes. It is expected that this Directive will be adopted by the Council in the first half of 2010, to enter into force on 1 January 2012 for all measures but automatic exchange of information and on 1 January 2014 for automatic exchange of information.

Volume of enquiries, complaints, infringements work and petitions, and prioritization among them

In the area of **direct taxation**, the objectives adopted by the Commission for the period 2005 - 2009, were after increases in the last years reflected in a rather stable number of infringement cases and increased input into new Court cases. As in previous years, the main focus in 2009 was on breaches of Community law, in particular those concerning the application of the Treaty freedoms in respect of differential treatment of domestic and cross-border situations. In addition, infringement action was targeted at those areas where the Commission sees scope for co-ordination of Member States' direct tax systems, as highlighted in the 2006 Communication on Co-ordinating Member States' direct tax systems in the Internal Market. In this respect, priority was in particular given to infringement cases in respect of exit tax rules on individuals and companies and discriminatory tax treatment of foreign charities.

In 2009 the Court of Justice delivered 23 judgments related to direct taxation. Most of the Court's judgments in this area (16) concerned references for preliminary rulings. The following cases were of particular relevance:

In *Persche*460 the Court held that Article 56 EC [now Article 63 TFEU] precludes legislation of a Member State by which, as regards gifts made to bodies recognised as having charitable status, the benefit of a deduction for tax purposes is allowed only in respect of gifts made to bodies established in that Member State, without any possibility for the taxpayer to show that a gift made to a body established in another Member State satisfies the requirements imposed by that legislation for the grant of such a benefit.

In *Margarete Block*461 the Court ruled that Article 56 EC [now Article 63 TFEU], in circumstances such as those of the present case, does not preclude legislation of a Member State which does not provide for inheritance tax paid in another Member State to be credited against inheritance tax payable in the first Member State. The double taxation results from the exercise in parallel by two Member States of their fiscal sovereignty. Community law, in its current state and in a situation such as that in the main proceedings, does not lay down any general criteria for the attribution of areas of competence between the Member States in relation to the elimination of double taxation within the Community.

In *Commission v. Italy*462 the Court held that by making dividends distributed to companies established in other Member States subject to a less favourable tax regime than that applied to dividends distributed to resident companies, the Italian Republic has failed to fulfil its

460 Judgment of 27.01.2009, case C-318/07

461 Judgment of 12.02.2009, case C-67/08

462 Judgment of 19.11.2009, case C-540/07

obligations under Article 56 EC [now Article 63 TFEU]. The Court confirmed the Commission's position that outbound dividend payments to corporate shareholders resident in other EU Member States may not be taxed less favourably than dividend payments to resident corporate shareholders. In addition, the Court rejected the Italian argument invoking the application of Conventions for the avoidance of double taxation as a mechanism able to compensate the difference in treatment arising from the Italian legislation.

Regarding the **petitions** in the direct tax area, most petitions related to possible infringements of Treaty freedoms and instances of double taxation due to the simultaneous application of different Member State tax laws.

As regards **direct taxation**, the Commission opened 90 new infringement cases in 2009, a smaller number than in 2008. This was due also to the new approach of applying a tighter dialogue and co-operation between the Commission and Member States in the stages prior to opening of formal infringement proceedings. During 2009, 70 (100% increase with regard to 2008) opened infringement cases were closed after the Member States concerned modified their legislation to comply with Community Law.

- In view of the lack of secondary Community legislation in the direct tax area, the majority of enquiries and complaints in this area (a total volume of 260 in 2009) relate to the application of the fundamental Treaty freedoms in respect of differential treatment of domestic and cross-border situations. They therefore fall mainly into the second priority category of the Communication COM(2007) 502 concerning 'breaches of Community law, raising issues of principle or having particularly far-reaching negative impact for citizens, such as those concerning the application of Treaty principles (..)'.
- Judging from the ever increasing number of enquiries, complaints and references for preliminary rulings in the direct tax area, the external interest in this area is substantial and growing. Given the lack of progress toward positive integration, which is at least partly due to the unanimity requirement in tax matters, this trend is likely to continue and intensify over the coming years.
- Priority is given to those cases which reveal clear and serious infringements of Community law that prevent EU citizens and enterprises from making use of their rights to establish themselves or invest in other Member States. Moreover, particular attention is paid to those areas where the Commission sees scope for co-ordination of MS' direct tax systems, as highlighted in the 2006 Communication on Co-ordinating Member States' direct tax systems in the Internal Market (COM(2006)823 of 19.12.2006) and the subsequent specific communications on cross-border losses, exit taxes and anti-abuse rules. In addition, work on the current priority areas (including taxation of cross-border dividend payments and cross-border pensions) will continue.

The volume of petitions in the direct tax area is relatively moderate and stable (15 petitions in 2009).

Management of the acquis through committees and expert groups

The Working Group for Administrative Cooperation in the field of Direct Taxes (WG ACDT) examines matters concerning the application of the Directive on mutual assistance in direct tax matters and insurance premiums (Directive 77/799/EEC) and the application of the Directive on the taxation of savings income in the form of interest payments (Directive 2003/48/EC). Three meetings have been held in 2009.

In addition, a sub group of the WG ACDT devoted to the design and IT development of common forms for exchange of information met four times in 2009.

Recently adopted measures requiring additional work

There are no recently adopted measures in the direct tax area which require additional work.

New measures requiring transposition work

Regarding direct taxation, negotiations are ongoing on the amendment to the Savings Taxation Directive (2003/48/EC) and the Mutual Assistance Directive (77/799/EEC). Adoption by Council in 2010 would require substantial transposition work.

11.3.2. **Evaluation based on current situation**

The situation in the direct tax area is changing as the infringement action and the number of references to the Court has increased in recent years and this trend is likely to continue. The key challenges are to manage this increase in activity without an increase in resources and to achieve correct application of Community law in this largely unharmonised area.

A number of measures have already been taken to try and improve the situation. This includes a more strategic approach to infringement action in this area by focusing on specific priorities and adopting a more horizontal approach to similar infringements in different Member States.

Moreover, the Commission is encouraging Member States to take a more pro-active approach to removing existing tax obstacles by examining the scope for co-ordination of MS' direct tax systems. As outlined in the 2006 Communication on Co-ordinating Member States' direct tax systems in the Internal Market (COM(2006)823 of 19.12.2006), the aim of this initiative is to ensure that national tax systems comply with Community law and interact coherently with each other. The initiative seeks to remove discrimination and double taxation for the benefit of individuals and business while preventing tax abuse and erosion of the tax base. Coordinated solutions could help to remove discrimination and eliminate remaining tax obstacles to cross-border activity and thus help to reverse the trend of increased litigation by taxpayers in national courts and the ECJ.

11.3.3. **Evaluation results**

11.3.3.1. Priorities

As far as direct taxation is concerned, the priorities set for 2009 remain unchanged for 2010.

11.3.3.2. Planned action (2010 and beyond)

Given the evaluation of the current situation, continued and intensified infringement action is envisaged in the direct tax area.

Common Consolidated Corporate Tax Base (CCCTB)

In the medium term, adoption by the Council of the planned legislative proposal for a Common Consolidated Corporate Tax Base (CCCTB) would require substantial implementation/ transposition by Member States and conformity assessment by the Commission possibly combined with expert group/ committee meetings to manage the

application of the measure. Once adopted and implemented, CCCTB would reduce the scope for cross-border restrictions and thus result in a decrease in infringements in the corporate tax area.

Amendment Savings Directive463

The European Commission on 13 November 2008 adopted an amending proposal to the Savings Taxation Directive, with a view to closing existing loopholes and better preventing tax evasion. The Commission proposal seeks to improve the Directive, so as to better ensure the taxation of interest payments which are channelled through intermediate tax-exempted structures. It is also proposed to extend the scope of the Directive to income equivalent to interest obtained through investments in some innovative financial products as well as in certain life insurance products. Adoption by the Council would require substantial implementation by Member States and conformity assessment by the Commission possibly combined with committee meetings to manage the application of the measure.

11.3.4. **Sector summary**

In the area of **direct taxation**, action continues to relate mainly to the second priority listed in the 2007 Communication (breaches of Community law raising issues of principle). In view of the lack of secondary Community legislation in this area, the main focus is on the application of the fundamental Treaty freedoms in respect of differential treatment of domestic and cross-border situations. There has again been a marked increase in enquiries, complaints and references for preliminary rulings and this trend is likely to continue. In order to manage this increase in activity, the Commission will continue to pursue a strategic approach to infringement action in this area by focusing on specific priorities and by looking more horizontally at similar infringements in different Member States. Moreover, as outlined in the 2006 Communication on Co-ordinating Member States' direct tax systems in the Internal Market, the Commission is encouraging Member States to be more pro-active in removing existing tax obstacles by examining the scope for co-ordination in this area. Such co-ordinated action can help to remove discrimination and promote compliance with Community law. The priorities in this area remain unchanged for 2010.

12. EDUCATION AND CULTURE

12.1. Current position

12.1.1. General introduction

12.1.1.1. Education and training

The continuing challenge in the field of education and training is to ensure the application of the principle of free movement for students, a fundamental objective of EU action in accordance with Article 165 TFEU, which replaced and supplemented Article 149 of the EC Treaty. Students in the different types and levels of education and training should not be

463 Directive 2003/48/EC on taxation of income from savings (OJ L 157 p 38 of 26.06.2003)

treated less favourably because they have exercised their right to mobility for all or a part of their studies or have been awarded diplomas in another Member State.

Learning mobility plays a key role both in the personal and skills development of the individual student and in promoting greater labour market flexibility after the studies. It is also an important component for creating the Europe of citizens, one of the key objectives of the Union. The obstacles to mobility should therefore be removed as far as possible. Despite the relative lack of specific, binding provisions in EU primary and secondary law in this area, the Commission took action to protect the principle of free movement. The obstacles encountered relate mainly to the equality of tuition and registration fees, to some benefits directly related to student status, to the recognition of periods of study and diplomas acquired in other Member States and to the scholarships and/or student loans offered. Infringement procedures begun in 2009 concerned areas such as discrimination in access to distance learning provided from a Member State other than the Member State of residence; and discrimination in access to reduced fares for students on public transport.

The main Treaty articles and other legally binding provisions applicable are:

- Article 12 of the Treaty464, establishing the principle of prohibition of any discrimination on grounds of nationality within the scope of application of the Treaty465.

- Article 17, establishing citizenship of the Union and ensuring citizens of the Union enjoy the rights conferred by the Treaty.

- Article 18, providing that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States.

- Articles 149, related to education. In paragraph 2, the objectives of the EU institutions' action in the field of education are set out. Among those objectives are "encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study" and "encouraging the development of distance education". Similar provisions are contained in Article 150, related to vocational training.

- Directive 2004/38/EC, on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. This Directive contains several provisions concerning students and persons under vocational training. Indeed, students are an important category of

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464 Since the 1.12.2009, Article 18 of the Treaty on the Functioning of the European Union. As our legal cases in 2009 have been treated under the old Treaty (EC Treaty), it is to that Treaty we will refer in the present contribution. We will use reference to the new Treaties in the topic concerning planned action for the future.

465 The Court of Justice has held that the field of education is among those included in the scope of the Treaty under Article 12. Inter alia, see the judgment of 11 July 2002 in the case C-224/98, *D'Hoop*, grounds 29 to 32; judgment of 15 March 2005 in the case C-209/03, *Bidar*, operative part. Article 12 must be read in conjunction with the provisions of the Treaty on citizenship of the Union, i.e. articles 17 and 18.

citizens moving between Member States and the Directive contains key provisions related to students on, for example, rights of residence for students legally enrolled in education or vocational training, and on equal treatment of EU citizens with specific rules on social assistance and maintenance grants.

Directives and other EU legal acts containing provisions related to education or vocational training466 are not adopted on the basis of Articles 149 and 150 EC, because the harmonisation of the laws and regulations of the Member States for the achievement of the objectives referred to in these Articles is excluded by the Treaty (see paragraph 4 of Articles 149 and 150). EU action based on these articles may only encourage, support and supplement Member States' action, while fully respecting their responsibility for the content of teaching and vocational training and for the organisation of education and training systems.

Nevertheless, Article 149 paragraph 2, taken together with the abovementioned Articles 12, 17 and 18 and Directives, provides a clear structure for the legal framework on the free movement of students. On that basis, a student who moves from his Member State of origin to another to carry out all or part of his/her studies, is protected not only against discrimination on grounds of nationality in the second Member State, but also against prejudicial treatment in his/her Member State of origin on grounds (directly or indirectly) related to the fact that s/he has studied abroad. This new standard finds its application, e.g., when a student asks his/her own Member State to recognize a diploma acquired in another Member State or when s/he asks for the portability of a grant or scholarship in order to continue studying in another Member State467.

In that light, the refusal to recognize a diploma without a proper justification or the application of disproportionately long or costly procedures could be interpreted as penalising a European citizen for having exercised his or her right to free movement and having followed studies in another Member State. Such practices could, therefore, also constitute violations of EU law.

Finally, it is useful here to show the methodology used by the Commission in the exercise of its tasks for the classification of the issues pertaining to education and training. The categories are:

(1) Access to educational institutions in a Member State for students from other Member States. The principle of non discrimination (12 CE) is the main rule here. Among seven cases handled by our DG in 2008, the cases against

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466 Another example is Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. This Directive, which lays down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation, is likely to apply in some questions related to education and vocational training. The adoption of such anti-discriminatory provisions to be applied also in the fields of education and vocational training is not incompatible with Articles 149 par. 4 and 150 par. 4 EC, because the objective of anti-discrimination rules crosscuts all areas of EU law.

467 Judgment of the Court of 23 October 2007 in the joint cases C-11/06 and C-12/06, *Morgan* and *Bucher.*

Austria and Belgium concerning access to their universities, principally for medical and related studies, by candidates from Germany and France respectively, remain suspended for five years. The Commission is closely monitoring the impact of the conditions imposed by those Member States, requiring them to submit to the Commission statistical data468 which will enable an evaluation to be made on whether the measures are necessary and proportionate. Moreover, the preliminary case C-73/08, *Bressol*, submitted to the Court of Justice in 2008 and on which the judgement is expected in 2010, deals with the same issues and may impact on the handling of these cases.

(2) The conditions for awarding grants, either to cover tuition and registration fees, or to cover living expenses. This issue is examined both in connection with the host country, concerning students from other Member States, and in relation to the country of departure, which, under certain conditions (Case C-11-06, *Morgan*), is obliged to award grants to students who decide to go to another country for all or part of their studies.

(3) Other rights of students in the host country during their studies, in order to ensure equal treatment with domestic students. To this category belongs the issue of reductions on transport tariffs, for all regular students in a Member State, to the same extent as for the national students. This issue, with four cases in 2008, has been taken up with the three Member States concerned469.

(4) The academic recognition of diplomas. The Commission receives a lot of correspondence on this issue, relating particularly to excessive delays in recognising diplomas or periods of study, exceeding a reasonable cost for such recognition, not permitting appeals against negative decisions or not presenting justifications for such decisions.

Apart from the binding provisions of EU law in this sector, the role of "soft law", consisting principally of Recommendations of the European Parliament and of the Council, is particularly important in providing a framework in which the difficulties encountered by citizens can be resolved. In this context, the European Qualifications Framework, due to be implemented by all Member States by 2011, is beginning to have an impact. Valuable results are also often obtained in this area by the ENIC-NARIC network (European Network of Information Centres, National Academic Recognition Information Centres)470.

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468 A second annual set of statistics was provided by Austria in December 2009.

469 To the same category (student rights toward the country of destination) could be classified the issue of entry and residence permit for students. As for the movement of students between Member States, the issue was addressed initially by Directive 93/96/EC and recently by Directive 2004/38/EC. As for the movement of students between a EU country and a third country to which extends the application of Union programmes, the problems are often resolved by the provisions governing the programme (mandatory or not). In cases of other third countries, the solutions are given either by the provisions of mutual agreements or by other instruments of the Union, which are the responsibility of the Directorate General for Justice, Liberty and Security.

470 http://www.enic-naric.net/

12.1.1.2. Sport

In the area of sport, it is established case-law of the Court of Justice that sport federations and regulations must respect the fundamental rights guaranteed by the Treaty, and in particular the principle of non-discrimination on grounds of nationality471. When faced with obstacles to mobility or with indirect discrimination, the principle of proportionality applies on a case by case basis, taking into consideration the specificity of sport. The same case law has recognised that the principle of equal treatment does not apply to rules of purely sporting interest which are not of an economic nature, such as the composition of national teams.

In the absence of provisions on sport in the Treaty establishing the European Community, amateur sport was understood both as a social advantage for migrant workers and as a field subject to equal treatment rules in the framework of European citizenship. Following the entry into force of the Lisbon Treaty on 1st December 2009, the competence of the European Union in the area of sport now includes all sport activities within the scope of EU law.

The entry into force of the Lisbon Treaty introduced a new Article 165 TFEU extending the competence of the European Union in the area of sport. Following a combined reading of Articles 18, 21 and 165 TFEU, the Commission considers that the general EU principle of prohibition of any discrimination on grounds of nationality applies to sport for all EU citizens who have used their right to free movement. As a consequence, sport activities as a whole fall into the scope of EU law, including amateur sport as well as professional sport, which also falls more specifically under the provisions related to internal market freedoms, in so far as the sport activities under consideration constitute an economic activity.

Moreover, the Commission considers amateur sport to be a social advantage in the context of the free movement of workers. According to Article 7(2) of Regulation (EEC) 1612/68472, migrant workers have to be treated equally with nationals of the host country concerning access to employment, as well as working conditions and social advantages. The Court has held that these cover non financial advantages, in particular those which would facilitate their integration into the host Member State.

Additionally, the Commission takes into account the recent ECJ case law473 which considers that Union citizenship is destined to be the fundamental status of nationals of the Member States. In that regard, the Commission considers that the exercise of the right to move and reside freely in another Member State is enhanced if citizens of the Union are able to practice sport as amateurs on the same footing as its nationals. Consequently, in exercising that right in another Member State, persons are in principle entitled, pursuant to Article 12 of the Treaty, to treatment no less favourable than that accorded to nationals of the host State.

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471 See CJEU cases C-36/74 *Walrave*; C-13/76 *Donà*; C-415/93 *Bosman*

472 Regulation (EEC) 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.

473 See Cases C-184/99 *Grzelczyk*, paragraphs 31 to 33; C-85/96, *Martinez Sala*, paragraph 63; C-158/07 *Förster*, paragraphs 37 to 43.

In applying Union law to amateur sport, the Commission takes into account the specific characteristics of sport, as set out in Article 165 TFEU and in the Commission's White Paper on sport474.

12.1.2. **Report of work done in 2009**

12.1.2.1. Education and training

The Commission services have intensified their activity in this area, through infringement cases, parliamentary questions, petitions to Parliament, citizens' inquiries and complaints, and by the application of new tools (EU Pilot, CHAP) for the implementation of Community law.

The Commission opened three infringement proceedings under Articles 12, 17, 18 and 149 of the Treaty and Article 24 Directive 2004/38 about discrimination of students by the host country, regarding fares on public transport. The procedures have reached the stage of reasoned opinions for two Member States, while the third has complied with EU law at the stage of formal notice. The Commission believes that students who perform some or all of their studies in a Member State should have access to public transport of that State under the same conditions as domestic students.

The Commission also opened infringement proceedings against two Member States relating to fees and grants for distance learning. The Commission believes that students, who study in a Member State other than the one where the university providing the distance learning is situated, should not pay higher tuition fees than students from that country nor receive a lower maintenance grant than if the university was situated in the Member State of residence.

Two further files are related to tuition fees in higher education. In the first, compliance has been achieved following approaches from the Commission services. In the other, the opening of an infringement procedure is foreseen for the beginning of 2010.

In response to a petition to the European Parliament, the Commission services are currently pursuing a case of possible discrimination in access to compulsory education based on the language spoken by the child at home. Such a criterion risks constituting indirect discrimination based on nationality.

12.1.2.2. Sport

The Commission received an increasing number of complaints in 2009 relating to discrimination on grounds of nationality, concerning access to competitions, awards of titles and medals, obstacles to mobility and transfer or administrative fees. The Commission's concern is to ensure that rights to free movement and equal treatment are respected, taking into account the specific characteristics of sport. In that light, the Commission has launched a study to address the specific issue of access to individual competitions which will help to provide better guidance in this area.

The complaints concerned access to both individual and collective competitions in various sports such as basketball, handball, tennis, mountain running, horseback riding or bowling. Infringement proceedings were opened concerning respectively discrimination on grounds of

474 White paper on sport, 11 July 2007, COM (2007) 391 final.

nationality in individual judo competitions, basketball regulations and transfer fees in handball. Three requests were sent through EU Pilot related to basketball administrative fees, nationality quotas in squash and shooting. The Commission also continued its dialogue with sport associations as foreseen in the White Paper on sport. In this framework, the Commission continued to work with FIFA on the so-called "6+5" rule in order to find a solution compatible with EU law.

12.2. Evaluation based on the current situation

12.2.1. **Education and training**

The level of compliance of Member States with the acquis can be considered generally satisfactory. However, the number of complaints and petitions of citizens, especially on the recognition of diplomas and periods of study, reveals that the obstacles to free movement are still widespread in practice.

The Commission services intend therefore to publish guidance for public authorities and stakeholders in the Member States, drawing out the key implications of the case law established by the Court thus far. This guidance will cover issues such as access to educational institutions, recognition of diplomas, the portability of grants, and other rights of students in the host country or in the country of origin. It should help to establish the rights of students to free movement as a clear area of EU law, underpinning the trend already established by the Court. In doing so, it would contribute to the Union's objective of achieving a substantial increase in the level of mobility among students in higher education. Announced in the previous Report on the control of application of EU law, this guidance is foreseen to be published in the framework of the new Commission initiative *Youth on the Move*.

12.2.2. **Sport**

The Union acquis concerning collective sports enables the Commission to act against discrimination on grounds of nationality and obstacles to free movement when nationality quotas are detected. Other areas of sport challenging EU law and not yet covered by the ECJ's case law, such as access to individual competitions which may be destined to select, directly or indirectly, national athletes or award national titles, medals or records, need legal certainty. In that light, the Commission has launched a study which will help to provide better guidance in this area and better define the specific characteristics of the concerned sports.

Large disparities can be found across the Union concerning the involvement of Member States in the area of sport and its regulation. When confronted with violations of EU law that can only be considered as disputes between private individuals, the Commission is unable to intervene within the framework of article 258 TFEU and can only recommend when appropriate the use of means of redress available at national level, thus relying on national tribunals which have the duty to ensure that EU law is correctly applied to every case brought before them.

12.3. Evaluation results

12.3.1. Priorities

12.3.1.1. Education and training

The priority area remains the mobility of students within the European Union, where the current obstacles prevent the Union from realising the full economic and social benefits. In this context, the academic recognition of diplomas is probably the most difficult issue to deal with.

12.3.1.2. Sport

The priorities set in the previous Annual Reports are unchanged. The Commission will continue to ensure that rights to free movement and equal treatment are respected, taking into account the specific characteristics of sport.

12.3.2. Planned action (2010 and beyond)

12.3.2.1. Education and training

Noting that the area of education is a separate chapter of the Union's acquis, the Commission intends to support its implementation by:

- Opening formal proceedings in cases which, in the Commission's view, represent clear infringements of EU law;
- Participation in significant preliminary references to the Court, when matters relating to education and sport are involved.
- Increasing use of the EUPilot and CHAP tools in cases which appear to involve one-off misapplications of principles which are otherwise accepted by the Member State concerned;
- The provision of guidance to support Member State administrations, students and other stakeholders, with a clear description of the implications of the state of the law, jurisprudence and practice in the fields of education and amateur sport.

12.3.2.2. Sport

The planned actions for 2010 are to:

- Make proposals for the implementation of the new sport provisions foreseen in Article 165 TFEU,
- Continue the enforcement of EU law, relying on the new provisions of Article 165 TFEU,
- Continue dialogue with sport associations in a preventive perspective,
- Make use of the results of the Study on equal access to individual competitions for better guidance in this problematic area.

13. HEALTH AND CONSUMERS

13.1. Introduction

The mission of the Commission in this domain is to improve the health, safety and confidence of European citizens. We aim to use our Treaty powers to the fullest possible extent, mindful in particular of the need for legislation to be implemented and enforced. Effective implementation of this body of legislation requires the cooperation of the Member States, the support of the European Parliament and the help of consumers, patients and citizens. The Commission is committed to engage society at large and all European and national institutions in our efforts to ensure that citizens and business benefit from legislation in this domain.

The three main policy pillars in this area - consumer affairs, public health, and food safety - require diligent use of finite enforcement resources to produce the intended benefits for citizens and business in application of this body of legislation (see Annex I paragraph VI for a comprehensive listing of the legislative acquis for each policy area).

The credibility and legitimacy of policy actions depend on how effectively legislation is implemented. The Commission ensures that legislation in this area is fully and consistently implemented because the stakes are high when citizens do not benefit from the protection afforded by established safety requirements.

Member States are our key partners because they have the primary responsibility for ensuring implementation of EU law. But equally better cooperation between national enforcement agencies and the Commission will result in more uniform application of legislation in this area. In addition, the Commission sought during the course of 2009 to empower citizens, consumers and patients through information and education to enable them to support our implementation efforts and those of Member States.

This section describes the work done in 2009 by the Commission services responsible for health and consumers. It describes how we are seeking to engage everyone that has a say in better application of EU law in this domain and who may have a stake in developing a "smart" regulatory environment based on the principles of Better Regulation.

The Commission seeks to use all parts of the tool-box at its disposal to ensure adequate application of EU law. We see this challenge as an opportunity to use enforcement resources in an optimal way and to improve our capacity for prioritisation of infringements. Member States are increasingly turning to the Commission for leadership in the area of better application of EU law and we will not lose any opportunity to show it. We aim to make every aspect of implementation of EU law in this domain both open and participatory using modern tools of communication to solicit collaboration.

We understand that this body of legislation is often technical and requires guidance to Member States on the practical modalities of its application. Law without enforcement is impotent and the Commission is making sure that it supports, assists, encourages and, in the last resort, prosecutes Member States for failures to comply.

For each area a description is given on how the Commission has developed partnerships with Member States to improve their application of the acquis. The document also describes areas where weaknesses have been detected in the application of the legislation and the required actions have been prioritised.

13.2. Public Health

13.2.1. Current position

13.2.1.1. General Introduction

Health is an important priority for Europeans who expect to be protected against illness and disease. Most competence for action in the field of health is held by Member States, but the EU has the responsibility, set out in the Treaty, to undertake certain actions which complement the work done by Member States (for example in relation to cross border health threats, patient mobility, the reduction of health inequalities) and to develop harmonised legislation in the areas of blood, tissues and cells, and organs.

The Lisbon Treaty that came into force in 2009 has not changed much in the EU's competence to act. Article 168(4) TFEU (ex Article 152(4) TEC) constitutes the legal basis for the adoption of legislation in the area of public health. However, some health-related legislation has also been adopted using other legal bases such as Article 114 TFEU (ex Article 95 TEC).

The main pieces of legislation in the area of public health concern tobacco control (Directive 2001/37/EC concerning the manufacture, presentation and sale of tobacco products and Directive 2003/33/EC relating to the advertising and sponsorship of tobacco products), blood (Directive 2002/98/EC setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components), tissues and cells (Directive 2004/23/EC on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells), the communicable diseases (Decision 2119/98/EC setting up a network for the epidemiological surveillance and control of communicable diseases in the EU, and Regulation (EC) No 851/2004 establishing a European Centre for Disease Prevention and Control).

With regards to tissues and cells, two implementing Directives complete the legislative framework: Directive 2006/17/EC as regards technical requirements for the donation, procurement and testing of human tissues and cells, and Directive 2006/86/EC as regards traceability requirements for the coding, processing, preservation, storage and distribution of human tissues and cells.

13.2.1.2. Report of Work Done in 2009

2009 saw significant developments in relation to the transposition of the EU health acquis. As regards Directives in the tissues and cells sector the transposition rate continued to increase following continual contacts between the Commission and Member States Health Attachés to track specific progress. By the end of 2009, one Member State – Italy - was still lacking transposition measures for Directives 2006/17/EC and 2006/86/EC. The Commission has accelerated infringements proceedings against Italy in respect of both directives so that the Court of Justice delivered on 12.11.2009[475] and 26.11.2009[476] judgments condemning Italy for not having transposed those Directives.

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475 Case C-12/09 (concerning the non transposition of Directive 2006/17/EC)

476 Case C-13/09 (concerning the non transposition of Directive 2006/86/EC)

In the blood, tissues and cells sectors (Directives 2002/98/EC and 2004/23/EC), the Commission regularly collects information through questionnaires and pursues collaborative follow-up meetings with competent national authorities of Member States tasked with enforcement of these directives. The main implementation challenges resolve in close partnership with Member States are linked to the vigilance, traceability and inspections systems.

Measures (until June 2010) allowing temporary derogations to certain eligibility criteria for whole blood and blood components donors in the context of a risk of shortage caused by the Influenza A(H1N1) pandemic were adopted in November 2009 (Commission Directive 2009/135/EC). An operational manual for competent national authorities for the inspection of tissue and cell procurement and tissue establishments was developed during 2009. A common approach concerning traceability systems for tissues and cells is currently being developed. Moreover, in both sectors inconsistencies have been detected concerning how Member States apply the principle of voluntary unpaid donation. These issues will be further addressed in the upcoming reports on the principle.

Two reports on the implementation of the Directives on blood and on tissues and cells have been developed during 2009.. The reports show that the implementation of both Directives is satisfactory although further efforts are needed:

– in the blood sector regarding the finalisation of the accreditation/designation/authorisation/licensing process in respect of each individual blood establishment; the performance of inspections and the submission of the annual report on vigilance to the Commission;

– in the tissue and cell sector regarding the finalisation of the accreditation/designation/authorisation/licensing process in respect of each individual tissue and cell establishment; development of inspections systems; monitoring of import/export measures; registry of tissue establishments, and fulfilment of different reporting requirements.

The Commission is further developing partnerships with Member States to help them develop operational solutions in response to the remaining challenges.

Finally, following the completion of the notification of Member State's transposition, a concordance table addressing the most important aspects of the four Blood Directives was sent to the Member States for completion. Based on the results of the tables received, the Commission is performing conformity checks in order to adequately monitor the adequacy of the notified transposition measures.

In the tobacco sector the two existing Directives (Directives 2001/37/EC and 2003/33/EC) are well implemented in Member States. In general, Member States have wider advertising and sponsorship bans than the cross-border bans required by the Tobacco Advertising Directive (2003/33/EC). Advertising in virtual environments continues to be a challenge not only for Europe but around the world, requiring a global solution. Cross-border internet sales of cigarettes for example involve illegal tobacco advertising and promotion. In addition, on-line sales often lack the required warning messages and encourage tax evasion. Negotiations on a protocol to address illicit tobacco trade are on-going in context of the Framework Convention on Tobacco Control (FCTC).

As regards more particularly the Tobacco Products Directive (2001/37/EC), the biggest challenges are new tobacco and nicotine products proliferating on the market and the intensified use of tobacco packages as a promotion tool.

In November 2009 the Commission published a Report on the Implementation of the Council Recommendation (2003/54/EC)477 on smoking prevention and on initiatives to improve tobacco control. The report is based on information from Member States and concludes that the degree of implementation is generally good.

On 30 November 2009, Health Ministers adopted a Council Recommendation on smoke-free environments478. The Commission supports and encourages its implementation by the Member States.

Considerable efforts by the Commission have also been achieved in the communicable diseases area. Implementing measures have now completed the EU legal framework, which notably lays down the list of diseases and special health issues together with the criteria for their selection (Commission Decision 2000/96/EC), provides case definitions for these diseases (Commission Decision 2002/253/EC), and defines the events to be reported within the early warning and response system (EWRS), as well as procedures for information, consultation and cooperation under this system (Commission Decision 2000/57/EC). Decision 2000/96/EC has been amended by Decision 2009/312/EC, in order to update it in the light of the development of dedicated surveillance networks.

In the context of the Influenza A (H1N1) pandemic, a case definition of this new virus was promptly adopted (Decision 2009/363/EC amending Decision 2002/253/EC, complemented by Decision 2009/540/EC once WHO had given an official name to this new virus), and it was added to the list of diseases covered by the epidemiological surveillance network (Decision 2009/539/EC amending decision 2000/96/EC). Decision 2000/57/EC was substantially amended by Decision 2009/547/EC in order to allow the coordination of contact tracing measures (of infected persons) at EU level. A Council Recommendation (2009/1019/EC) on seasonal influenza vaccination was also adopted on 22 December 2009.

During the course of 2009 discussions infirst reading of the proposal for a directive on the application of patients' rights in cross-border healthcare were pursued. The European value-added to this proposal is to achieve clarity for all patients on their rights of reimbursement for healthcare received in another Member State. The European Parliament adopted amendments in first reading on 23 April 2009.

EU health systems are currently facing a number of challenges, like population ageing, citizens' rising expectations, migration, and mobility of patients and health professionals. In this context, it is necessary to ensure provision of safe and high quality healthcare for all European citizens, whilst respecting the principle of subsidiarity. The provision of safe and high quality healthcare can improve an individual's health outcome, and can contribute, in the longer term, to a cost-effective use of resources. To assist Member States in their efforts in ensuring provision of safe and high quality healthcare, the Commission adopted a proposal for a Council Recommendation on **patient safety**, including the prevention and control of

477 SEC(2009) 1621 final

478 OJ C 296, 5.12.2009

healthcare associated infections. Member States adopted the Recommendation in June 2009479.

Safe and high quality healthcare strongly depends on having a motivated and efficient health workforce with the right set of skills and in adequate numbers given the needs. The Commission addressed this issue in the Green Paper on the European Workforce for Health and ran a public consultation on the Paper in 2009. The numerous responses confirmed the importance of this issue at EU level.

13.2.2. **Evaluation, Priorities & Perspectives**

The framework of public health legislation put in place in this decade has shown that meticulous planning and proactive prevention initiatives are necessary to avoid significantly late transposition of the adopted Directives. The Commission continues to ensure that this legislation is fully and consistently enforced by ensuring that Member States are playing their full role for the benefit of citizens and patients. We are calling upon Member States to take full responsibility for ensuring implementation of the EU's public health policies and actively promoting cooperation between the Commission and national competent authorities.

13.2.3. **Summary of Sector**

The challenge in this sector in the near future is to achieve effective transposition of public health legislation through closer partnerships with Member States and to guarantee that harmonised rules are uniformly enforced by competent national authorities. We will also seek increased transparency of enforcement action and outputs by Member States to ensure that EU standards are meticulously upheld.

13.3. Consumer Affairs

13.3.1. **Current position**

13.3.1.1. General Introduction

There are now more than 500 million consumers in Europe and their expenditure represents over half of the EU’s gross domestic product (GDP). Consumers are essential to economic growth and job creation in a large market of products and services.

The Commission's Consumer Policy supports the aims laid out in Article 169 TFEU (ex Article 153 TEC), which promotes the economic interests, health and safety of European consumers. It is designed to ensure that the internal market is open, fair and transparent, and that products sold are safe, allowing consumers to exercise real choice, excluding rogue traders, and helping consumers and businesses take full advantage of the market’s potential.

With so many new products and brands, and increasingly sophisticated financial services, European consumers are having a hard time getting their bearings. They are not comfortable with the idea of buying something in another country of the European Union: less than 30% of people have done so over the past year. Yet, the EU single market offers many possibilities for competition and for buying at a lower price.

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479 OJ C 151, 3.7.2009

13.3.1.2. Report of Work Done in 2009

Consumer rights

There has been a rapid evolution in the travel sector during the last two decades, i.e. since the time of the adoption of Directive 90/314/EEC on Package Travel (1990). The development of the Internet has made it possible for consumers to make their reservations themselves directly from a wide range of providers, e.g. tour operators, travel agencies/retailers, air carriers, cruise lines and hotels. The increasing trend of offering "dynamic packages", especially on the Internet, has created legal grey zones, where both businesses and consumers may be uncertain of whether such arrangements are covered by the current Directive. Furthermore, the rapid development of low cost air carriers has revolutionized the supply of air transport and thereby has enhanced competition and consumer choice in the travel market. For these reasons a decreasing number of consumers are protected by the Directive when going on holidays. Both the Council Conclusions from 2000 and the European Parliament's *Resolution on general aspects of consumer protection 2001/213* called for an update and clarifications of the Directive. Against this background, the Commission started the formal impact assessment process on the potential revision of the Directive in June 2009. A Member State Workshop was organised in the context of the impact assessment in October 2009. It confirmed a strong support for revising the Directive. In November, the Commission published an external study: "Study on Consumer Detriment in the area of Dynamic Packages" and simultaneously launched a public consultation on the revision of the Directive. This consultation was open until 7 February 2010. In December 2009 the Commission also initiated a public consultation on air passenger rights, which, in particular, touches on the question of bankruptcy protection for standalone air tickets.

The co-decision legislative process is well advanced in relation to the proposal for a new Directive on consumer rights, which was adopted by the Commission in 2008. The proposal brings together and updates the Distance Selling Directive 97/7/EC, the Doorstep Selling Directive 85/577/EC, the Consumer Sale of Goods Directive 99/44/EC and the Unfair Contract Terms Directive 93/13/EC. The impact assessment preceding this proposal identified the fragmentation of national consumer protection laws as a significant regulatory barrier, preventing consumers and businesses from reaping the full benefits of the internal market. The main cause of the fragmentation is the minimum harmonisation clauses contained in the existing consumer directives. Businesses are therefore either reluctant to sell cross-border or pass the additional costs incurred from doing so on to consumers. Through the harmonisation of the most important aspects of the consumer rights legislation, consumers and businesses will be able to benefit from the same rules all over the EU. As a consequence consumers will have more opportunities to buy from traders who were previously reluctant to sell cross-border. The new Directive will upgrade existing consumer protection in key areas where there have been large numbers of complaints in recent years, such as doorstep selling. It also adapts the legislation to new technology and sales methods, for example m-commerce (purchase by mobile phone). During the Czech and Swedish presidencies, intense negotiations on the proposal took place on the proposal in the Council and considerable progress was achieved. The progress was confirmed by a positive outcome of the policy debate in the Competitiveness Council on 3 December 2009. The discussions in the European Parliament are progressing as well; the lead committee (IMCO) held several exchanges of views, with the draftsperson intending to present a working document on the proposal by April 2010.

Consumer credit

Directive 2008/48/EC on credit agreements for consumers, which repeals Council Directive 87/102/EEC, was adopted on 23 April 2008. Pursuant to Article 27 of the Directive (following a corrigendum from 11 August 2009480), the Directive is to be transposed by the Member States by 11 June 2010.

In 2009 only Portugal and Germany notified to the Commission measures transposing the Directive. In order to assist the Member States with the transposition of the Directive, two workshops took place during 2009. The first one, held on 27 March 2009, mainly focused on the study of the Annual Percentage of Rate (APR) and on answering Member States' questions. During the second workshop, held on 9 October 2009, the Commission's initiative on responsible lending, a topic closely related to consumer credit was discussed. Depending on the demand by Member States, a third workshop could take place .

The Commission's proposal contained a provision obliging the Member States to provide concordance tables. However, upon the request of certain Member States, this obligation was later removed. Instead, recital 50 of the Directive now invites Member States, in accordance with point 34 of the Interinstitutional Agreement on better law-making, to submit such tables. The lack of a formal obligation to provide concordance tables will make the Commission's work more complicated and resource intensive..

Distance Marketing in Financial Services

Directive 2002/65/EC on Distance Marketing of Financial Services was adopted in 2002 with a view to boosting consumer confidence when purchasing financial services by means of concluding a distance contract, in particular in cross-border internet transactions. Pursuant to Article 21 of the Directive, Member States were to adopt transposition measures by 9 October 2004.

Most of the Member States transposed the directive only in 2005-2006, on 20 November 2009 the Commission adopted a report481, informing the European Parliament and the Council on the application and the review of the Directive. This report takes into account the results of two studies launched in 2007 assessing the economic and legal impact of the Directive on cross-border distance marketing of financial services. It also includes conclusions drawn from two workshops held in 2007 and 2008 with consumer groups and the financial services industry, the Commission's transposition checks, and other sources. The report underlines the fact that in most Member States the market for cross-border distance selling of financial services is rather insignificant.

The market will be monitored regarding an increase of e-commerce in the field of financial services, which is likely to occur. However, should no such increase be observed, appropriate initiatives addressing the causes for the delayed market development, focusing possibly on enforcement, could be explored.

480 OJ L 133, 22.5.2008

481 Review of the Distance marketing of consumer financial services Directive (2002/65/EC), COM (2009) 626 (final)

In relation to the abovementioned transposition check, in those cases where the Commission found a lack of conformity of national transposition measures with the Directive, it launched formal infringement proceedings. On 9 October 2009, letters of formal notice were sent to Spain, Italy, Belgium, Sweden, the Netherlands and Latvia. Further letters of formal notice are expected to be sent in the course of 2010.

Injunctions

Directive 98/27/EC on injunctions for the protection of consumers' interests was adopted on 19 May 1998. Since then, the scope of the Directive has been extended through modifications of its Annex. For the sake of clarity, the Injunctions Directive has been codified by Directive 2009/22/EC, adopted on 23 April 2009

The Commission is in the process of verifying the compliance of the laws of the Member States with the provisions of the codified Injunctions Directive.

Transposition and application of Directive 2005/29/EC

By the end of 2009 Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market had been transposed by all Member States. However, the transposition of the Directive still poses a number of challenges considering the important legal impact of full harmonisation in a broad area characterised by considerable differences in national legislations and policies. In order to achieve adequate transposition of the Directive, the Commission launched two infringement proceedings (against Belgium and France) in 2009, and held several bilateral meetings with certain Member States. The Commission also intervened in various cases referred to the Court of Justice for preliminary rulings which concerned the Directive. In two judgements handed down on 23 April 2009 (cases C-261/07 and C-299/07) and 14 January 2010 (case C-304/08), the Court of Justice confirmed the full harmonisation character of the Directive. While examining the compatibility of Belgian and German laws prohibiting certain combined offers with the provisions of the Directive, it held that *"Member States may not adopt stricter rules than those provided for in the Directive, even in order to achieve a higher level of consumer protection*". Thus, the Directive was found to preclude such national prohibitions of combined offers.

To promote a common understanding and to develop a uniform application of the Directive, the Commission published online Guidance on the application of the Unfair Commercial Practices Directive482483 on 3December 2009. This Guidance aims mainly national enforcers, as well as other stakeholders. It includes examples showing how the Directive should work in practice. Furthermore, the Commission launched in 2009 a call for tender to establish a public database on the Directive, which will include national laws transposing the Directive and relevant European and national case law, decisions and doctrine.

Transposition and application of other consumer protection Directives

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482 SEC(2009)1666

483 http://ec.europa.eu/consumers/rights/docs/Guidance_UCP_Directive_en.pdf

In 2009 the Commission continued its efforts in carrying out systematic checks on the quality of transposition of several consumer protection directives by the Member States. In addition, its services dealt with a number of complaints which identified potential transposition problems.

In particular, the Commission followed-up on infringement proceedings opened in 2008 and based on the inadequate transposition of Directive 93/13/EEC on unfair terms in consumer contracts. In some cases the Member States concerned changed their legislation. In those cases where the Commission considered that the Member States' transpositions remained inadequate, the Commission continued the infringement proceedings, in particular by sending reasoned opinions to the Czech Republic and Slovakia484, and bringing an action against Malta in the European Court of Justice (Case C-220/09).The latter action was, however, withdrawn as Malta amended its legislation.

Transposition checks carried out in 2009 in relation to Directive 99/44/EC on the sale of consumer goods and guarantees gave rise to the opening of infringement proceedings against a number of Member States.485 In a few cases Member States brought their legislation in line with the Directive, whereas in other cases infringement proceedings are likely to be continued in 2010. In addition, several complaints were dealt with under the Directive.

Transposition checks in relation to other directives, including Directive 97/7/EC on distance contracts, will continue in 2010. The Commission may continue informal contacts with the Member States to amicably resolve the issues at stake, but it may have to resort to infringement cases in certain cases.

Finally, there were a number of new requests for preliminary rulings under Article 267 TFEU (ex Article 234 TEC) in relation to different consumer protection directives, including Directive 97/7/EC and Directive 99/44/EC. In Cases C-511/08 *Heinrich Heine* a German court asks whether Directive 97/7/EC precludes national legislation which allows the costs of delivering the goods to be charged to the consumer even where he has withdrawn from the contract. Case C-146/09 *Scholl* deals with the question of whether under Directive 97/7/EC a consumer has a right to withdraw from a distance contract for the supply of electricity and gas. Cases C-65/09 *Wittmer* and C-87/09 *Medianess Electronics GmbH* (concerning Directive 99/44/EC) concern the questions of whether, when replacing a product, the seller must bear the costs of removing the non-conforming consumer good from a thing into which, in a manner consistent with its nature and purpose, it has been incorporated by the consumer.

The Court ruled on Directive 97/7/EC in Case C-489/07 *Messner*. This case concerns a German provision according to which a seller may claim compensation for the value of the use of the goods delivered to the consumer in case where the consumer withdraws from a distance contract. The Court found that a general requirement to pay compensation for the value of the use of the consumer goods acquired under a distance contract during the withdrawal period is incompatible with the objectives of Directive 97/7/EC. However, the Court also considered that the directive does not intend to grant consumers rights which go beyond what is necessary to allow for them to effectively exercise the right of withdrawal.

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484 Commission's press release IP/09/1451

485 Commission's press release IP/09/1032

In Case C-227/08 *Martín Martín* the Court ruled that Directive 85/577/EEC did not prevent a national court from declaring of its own motion that a doorstep-selling contract is void on the grounds that the consumer was not informed of his right of withdrawal. The Court considered that the obligation to give notice of the right of withdrawal (Article 4 of the Directive) played a central role in the directive as an essential guarantee for the effective exercise of that right. This as well as the imbalance between consumers and traders justifies, in the Court's view, the positive intervention by the national court for the benefit of consumers.

Following requests for preliminary rulings in 2008 in relation to Directive 93/13/EEC 486 on unfair terms in consumer contracts the Court concluded in Case C-243/08 *Pannon GSM* that, on the basis of Article 6(1) of Directive 93/13/EEC487, that national courts are not only entitled, but also required to examine, of their own motion, the unfairness of a contractual term where they have available to them the legal and factual elements necessary for that task. Where they consider such a term to be unfair, they must not apply it, except if the consumer opposes that non-application. The Court clarified certain aspects of this obligation in Case C-40/08 *Asturcom Telecomunicaciones,* and is expected to give further guidance in Case C-137/08 *VB Pénzügyi Lízing,* where a judgment can be expected in 2010.

Communication on the enforcement of the Consumer Acquis

On 2 July 2009 the Commission adopted a Communication on the Enforcement of the Consumer Acquis488 which notes certain actions taken in the field of consumer rights enforcement and sets out five priority areas where further work is needed. This prioritization will form the basis for the Commission enforcement strategy in the years ahead, and includes the strengthening of cooperative frameworks such as the rapid alert system for product safety RAPEX and the Consumer Protection Cooperation (CPC) Network, the stepping up of cooperation with third countries, better market-monitoring, the reinforcement of knowledge sharing and a common understanding of the rules, and lastly, the giving of more visibility and transparency to enforcement actions.

EU-Sweeps

In 2009 the third EU "Sweep" was carried out, involving systematic and simultaneous checks in different Member States to investigate potential breaches of consumer protection rules in the electronic goods sector. This Sweep looked into 369 websites, of which 55% showed irregularities and were flagged for further investigation in the enforcement phase. The exercise was carried out by all the EU Member States, with the exception of Slovakia, as well as by Norway and Iceland. The participating authorities focused on a group of electronic

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486 Join cases C-243/08 *Pannon GSM* and C-137/08 *VB Pénzügyi Lízing.* See as well case C-40/08 *Asturcom Telecomunicaciones*

487 Article 6 (1) reads: "Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms."

488 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the enforcement of the consumer acquis, COM (2009) 330 final

products: MP3/MP4 players, PC related equipment, digital cameras, mobile phones, DVD players and game consoles. The most common breaches detected in the 2009 Sweep were related to misleading information about consumer rights (66% of problematic websites), for instance consumers were not informed or were mislead about their right to return an ordered product. There were also many websites with misleading information on the final price of the product (45% of problematic websites) or where contact details of the trader were missing (33 % of the problematic websites). In the first half of 2010 the authorities will check whether the detected irregularities still exist and will report on the results.

The final report on the follow-up of the 2007 Sweep related to websites selling air tickets was published in May 2009. The results of the report showed that out of the 447 websites investigated in 2007, 94% are now compliant. The final report on the follow up of the 2008 Sweep on mobile phone services showed that out of the 500 websites investigated 70% may now be considered acceptable

Consumer empowerment

Through the European Consumer Consultative Group (ECCG), the Commission pursued its dialogue with consumer organisations and consulted them on initiatives having an effect on consumers. ECCG members also shared their views regarding the application of EU legislation. The Commission Decision setting up the ECCG489 has been revised in order to further improve the efficiency and representativeness of the group; to better involve national consumer organisations which are not ECCG members in its work and to ensure sufficient continuity in the group.

In 2009, information campaigns raising awareness of EU-wide consumer rights were conducted in Estonia, Latvia and Lithuania and it was planned to carry out a similar campaign in Bulgaria at the beginning of 2010. The campaigns contribute to the better enforcement of consumer law by informing consumers about specific rights they have at home and in other EU countries, and by increasing awareness of associations and institutions that provide further information and advice, such as consumer associations, government institutions and European Consumer Centres.

The campaign messages reached (according to data from the Eurobarometer Flash surveys undertaken to verify campaign impact) about 66% of the Estonian citizens, 82 % of Latvian citizens and 86% of Lithuanian citizens. In addition, materials from equally successful campaigns in other new Member States conducted in previous years were updated, reproduced and redistributed in 2009.

Training and education activities

In 2009 the Commission carried out a series of training courses designed to help build the capacity of European consumer organisations, aiming at providing a better understanding of the consumer acquis and thereby preventing infringements. The Commission also distributed 3.870.000 copies of the Europa Diary containing consumer education materials to over 22.000 EU schools and developed its consumer education website: www.dolceta.eu.

Consumer Protection Cooperation (CPC)

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489 Commission Decision 2009/705/EC, OJ L 244, 16.9.2009, p. 21–24

The Enforcement Network, also referred to as the CPC Network, was established by the Consumer Protection Cooperation (CPC) Regulation490 in December 2006 to stop intra-community infringements of EU consumer laws in cross-border situations. Some 250 enforcement authorities in Member States are linked to form an EU-wide consumer protection network.

The Network further developed its activities in 2009: 319 new requests for mutual assistance were registered in the database in 2009 (compared to 265 in 2008), of which more than a third were closed within one year. Some 44 alerts (95 in 2008) concerning suspected or confirmed intra-community infringements were circulated within the Network. In addition, a third joint market surveillance and enforcement exercise was carried out in the form of a sweep on sites selling electronic goods (see above). Joint activities of CPC authorities also continued, for instance in the area of air transport where a report on airport taxes and charges was published in November 2009 by 11 CPC authorities.

In 2009, the Commission took the first steps to address the shortcomings in the Network's operations that had been identified in discussions with Member States in 2008, in particular through the experience of coordinating the sweeps. CPC-authorities examined with the Commission, in the framework of a workshop, how to enhance cooperation within the network and to improve the efficiency of the network's operations. The outcome of this work will result in the adoption of operating guidelines .

Moreover, during 2009 the Commission organised two other workshops which discussed two subjects of relevance to the Network. The first workshop discussed the question of applicable law in the CPC enforcement context while the second focused on sanctions and naming of traders. The follow up action to these two workshops, including the results of questionnaires on the subjects under discussion, will be discussed during another workshop in 2010.

Earlier in the year, the Commission also set up a network of national trainers to reinforce the training capacities and to provide to CPC users a forum for discussion and exchange of best practice.

In July 2009, the Commission reported to Parliament and Council on the application of the Consumer Protection Cooperation (CPC) Regulation491 in the period 2007-2008. This first Biennial Report was based on national reports from Member States covering the same period and reflects the Commission's experience monitoring and coordinating the application of the Regulation. It confirms that the CPC Network is developing to a powerful tool that increases the level of consumer protection in the EU, but it also shows, based on statistical evidence, that further efforts are required to strengthen the Network and to further develop the broader cooperation framework established by the Regulation.

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490 Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, OJ L 364 dates 9.12.2004

491 Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responisble for the enforcement of consumer protection laws, OJ L 364 dates 9.12.2004

The Commission also continued the dialogue with Member States, initiated in 2008, aiming at ensuring that adequate resources are allocated to enforcement in order to meet the obligations stemming from the Consumer Cooperation Regulation. This point was raised again in the Competitiveness Council of 25 September 2009.

Commission Decision 2009/251/EC banning Dimethyl fumarate in all consumer products

The Commission adopted on 17 March 2009 Decision 2009/251/EC[492] on the basis of Article 13(4) of Directive 2001/95/EC of the European Parliament and of the Council on general product safety (General Product Safety Directive, "GPSD")[493]. This Decision concerns Dimethyl fumarate (DMF), a biocide preventing moulds which is strongly sensitising and can cause severe skin reactions. The Decision requires Member States to ensure that all consumer products containing DMF are withdrawn from the market and recalled from consumers. Since the Decision can only be valid for one year at a time, it will be prolonged for further periods until a permanent measure is put in place in EU legislation.

Commission Decision 2009/298/EC on child-resistant lighters

On 26 March 2009, the Commission adopted Decision 2009/298/EC[494], extending for the third time – until 11 May 2010 – Decision 2006/502/EC requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of so-called novelty lighters. Upon a mandate from the Commission, CEN is currently revising the relevant standard (EN 13869:2002 'Lighters — Child-resistance for lighters — Safety requirements and test methods').

Commission Decision 2009/490/EC on personal music players

A Commission Decision (2009/490/EC[495]) was adopted on 23 June 2009 which, for the purposes of Article 4 of the GPSD, defines the safety requirements for personal music players in order to avoid the risk of hearing damage. In particular, the Decision states that, first, exposure to high sound levels shall be limited in order to avoid hearing damage and, second, users shall be provided with adequate warnings and information on the risks of hearing damage. A mandate to develop new safety standards, based on the safety requirements in the Decision, was subsequently sent to the European standards bodies on 28 September 2009. It is expected that the standards will be adopted by the end of 2011.

Report on the implementation of the General Product Safety Directive and the follow-up to this Report

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492 OJ L 74, 20.3.2009, p. 32

493 OJ L 11, 15.1.2002, p. 4

494 OJ L 81, 27.3.2009, p. 23

495 OJ L 161, 24.6.2009, p. 38

On 14 January 2009, the Commission adopted the Report on the implementation and application of Directive 2001/95/EC on General Product Safety496 and submitted it to the European Parliament and to the Council. The Report highlighted that the GPSD has proven to be a powerful tool for protecting the safety of non-food consumer products. In particular, the RAPEX system, the rapid exchange mechanism on dangerous products, has allowed prompt identification and follow-up to products identifying as posing serious risks to consumers. However, the Report has also identified some areas in the Directive which should be addressed in order to improve its efficiency and effectiveness: tighter product traceability, alignment with the market surveillance framework under Regulation (EC) No 765/2008497, which entered into force on 1 January 2010, more modern and standardisation provisions, more flexibility for urgent or temporary measures etc.

On the basis of the conclusions reached in the Report and the obligations set out in Regulation (EC) No 765/2008 requiring the Commission, inter alia, to analyse the consistency of EU rules in the field of market surveillance and, if appropriate, amend and/or consolidate these rules, the Commission started to work on the revision of the GPSD.

RAPEX system

RAPEX is the EU Rapid Information System for dangerous non-food consumer products which was established by and operates under the GPSD. The Member States, EFTA/EEA countries and the Commission use RAPEX to rapidly exchange information about dangerous non-food consumer products found on and consequently withdrawn from the European market.

RAPEX operation improved again in 2009. In total, 1.993 notifications were exchanged through the system by participating countries and the Commission. This constitutes an increase by 7% when compared to 2008. Half of the countries participating in the system further enhanced their activities and submitted more notifications on dangerous products than in the previous years. As RAPEX notifications sent by the Member States in 2009 were of better quality, the number of notifications distributed for information purpose only decreased by 9% compared to 2008 (283 notifications distributed in 2009 compared to 311 notifications in 2008).

Toys, motor vehicles and electrical appliances were still among the most often notified products through the system. However, in 2009, there was a significant increase in the number of RAPEX notifications on clothing and textiles (395 notifications, 23% of all) which results mainly from the enhanced market surveillance activities undertaken by national authorities following, in particular, the adoption of the Commission Decision 2009/251/EC banning Dimethyl fumarate in all consumer products and the launch of the joint market surveillance action on cords and drawstrings in children's clothing. This proves that risk-focused EU-level measures and joint prioritisation of certain types of products in the surveillance actions taken by Member States result in well spent resources in terms of finding dangerous products that could be harmful to consumers.

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496 COM(2008) 905

497 OJ L 218, 13.8.2008, p. 30

The number of notifications with an unidentified country of origin decreased again in 2009 (from 23% in 2004 to 7% in 2009). This is an indicator that the market surveillance authorities in Europe are increasingly aware of the importance of not only taking the incriminated product off the outlets in their country but also the discovery of the traceability data helpful to authorities in other countries and ultimately in the country of origin of the product. The number of dangerous products of Chinese and European origin notified through RAPEX was maintained at the level of respectively 60% and 20% of all notifications (i.e. 1013 and 337 notifications). These results are similar to previous year's results.

Revision of the RAPEX guidelines

On 16 December 2009, the Commission adopted Decision 2010/15/EU[498] laying down the new guidelines for the management of the EU Rapid Information System, 'RAPEX', established under Article 12 and the notification procedure established under Article 11 of Directive 2001/95/EC The new RAPEX guidelines introduced by Decision 2010/15/EU repealed the previous guidelines laid down by Commission Decision 2004/418/EC499.

The revision was based on various developments since 2004 (when the previous guidelines were adopted), such as (a) the significant increase in the number of notifications sent through RAPEX which have to be followed up in all Member States, (b) the need to increase the traceability of dangerous products by providing more detailed and precise information about the dangerous products notified via RAPEX, and (c) enhanced cooperation and exchange of information with third countries, such as China and the United States, on dangerous consumer products and corrective measures. Furthermore, when revising the RAPEX guidelines, the Commission's intention was to include into the new guidelines all the best practices developed over the years by the Member States and the Commission RAPEX Team to ensure even more efficient and effective operation of RAPEX.

While the scope of the RAPEX guidelines remains unchanged under Decision 2010/15/EU (i.e. RAPEX and Article 11 notification procedure), the new guidelines more precisely and comprehensibly clarify the notification criteria and define various stages and aspects of the notification and reaction procedures including organisational aspects. The new guidelines also regulate aspects of the RAPEX system which had not previously been subject to specific rules, and which, however, are essential for the functioning of the procedure, including, permanent withdrawal of notifications from the system, temporary removal of notifications from the RAPEX website and confidentiality rules.

Another fundamentally revised element in the RAPEX guidelines is the new improved risk assessment method that was developed by a dedicated working group of Member State experts and is recommended to all national authorities in order to assess the safety of consumer products.

Business Application

498 OJ L 22, 26.1.2010, p. 1

499 OJ L 151, 30.4.2004, p. 83

In May 2009, the Commission introduced a new online system in the product safety area for producers and distributors called "*Business Application*". The application was established to simplify the procedure for producers and distributors to fulfil their obligation (as laid down in Article 5(3) of the GPSD) to notify the competent national authorities of any dangerous consumer products placed on the EU market. The application makes it possible for producers and distributors to alert all European countries at the same time in one step, thus simplifying and speeding up the notification process. Since its launch, the operation of the "*Business Application*" has proved successful. In total, 44 notifications (including updates) sent through the application in 2009 by producers and distributors have been accepted by the competent national authorities.

Joint Actions on market surveillance activities

To support the Member States in their cross-border activities, in 2009 the Commission awarded a financial contribution of EUR 1.2 million to five joint market surveillance actions. These joint actions focused on: sun beds and solarium services, helmets, household appliances that could be appealing to children, lighters and baby walkers. To further strengthen cooperation between the Member States on consumer product safety, the Commission will continue joint actions in 2010 and 2011 and will financially contribute to the best proposals suggested by Member States.

International cooperation

The Commission further strengthened collaboration with its international partners in the product safety area. The main aim is to share information about emerging product safety risks, provide updates on legislative and normative developments and prevent dangerous products from finding their way onto the EU market. More particularly, in November 2009, the Council authorised the European Commission to open negotiations with the United States for an agreement on cooperation and information exchange in the area of consumer product safety.

In 2009 the collaboration with the People's Republic of China's General Administration for Quality Supervision, Inspection and Quarantine (AQSIQ) continued and the Commission continued to make available on the Internet the analyses of the quarterly follow-up reports to the RAPEX notifications sent to China.

The European Consumer Centres Network (ECC-Net)

In 2009, the European Consumer Centres Network (ECC-Net) handled over 60 000 contacts with consumers who turned to them for advice about their rights or for help with problems in the course of cross-border shopping.

The work of the centres shows that, in 2009, as it was already the case in 2008, European consumers' biggest problems were related to transport, recreation and culture and accommodation services. More than half of all complaints concerned on-line transactions (54%).

In 2009 most complaints dealt with by the ECCs related to products and services (32.7%), delivery (24.1%), contract terms (11.7%) and price and payment (11.4%). The ECCs also helped consumers to reach agreements on complaints with traders using out-of-court dispute resolution mechanisms.

In addition, the ECCs have also carried out joint projects analysing consumer complaints and concerns on key issues such as Alternative Dispute resolution mechanisms in Europe and comparison of hotel categories in the EU, and publicised their conclusions in reports released in late 2009. They have also laid the ground work for reports on how consumers feel about Air Passenger Rights and e-commerce.

In addition, the ECCs participated actively in the European Consumer Summit 2009 as speakers and sponsors of consumers who presented their real life stories and organised several consumer awareness raising events at national level.

13.3.2. **Evaluation, Priorities & Perspectives**

On 13 March 2007 the Commission adopted a Consumer Policy Strategy for 2007-2013. The strategy sets out the challenges, role, priorities and actions of EU consumer policy for this period. The overall objectives of the Strategy are to empower consumers, to enhance their welfare and to protect them effectively. The Commission's vision is to achieve by 2013 a single, simple set of rules for the benefit of consumers and retailers alike.

Given the progress achieved on the review and development of the consumer acquis, effective enforcement will play an important role. This will include, from the Commission's point of view, continued efforts in accompanying the transposition process in the Member States and supervising the transposition and application of directives by the Member States.

As part of a larger exercise to monitor how well the internal market functions for consumers, Commission services and the Member States developed in 2009 a framework for regular collection of enforcement indicators to measure the effectiveness of enforcement at national level. National policies and institutions related to enforcement play a key role in making the internal market function for consumers: free circulation of safe products and the protection of consumers from rogue traders depend on the effectiveness of enforcement and market surveillance in all Member States. An expert group composed of members of the CPC (Consumer Protection Cooperation) and GPSD (General Product Safety Directive) committees identified the most appropriate indicators, taking account of differences between national enforcement systems.

The Commission will launch in 2010 a mid-term evaluation of the 2007-2013 Consumer Policy Strategy and of the 2007-2013 Programme of Community Action (as well as an ex-post evaluation of the Programme of Community Action 2004-2006). This exercise will provide building blocks for the preparation of the next Consumer Policy Strategy (post 2013).

The Commission is planning to open a period of joint reflection with the Member States on the future role of ECC-Net. In parallel, an evaluation of the Network is foreseen five years after the merger of the two previous networks into ECC-Net. This evaluation should take place in 2010.

13.3.3. **Summary of Sector**

The challenge in this sector in the near future is to increase EU-wide consumer confidence through clearer, simplified and harmonised rules that are uniformly enforced by national authorities across Europe. Another challenge is to step up enforcement of EU rules To do so the Commission will seek increased transparency of enforcement action and output to ensure that Member States' role is not only crucial in ensuring proper transposition of Directives but also in effectively deploying the resources and mechanisms needed to ensure compliance. Consumers' awareness will also play a key role

13.4. Food safety

13.4.1. General Introduction

For consumers, safety is the most important ingredient of their food. Consumer confidence is an essential outcome of a successful food policy and is therefore a primary goal of EU action in this area. The central goal of the Commission's food safety policy is to ensure a high level of protection of human health and consumers' interests in relation to food, taking into account diversity, including traditional products, whilst ensuring the effective functioning of the internal market.

The Commission's guiding principle, is to apply an integrated approach from farm to table covering all sectors of the food chain, including feed production, primary production, food processing, storage, transport and retail sale. The credibility and legitimacy of the Commission's actions depend on how effectively the food safety policy is implemented and results delivered. Greater transparency at all levels of food safety policy is the thread running through the Commission's integrated approach and will contribute fundamentally to enhancing consumer confidence in Europe's food safety policy.

Legislation applicable to the various components of the food chain includes, in addition to the food and feed law, rules applicable to animal and plant health and to the welfare of animals. There have been enormous developments in the past decades, both in the methods of food production and processing, and the controls required to ensure that acceptable safety standards are being met. Legislation will be reviewed and amended as necessary in order to make it more coherent, comprehensive and up-to-date. Enforcement of this legislation at all levels will be promoted. Member States are our key partners in ensuring adequate and uniform application of Europe's food safety legislation.

13.4.2. Work done in 2009

Work is ongoing on the modernisation and simplification of the legislation applicable to food and feed safety, animal and plant health, and animal welfare. The aim is to achieve better enforceability of existing rules, whilst providing for a state of the art legislative framework.

Both the Animal Health Strategy500 and the recently launched work towards a Plant Health Strategy501 include the objective of providing the EU with a more coherent and directly enforceable set of rules in these areas in order to replace a vast amount of Directives adopted in the course of the last decades (the food safety acquis is one of the largest, numbering more than 500 Directives).

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500 Communication from the Commission to the Council, the European Parliament, the European Economic and social committee and the Committee of the Regions on a new Animal Health Strategy for the European Union (2007-2013) where “Prevention is better than cure”. COM(2007) 539 final.

501 The Council called on the Commission to evaluate the current plant health *acquis* and to consider possible modifications to it, and subsequently present a proposal for a Community plant health strategy. The Commission has launched the evaluation, and a study is expected to start by mid 2009.

A report on the state of implementation of Regulation (EC) No 882/2004502 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare was transmitted to the European Parliament and Council on 8 July 2009 (on the basis of its Article 65)503.

Three main issues are highlighted in the report:

- The rules on financing of official controls (Articles from 26 to 29 of Regulation (EC) No 882/2004) have proven to be difficult to implement by the Member States given their complexity and unclear wording, according to a 2008 evaluation carried out by an external contractor. Moreover, the report indicated that the main objective of these rules, i.e. ensuring that adequate resources are available for the required official controls, has not been fulfilled. On this basis, the Commission has therefore started a review of these provisions and the related impact assessment is now on-going;

- The need for further integration of the official controls carried out in specific sectors into the general framework of Regulation (EC) No 882/2004. One of the main examples is the legislation on residues of veterinary medicines (Council Directive 96/23/EC on measures to monitor certain substances and residues thereof in live animals and animal products). On the basis of a reflection that began in 2003, the Commission has now started a review of that Directive with the objective of optimizing and simplifying the overall legislative framework;

- The application for the first time of harmonized checks at the EU border for feed and food of non-animal origin as provided for in Article 15(5) of Regulation (EC) No 882/2004 and implemented by Regulation (EC) No 669/2009 (applicable from 25.1.2010). The new rules provide that specific feed and food of non-animal origin identified on the basis of a known or emerging risk are to be subject to an increased level of official controls at the EU border.

In more general terms, the Commission through an intra-departmental reorganisation has integrated the issue of enforcement throughout the EU food safety policy area. This has mainly resulted in a systematic analysis of all issues related to implementation of EU legislation and emerging from in-house information, including the more than 200 inspection reports produced yearly by the Food and Veterinary Office (FVO) of the Commission, or from information received from Member States or stakeholders. For each of them an appropriate action is decided upon in cooperation with the responsible Units and a continuous follow-up is ensured till the issue has been resolved.

Moreover, the issues related to transposition highlighted in the previous report have been specifically followed-up during 2009 and most of them have now been closed due to the fact that transposition has taken place. For the other cases, appropriate action has been taken to

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502 OJ L 165, 30.4.2004, p. 1–141

503 8.7.2009. Report from the Commission to the European Parliament and to the Council on the application of Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and welfare rules – COM(2009) 334 final

resolve the issue. Please refer to the sectoral sections of this chapter, where the most relevant initiatives are described.

FVO inspections

At EU level, valuable information regarding the application of EU legislation along the food chain is provided by the inspection activities of the Commission's FVO. Information collected by the FVO during recent years was carefully screened during the course of 2009 to provide an overview of potential shortcomings in relation to transposition problems of some Directives or inadequate application of legislation throughout the food chain.

The Commission services are in contact with the Member States concerned to address these issues through an array of approaches using its tool-box. The FVO continues to screen Directives with the purpose of identifying any significant transposition problems. In a similar vein, the Commission services are considering the most efficient and effective enforcement action with respect to issues other than transposition that have been identified by the FVO.

In three cases the Commission vigorously pursued infringement proceedings against Greece because that Member State persistently failed to comply with a range of important components of EU food safety legislation.

In 2009 the Court delivered in the framework of three infringement proceedings judgments condemning Greece to have failed to correctly apply EU law:

– The FVO missions have highlighted since 1998 fundamental systemic shortcomings in the performance of the Greek authorities' official controls in the area of food safety, animal health and animal welfare. These shortcomings are mainly attributable to the shortage of human resources in the Greek veterinary services. Because of these shortages both in central administration as well as in the decentralised authorities, there was a failure to carry out the official controls in an effective and substantial way. The Court concluded that the results of the efforts made by the Greek authorities to solve these problems were unsatisfactory.504

– FVO missions provided evidence of systemic deficiencies in the management of animal by-products. The Court concluded that Greece failed to correctly apply key provisions of Regulation (EC) No 1774/2002 laying down health rules concerning animal by-products not intended for human consumption505.

– Also on the basis of evidence gathered during FVO inspections, the Court of Justice condemned Greece for failure to apply in a satisfactory way EU legislation relating to the protection of animals during transport and in slaughterhouses506.

504 Judgment of the Court of Justice of 23.4.2009 in case C-331/07

505 Judgment of the Court of Justice of 17.12.2009 in case C-248/08

506 Judgment of the Court of Justice of 10.9.2009 in case C-416/07

All three cases show the need to give priority to initiatives that aim at engaging fully Member States' enforcement actors in discussions and actions that address the optimal use of finite enforcement resources.

13.4.3. **Food Hygiene**

(1) **Current position**

General introduction

The EU Food "Hygiene Package" is composed of three Regulations consolidating, updating and simplifying the EU legislation on food hygiene:

- Regulation (EC) No 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs507;
- Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin508, and
- Regulation (EC) No 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption509.

Those rules are based on the principles of a risk-based approach to a comprehensive and integrated food chain – from farm to fork – and the separation of responsibilities of the food business operators and the competent authorities.

The main objective of the Hygiene Package is to place the primary responsibility for food safety at the level of the food business operators. Moreover, the new rules aim at preventing contamination of food from biological, chemical and physical hazards by enabling food business operators to identify such hazards by the application of procedures based on the Hazard Analysis Critical Control Point (HACCP) principles. These procedures became compulsory for all non-primary food operators. The principle of flexibility incorporated in the new rules enables the continued use of traditional methods at any stage of production, processing or distribution of food.

General provisions are laid down for all foodstuffs, while specific provisions are laid down for foodstuffs of animal origin. Further measures providing detailed criteria and conditions for the implementation of the above mentioned Regulations are:

- Commission Regulation (EC) No 2073/2005 on microbiological criteria for foodstuffs510; Commission Regulation (EC) No 2074/2005 laying down implementing measures for certain products under the Hygiene Package511;

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507 OJ L 139, 30.4.2004, p. 1

508 OJ L 226, 25.6.2004, p.22

509 OJ L 226, 25.6.2004, p. 83

- Commission Regulation (EC) No 2075/2005 laying down specific rules on official controls for *Trichinella* in meat512;

- Commission Regulation (EC) No 2076/2005 laying down transitional arrangements for the implementation of the Hygiene Package513.

Report of work done in 2009

Given the innovative nature of the Hygiene Package, the European Parliament and the Council had requested the Commission to prepare a report three years after the start of the application of this legislation.514 This report *(Report from the Commission to the Council and the European Parliament on the experience gained from the application of the hygiene Regulations (EC) No 852/2004, (EC) No 853/2004 and (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004)* ("Hygiene Report") was adopted on 28 July 2009515. The Hygiene Report followed a thorough consultation process. It is based on information received from the competent authorities in the Member States, representatives of the food business operator and consumer organisations at European level, and the Commission's Food and Veterinary Office.

The Hygiene Report aims at presenting factually the experience gained, including the difficulties encountered, in 2006, 2007 and 2008 from the implementation of the hygiene package by all interested actors.

The Hygiene Report does not suggest any detailed solutions to the difficulties reported and is, therefore, not accompanied by proposals. The Commission believes that additional experience is first needed before deciding whether any proposals for improving the food hygiene package are warranted and whether consensus could be achieved in the future within the framework of the co-decision procedure.

The Commission also followed closely the discussions and the development of the microbiological criteria in the Codex Alimentarius Committee for Food Hygiene.

(2) **Evaluation of the current situation**

The Hygiene Report concludes that overall Member States have taken the necessary administrative and control measures to ensure compliance but there is still room for improvement in relation to implementation. These conclusions are supported by the findings

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510 OJ L 338, 22.12.2005, p.1

511 OJ L 338, 22.12.2005, p.27

512 OJ L 338, 22.12.2005, p.60

513 OJ L 338.22.12.2005, p. 83

514 Article 16 of Regulation (EC) No 852/2004; Article 14 of Regulation (EC) No 853/2004; and, Article 21 of Regulation (EC) No 854/2004.

515 Doc 12482/09 – COM (2009) 403 final

of audits and inspections carried out by the Commission's Food and Veterinary Office (FVO). Consulted stakeholders consider that the new principles and requirements introduced by the hygiene package have had a positive impact.

The main difficulties identified are in relation to certain exemptions from the scope of the hygiene Regulations, certain definitions laid down in the Regulations and the procedure for adapting those definitions, certain practical aspects concerning the approval of establishments handling foods of animal origin and the health or identification marking of such foods, the import regime for certain foods, the implementation of HACCP-based procedures in certain food businesses and the implementation of official controls in certain sectors.

(3) **Priorities and planned actions**

Priorities

As a result of the consultation within the framework of the drafting of the hygiene Report, the following issues were identified as priorities:

- Review of meat inspection provisions. This priority is supported by the Chief Veterinary Officers (CVO) conclusions on modernisation of sanitary inspection in slaughterhouses adopted at their meeting in October 2008516 and by the Council conclusions on the Hygiene Report, adopted during the 2967th Agriculture and Fisheries Council meeting on 20 November 2009.

- The replacement of biological testing methods (mouse bio-assays) by chemical detection methods of marine biotoxins in live bivalve molluscs, mainly for reasons of animal welfare.

- Consideration of a revision of certain articles of the hygiene Regulations by the co-decision procedure and the launch of a relevant impact assessment.

- Evaluation and guidance on the flexibility provisions in the Hygiene Package, in particular for small capacity establishments.

Planned actions (2010 and beyond)

- Review of meat inspections: round table conferences are scheduled. The purpose of these conferences is to exchange views with competent authorities of Member States and third countries, private stakeholders' organisations and scientific bodies. In order to ensure a risk-based approach, the European Food Safety Authority (EFSA) is requested to provide scientific opinions on meat inspections in slaughterhouses and, if considered appropriate, other stages of the production chain. Amendments of legal provisions based on these consultations are scheduled for 2011.

- Detection of marine biotoxins: After validation of the chemical methods, legal provisions will be amended to replace the mouse bio-assays.

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516 Doc. 14438/09

- Proposals for amendments to Articles of the "hygiene package" Regulations: In 2010, the provisions to be amended will be identified by consultations and an impact assessment on such proposed amendments. The co-decision procedure will be started in 2011 with the aim to achieve a result by 1 January 2014.

- Flexibility: Guidance documents both for competent authorities and food business operators will be published. The outcome of FVO fact-finding missions on this issue will be assessed and further initiatives considered when appropriate.

- A first step requiring that certain processed products of animal origin in composite products satisfy with the requirements in Regulation (EC) No 853/2004, shall be adopted before the end of 2010.

13.4.4. **Food Labelling**

13.4.4.1.*Current position*

General Introduction

EU legislation on the labelling of foodstuffs includes general provisions on the labelling of foodstuffs to be delivered to the consumer, as laid down in Directive 2000/13/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs. This Directive sets out harmonised rules to enable European consumers to get comprehensive information on the contents and the composition of food products. Nutrition labelling on foods is regulated by Directive 90/496/EEC. At the moment, under EU legislation, nutrition labelling is optional, although it becomes compulsory when a nutrition or health claim is made in the labelling, presentation or advertising of a foodstuff or when vitamins or minerals are voluntarily added to foods.

Report of work done in 2009

EU legislation on food labelling is currently under revision. The Commission adopted on 30 January 2008, a proposal for a Regulation of the European Parliament and of the Council on the provision of food information to consumers. This proposal combines Directive 2000/13/EC with Council Directive 90/496/EEC on nutrition labelling for foodstuffs into one instrument. In addition, the proposal is in line with the simplification process in the context of Better Regulation as it simplifies the structure of the horizontal food labelling legislation in Directive 2000/13/EC, by recasting and replacing provisions already in place under this Directive.

The labelling *acquis* is managed through the Standing Committee on the Food Chain and Animal Health (SCFCAH). The Committee plays a key role in exchange of views between the Member States and the Commission regarding the application of the labelling provisions and the increasing number of draft measures notified by the Member States (on the basis of Article 19 of Directive 2000/13/EC). The following measures were notified by the Member States under the notification procedure and assessed by the Commission during 2009:

- **Malta** notified a draft Regulation, requiring the mandatory indication of the country of origin and the date of slaughter on the labelling of packaged meat products. Following the negative opinion of the Commission, Malta withdrew the draft measures.

- **Greece** notified a draft Decree on the provision of information on the country of origin of the raw material (milk) used for the manufacture of dairy products intended for sale to the final consumer. The Commission gave a negative opinion as the notified measure was not justified under the provisions of Directive 2000/13/EC.

- **Italy** notified a draft Decree providing for *inter alia* several obligations to indicate the country of origin of certain milk products. The Commission gave a negative opinion as Italy failed to demonstrate that such measure was justified to avoid the consumer being misled as to the true origin of such foods.

- **Italy** notified a draft measure providing, *inter alia*, for additional warnings for the labelling of certain herbal extracts.

- **France** notified a draft measure laying down the conditions and labelling requirements for the use of virgin linseed oil for human consumption.

The two latter notifications were sent end 2009 and their assessment is to be completed in early 2010.

In terms of infringement procedures, there is one pending case before the Court of Justice concerning mandatory origin labelling for poultry meat (C-383/08), and an ongoing infringement proceeding concerning the labelling of allergens.

13.4.4.2.*Evaluation based on the current situation*

The EU legislation on food labelling has been extensively scrutinised over the last years and the results of this exercise confirmed the need for a significant overhaul of labelling rules. The revision of the legislation will bring coherence and clarity to provisions that apply to all foods. The replacement of the current horizontal labelling Directives by one concise legislative act in the form of a Regulation will provide for consistency of application of food labelling rules across all Member States. It will ensure that consumers receive the information that can be important in making health related choices, such as those concerning the presence of allergens or the nutrient content of the product. Importantly, the mandatory information must be legible, so that the consumers can easily read the label.

During 2009 discussions on the Commission's proposal for a Regulation on the provision of food information to consumers continued with the European Parliament and the Council. The main political issues in these discussions have been: the presentation of the nutrition information; the inclusion of origin labelling and whether it should be mandatory for all or certain categories of foods; the application of the general labelling requirements to alcoholic beverages; and, the inclusion of specific criteria to improve legibility of information. The First Reading in the European Parliament was postponed until after the 2009 elections and it is expected to take place in the first half of 2010.

13.4.4.3.*Priorities and planned action*

The priority in the general and nutrition labelling sector remains the overhaul of existing legislation in order to optimise this regulatory area. This will involve working towards adoption of the proposal for the Regulation on the provision of food information to consumers by the European Parliament and the Council and assessing notifications by Member States of additional mandatory labelling requirements.

Following the adoption of the proposed regulation it will be necessary to take forward appropriate implementing measures.

13.4.4.4.*Sector summary*

EU food labelling legislation is regulated by Directive 2000/13/EC. This Directive sets the compulsory information that has to be provided to the final consumer, such as the name of the product, the list of ingredients, the use-by date and any special conditions of use. The increasing number of national notifications, in particular concerning the mandatory origin labelling for certain foods, should be noted. Nutrition labelling rules are laid down in Council Directive 90/496/EEC. This Directive provides harmonised rules on the basic nutrition labelling provided on a voluntary basis or, when necessary, a mandatory basis. In order to modernise and improve EU food labelling rules, the Commission adopted on 30 January 2008 a proposal for a Regulation of the European Parliament and of the Council on the provision of food information to consumers, which is currently under discussions in the European Parliament and the Council. The priority areas on general food labelling are to follow the discussion in the European Parliament and the Council with a view to adoption of the final Regulation in the coming year and to assess Member State notifications of draft national legislative measures concerning food labelling.

13.4.5. **Nutrition labelling**

13.4.5.1.*Current position*

General introduction

Nutrition labelling rules are laid down in Council Directive 90/496/EEC. This Directive was recently amended through Commission Directive 2008/100/EC to revise and update a number of the technical rules contained therein, such as the list of vitamins and minerals and their recommended daily allowances values, the definition for "fibre" and the list of energy conversion factors.

Legislative Changes Underway

As stated above, the Commission adopted on 30 January 2008, a proposal for a Regulation of the European Parliament and of the Council on the provision of food information to consumers,517 which will repeal *inter alia* Council Directive 90/496/EEC. The amending Commission Directive 2008/100/EC will be incorporated in the Commission proposal for a Regulation on the provision of food information to consumers during the discussions of this Regulation.

13.4.5.2.*Evaluation*

The development of EU legislation relating to nutritional aspects of foods such as food supplements, the addition of vitamins and minerals and the harmonisation of nutrition and health claims meant that there was a need to update the certain technical aspects of the existing rules on nutrition labelling. The adoption of Commission Directive 2008/100/EC ensures coherence between different pieces of legislation. The inclusion of a definition of

517 COM(2008)40final.

fibre in EU legislation meant that this could be reflected in discussions on the revision of the definition of fibre at international level in Codex Alimentarius.

With respect to the general review of the nutrition labelling, there is wide agreement that the effectiveness of that labelling can be strengthened as a channel for information to consumers to support their ability to choose a balanced diet. The Commission conducted consultations of stakeholders and the feedback was that there is dissatisfaction among stakeholders on the current legislation. The proposal for the revision of the legislation aims to overcome the problem of disparity of the inclusion of nutrition labelling in different Member States or categories of food, by making the nutrition labelling of a limited number of nutritional elements mandatory on the majority of processed food. The proposal to revise the legislation mentioned under the food labelling section will help to ensure that consumers across the EU have access to relevant nutrition information so as to make informed choices, taking into account the nutrition-related advice provided through Member States' public health activities.

13.4.6. **Nutrition and Health Claims**

13.4.6.1.*Current position*

General introduction

Regulation (EC) No 1924/2006 of the European Parliament and of the Council, has been applicable since 1 July 2007, and lays down harmonised rules for the use of health or nutrition claims (such as "low fat", "high fibre" and "helps lower cholesterol") on foodstuffs. The Regulation aims at ensuring that any claim made on a food label in the EU is clear, accurate and substantiated and will thus enable consumers to make informed and meaningful choices when it comes to food and drinks. This should also contribute to a higher level of human health protection, as it ties in with the Commissions campaign for healthier lifestyle choices by allowing citizens to know exactly what they are consuming. The Regulation also strives to ensure fair competition and promote and protect innovation in the area of food. Only products offering genuine health or nutritional benefits will be allowed to refer to those on their labels.

Among the principles laid down in the Regulation, nutrient profiles were foreseen to be established by January 2010. Nutrient profiles have to determine whether foods are eligible to bear claims on the basis of their nutrient composition and will be based primarily on the levels of nutrients for which excessive intakes in the overall diet are not recommended (e.g. fat, saturated fat, salt and sugars).

The Regulation has two routes for authorising health claims; either via adoption of the EU list of permitted health claims based on national lists (the so-called article 13 list of functional claims) or via authorisation procedures based on applications directly from food business operators.

Regarding nutrition claims, the Regulation included in its annex a list of such authorized claims.

Report of work done in 2009

In 2009, further development of the nutrient profiles system and analysis of its impact were performed following EFSA's advice in 2008. The Commission services have put forward draft measures taking into account the opinion of EFSA, Member States, and stakeholders. These

draft measures raised considerable public interest, showing that longer discussion was needed, thus delaying the Commission Decision on this matter.

Concerning nutrition claims, an amendment adding 5 new nutrition claims was proposed and received a favourable opinion from the Regulatory Committee, paving the way for its adoption beginning of 2010. The new nutrition claims are related to the content in fatty acids such as omega-3 fatty acids, and conditions for the use of such claim guarantee a minimum content of these fatty acids in foods bearing these claims.

The Commission authorised and rejected the first health claims under the Regulation. 10 were authorised and 38 were rejected of those based on applications directly from food business operators. Such health claims refer to the reduction of disease risk, to children's development and health of children, or newly scientific evidence and/or include a request for protection of proprietary data.

Concerning the EU list of permitted health claims based on national lists further work was done to consolidate the unexpected high number of 44.000 health claims from the Member States. Examination of the national lists showed that Member States had applied the relevant criteria differently when preparing the lists and in certain cases not applied them at all. Consequently, consolidating the national lists into a single list including the claims for which the Authority should give scientific advice (by 2009, 4185 health claims have been send to EFSA), required further discussions with the Member States, stretching throughout 2009 and expected only to be finalised in 2010. An addendum is expected to be submitted to EFSA early 2010.

Meetings with Member States' experts have been held on a monthly basis to facilitate discussions on the application of the Regulation and to prepare the votes in the Standing Committee on the authorisation of health and nutrition claims. Guidance documents aimed at the food business operators and enforcement authorities are being developed. The guidance strives to ensure that only valid applications are submitted to EFSA and that authorised claims are used in compliance with the Regulation.

13.4.6.2.*Evaluation based on the current situation*

Though key implementation measures still need to be adopted, the new Regulation already prohibits some misleading marketing practices and benefits the European consumer in tangible ways.

Nutrient profiles are necessary to ensure that the claims delivered to consumers are accurate and not misleading, as could be claims on foods high in fat or sugars or salt, and therefore it will be a priority for the Commission to adopt the measures establishing these profiles.

The new rules on **nutrition claims** on fatty acids such as "Source of Omega-3 fatty acids" ensure consumers that they will have significant contributions in these fatty acids when choosing foods bearing such claims. Few Member States had rules for the use of these claims and therefore the introduction of harmonised rules is an improvement of consumer information that could help consumer to make healthier choices.

On **health claims**, the implementation of the Regulation gave rise to significant difficulties. This was illustrated by the unexpected high number of 44.000 health claims submitted by the Member States, as mentioned above, which would result in delaying the adoption of the EU

list of permitted health claims only due to the necessary time for EFSA to complete its assessment.

13.4.6.3.*Evaluation results*

Priorities

The priority remains to ensure a smooth implementation of the Regulation, meeting the objectives of that legislation in terms of both protecting consumers and harmonizing the use of nutrition and health claims within the EU.

Planned action

Nutrient profiles will have to be set up in accordance with the basic Regulation as they are necessarily to complete the implementing rules and allow an efficient functioning of that legislative framework.

On 1 October 2009 the Commission and the Member States received from EFSA the first series of opinions providing advice on 525 health claims in the consolidated list. EFSA has indicated to the Commission that the assessment of all the health claims in the consolidated list could not be completed before end 2011. Therefore, in an effort to fulfil the intention of the legislator, to protect the consumers against misleading claims and to provide clarity in the market, the Commission decided to propose a stepwise adoption of the EU list of permitted health claims. A first adoption of the EU list of permitted health claims is expected in 2010 and the EFSA advice on the 525 health claims has been scrutinized and discussed with the Member States and stakeholders with a view to prepare such adoption.

The Commission has planned a seminar in 2010 for all involved parties in implementing the Regulation (i.e. authorities, enforcement bodies, self-regulatory organisations etc) with the purpose of understanding each other tools and roles under the Regulation and thereby promoting a uniformed and correct application of the Regulation.

13.4.6.4.*Sector summary*

Implementing Regulation (EC) N° 1924/2006 on nutrition and health claims made on food was a major task in 2009. Substantial preparatory work has been completed for the establishment of specific nutrient profiles, and further development of the nutrient profiles system and analysis of its impact were performed. Five additional nutrition claims were proposed and received a favourable opinion from the Regulatory Committee, paving the way for inclusion into the list beginning of 2010. Regarding health claims based on applications directly from food business operators, 10 were authorised and 38 were rejected by the Commission on the basis of the scientific opinion published by EFSA.

Concerning the EU List of permitted health claims based on national lists further work was done to consolidate the unexpected high number of 44.000 health claims from the Member States. By 2009, 4185 health claims have been send to EFSA. An addendum is expected to be submitted to EFSA early 2010.

13.4.7. **Dietetic foodstuffs**

13.4.7.1.*Current position*

General introduction

Directive 2009/39/EC on foodstuffs intended for a particular nutritional uses (recast of Council Directive 89/398/EEC, hereafter referred to as the Framework Directive) establishes requirements on product composition and appropriate consumer information for foods that are suitable to fulfil the particular nutritional requirements of certain groups of the population.

Foods for particular nutritional uses, or dietetic foods, are defined as foodstuffs which owing to their composition or manufacturing process, are clearly distinguishable form foodstuffs for normal consumption, which are suitable for their claimed nutritional purposes and which are marketed in such a way as to indicate such suitability. The labelling of these products must include the particular elements of the qualitative and quantitative composition or the special manufacturing process which gives its particular nutritional characteristics.

For a number of these groups specific legislation has already been adopted. There are Commission Directives on foods for infants and young children, foods for weight reduction, medical foods and gluten-free foods. However, for certain groups of consumers mentioned in the Framework Directive, decisions as to whether or not specific directives would be proposed (e.g. food products for people with diabetes), or indeed are still needed (e.g. foods for sports people), are still to be taken.

Products that do not belong to the abovementioned categories are required to undergo a notification procedure in the Member States, with a view to facilitating the official monitoring and the placing on the market of innovative products.

Report of work done in 2009

The Framework Directive on dietetic foods is now more than 21 years old and a number of issues have arisen in relation to its scope and implementation. Many relate to the continued evolution of the EU food legislation. Of particular importance is the adoption of the Directive on food supplements, the Regulation on the addition of vitamins and minerals and of certain other substances to foods and the Regulation on nutrition and health claims made on foods. Following the developments in the food market this last decade and due to the broad definition mentioned above, many 'normal' foods now claim particular nutritional benefits due to their composition.

These elements, together with the evolution of the food market, render the revision of this legislation necessary.

An impact assessment supporting the revision of the legislation on dietetic foods was therefore undertaken in 2009. It is based on a study commissioned by the Commission and finalised in April 2009, on consultations with Competent Authorities and stakeholders and on two specific reports published in June 2008 on 1) the implementation of the notification procedure and 2) the desirability of special provisions for foods for persons suffering from carbohydrate-metabolism disorders (diabetes).

On the other hand, Commission Regulation (EC) No 953/2009 on substances that may be added for specific nutritional purposes in foods for particular nutritional uses was adopted on

the 13 October 2009**.** This Regulation consolidates the existing rules and amends the list of authorised sources of vitamins and minerals that may be added to foods for particular nutritional uses and for which the EFSA has given a favourable opinion.

13.4.7.2.*Evaluation based on the current situation*

It is clear from surveys, reports and comments from Stakeholders and National Competent Authorities that recently adopted pieces of food legislation to some extent overlap with some of the underlying principles of the dietetic food framework legislation. Consequently the application of each piece of legislation to dietetic foods might be unclear for businesses or Member States. Discussions have highlighted difficulties in particular with regards to the interpretation of the definition of dietetic foods.

There is also a need to consider the legislation on dietetic foods in relation to the more "strategic goals" of ensuring a better and simplified legal framework to facilitate innovation. Therefore, the impact assessment on the revision of the Framework Directive on dietetic foods would also consider the needs to simplify the legislative framework for businesses and Competent Authorities and to reduce administrative burdens. Particular attention will be given on small businesses to ensure that any change made to the legislation is easily communicated and simple to implement.

13.4.7.3.*Evaluation results*

Priorities

The main priority is to continue on the ongoing work related to the revision of the legislation on foods for particular nutritional uses, otherwise called dietetic foods.

Three key objectives must be achieved through the revision: 1) ensure continuing food safety for consumers, 2) ensure the free movement of goods within the internal market and with third countries and 3) minimise burdens on food business operators and ensure suitable flexibility and clarity for small businesses.

Planned action

The associated impact assessment should be submitted to the board during the first part of 2010 and adoption of a new proposal of the Commission is foreseen by the end of 2010 or early 2011.

13.4.7.4.*Sector summary*

The need to optimise the existing legal framework on dietetic foods to take into account the more recent developments in food legislation (food supplements, fortified foods, claims) and to clarify their interactions with the dietetic food legislation is considered under the revision of the framework Directive on dietetic foods. On the basis of an impact assessment, the Commission is currently assessing all the potential impacts that various options for the revision could have on the management of dietetic foods. The Commission would adopt a proposal by the end of 2010.

13.4.8. **Food Supplements and addition of vitamins and minerals and of certain other substances to foods**

13.4.8.1.*Current position*

General introduction

Directive 2002/46/EC of the European Parliament and of the Council on food supplements partially harmonises the rules applicable to the placing of food supplements on the market.

The scope of the Directive covers all food supplements. However, only the specific rules applicable to the use of vitamins and minerals in the manufacture of food supplements are laid down in the Directive. According to Article 4(8) of the Directive, the Commission adopted on 5 December 2008 a Report518 on the use of substances other than vitamins and minerals in food supplements which concludes that the existing EU legal instruments already constitute a sufficient legislative framework for regulating this area and does not consider it opportune to lay down specific rules for substances other than vitamins or minerals for use in foodstuffs. Therefore, the use of substances other than vitamins or minerals in the manufacture of food supplements continues to be subject to the rules in force in national legislation.

Regulation (EC) No 1925/2006 of the European Parliament and of the Council, which is applicable as of 1 July 2007, harmonises the provisions laid down in Member States that relate to the addition to foodstuffs of vitamins and minerals and of certain other substances, such as amino acids, essential fatty acids, fibre, various plants and herbal extracts. The objective of this Regulation is to ensure the effective functioning of the internal market whilst providing a high level of consumer protection.

Report on work done in 2009

In 2009, the Commission adopted Regulation (EC) No 1170/2009 of 30 November 2009 amending Directive 2002/46/EC of the European Parliament and of Council and Regulation (EC) No 1925/2006 of the European Parliament and of the Council as regards the lists of vitamin and minerals and their forms that can be added to foods, including food supplements. That Regulation updates the list of vitamins and minerals and of their authorised forms, that may be added to these foods, and for which the European Food Safety Authority (EFSA) has given a favourable opinion.

13.4.8.2.*Evaluation based on the current situation*

In order to complete the harmonization in that sector, the two acts mentioned above foresee that maximum amounts should be set up for use of the vitamins and minerals listed in their annexes in foods and in food supplements.

An impact assessment report to analyse the economic, social and environmental impacts of the options for the setting of maximum amounts is currently being finalized.

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13.4.8.3.*Evaluation results*

Priorities

In the area of food supplements and of fortified foods, the priority remains the completion of the harmonization for the use of vitamins and minerals.

Planned actions

Future activities, in the field of food supplements and of fortified foods, will relate to the adoption of implementing measures, which include, *inter alia*, the setting of maximum amounts of vitamins and minerals and the updating of the positive list of substances in the Annexes to the Directive.

13.4.8.4.*Sector summary*

Directive 2002/46/EC and Regulation (EC) No 1925/2006 of the European Parliament and of the Council respectively harmonise partially the rules applicable to the placing of food supplements on the market and the addition of vitamins and minerals and of certain other substances to foodstuffs.

The lists of vitamins and minerals have been recently updated.

The completion of the harmonization should take place in the near future with the setting up of maximum amounts for the use of the substances concerned.

13.4.9. **GMO Food and Feed**

13.4.9.1.*Current position*

General introduction

Regulation (EC) No 1829/2003 of the European Parliament and of the Council on genetically modified (GM) food and feed sets out a comprehensive set of rules governing the authorisation process for GM food and feed, while ensuring a high level of protection of human and animal health, of the environment and of consumers' interests.

The Regulation provides for a single EU procedure for the authorisation of all food and feed containing, consisting or produced from a genetically modified organism. This authorisation, valid throughout the EU, is granted subject to a single risk assessment process under the responsibility of the EFSA and a single risk management process involving the Commission and the Member States through a regulatory committee procedure.

Report on work done in 2009

In line with its obligations deriving from Regulation (EC) No 1829/2003, the Commission implemented the EU legislation on GM food and feed mainly in the two following areas:

- Authorisations were granted to those GM food and feed complying with all the conditions set out in the basic legislation:

On 10 March 2009 the Commission adopted Decision 2009/184/EC authorising the placing on the market of products containing or produced from genetically modified oilseed rape T45 (ACS-BNØØ8-2);

On 30 October 2009 the Commission adopted Decision 2009/813/EC authorising the placing on the market of products containing, consisting of or produced from genetically modified maize MON 89034 (MON-89Ø34-3);

On 30 October 2009 the Commission adopted Decision 2009/814/EC authorising the placing on the market of products containing, consisting of or produced from genetically modified maize MON 88017 (MON-89Ø17-3);

On 30 October 2009 the Commission adopted Decision 2009/815/EC authorising the placing on the market of products containing, consisting of or produced from genetically modified maize 59122xNK603 (DAS-59122-7xMON-ØØ6Ø3-6) and

On 30 November 2009 the Commission adopted Decision 2009/866/EC authorising the placing on the market of products containing, consisting of or produced from genetically modified maize MIR604 (SYN-IR6Ø4-5).

- The Commission monitored the situation as regards the risk of non-authorised GM food and feed in products imported from third countries being placed on the EU market. This was in particular the case concerning emergency measures regarding the presence of the unauthorised genetically modified organism Bt 63 in rice products coming from China and regarding the non-authorised genetically modified organism LL RICE 601 in rice products originating from the United States. In addition, a protocol of sampling and testing on linseed has been agreed with the Canadian authorities in order to prevent the import of the non authorised linseed FP 967.

The Commission has launched in June 2009 an evaluation on genetically modified food and feed with the view to assess to what extent the EU legislative framework and its objectives in this sector are still in line with the needs of the EU society.

The primary objective of this evaluation is to assess the implementation of the major aspects of the legislative framework and to present possible policy options. The evaluation will particularly focus on three aspects: (a) the authorisation procedure; (b) the labelling regime; (c) the acceptance of the EU regulatory system.

The authorisation of GMOs for cultivation is excluded from the scope of this evaluation as it covered by a parallel evaluation launched by DG Environment.

13.4.9.2.*Evaluation result*

Two evaluations have been launched in 2009 to review and assess the EU legislative framework in the field of GM food, feed and seed. The evaluations seek to identify existing challenges in its implementation, and to ensure its relevance for the current needs focusing, in particular, on the regulatory approval process and the compulsory labelling of GM food and feed. These evaluations also aim at obtaining a comprehensive set of data and information from an impartial source as well as to gain a clearer view about the functioning of the current regulatory framework, its consequences and impact. This information will be used as a basis for possible future policy decisions to streamline this sector.

13.4.10. **Novel Foods**

13.4.10.1. *Current position*

General introduction

Novel foods are foods and food ingredients that have not been used for human consumption to a significant degree within the EU before 15 May 1997. Regulation (EC) No 258/97 of the European Parliament and of the Council lays out detailed rules for the authorisation of novel foods and novel food ingredients.

Companies that want to place a novel food on the EU market need to submit their application in accordance with Commission Recommendation 97/618/EC which concerns the scientific information and the safety assessment report required.

The Commission adopted on 14 January 2008 a proposal for a Regulation of the European Parliament and the Council on novel foods, based on Article 114 TFEU (ex Article 95 TEC), which would revise and replace the existing legislation.

Report of the work done in 2009

A total of 13 novel foodstuffs (Arachidonic acid; Vitamin K2; 2 * two extension of uses of DHA; 3 * lycopene; lycopene oleoresin from tomatoes; Krill oil; leaf extract from *Morinda citrifolia*; Ice Structruing Protein; Chia seed (*Salvia hispanica*); leaf extract from lucerne (*Medicago sativa*)) were authorised for marketing in the EU in 2009. Also ca. 50 novel food products that were substantially equivalent to existing foods or food ingredients have been notified according to the simplified procedure in 2009.

13.4.10.2. *Evaluation based on the current situation*

The current legislation lays down a decentralized procedure leading to a long (3-5 years) and costly process which may prevent companies, in particular SMEs, from innovating in the food sector. The objectives of Commission's proposal were to address these points in particular through a centralised evaluation and authorisation procedure and to provide for better conditions for innovation in the food sector.

The European Parliament adopted its opinion in first reading on the novel food proposal on 25 March 2009.

However, the inter-institutional debate progressively focused on the issues of animal cloning for food production and of nanotechnology in food.

On cloning, the Commission acknowledged that the novel food Regulation was not the right legal instrument to cover all the aspects of the cloning issue and agreed to present a report to the European Parliament and the Council on all aspects of food produced from animals obtained by using a cloning technique and from their offspring, followed where appropriate by any legislative proposals.

On nanotechnologies, the Commission supported the EP amendment for the inclusion of a definition of "engineered nanomaterials" which is science based and could be later revised to take into account international scientific developments. It also agreed that all food ingredients

containing such nanomaterials would need a pre-market authorisation under the novel food Regulation.

As regards the mandatory labelling of all nano-ingredients, the Commission considered that it should be decided on a case by case basis when authorising the nano-ingredient under novel food Regulation.

13.4.10.3. *Evaluation results*

Priorities

Taking into account the objectives of the Commission's proposal of improving the authorisation procedure of novel foods, and of providing for better conditions for innovation in the food sector, the priority should be to progress toward an agreement for an adoption of the revised legislation on Novel Food.

Planned actions

A report to the European Parliament and the Council on all aspects of food produced from animals obtained by using a cloning technique and from their offspring, followed where appropriate by any legislative proposals, will be prepared.

13.4.10.4. *Sector summary*

The current legislation on novel foods does not allow for an efficient authorization procedure and for stimulating innovation in the food sector.

A Commission proposal currently discussed within the co-decision procedure aims at adapting the legislative framework in these respects. In that context, those discussions gave rise to a debate on the issues of the safety implications and ethical concerns of the use of cloning and nanotechnologies in the food sector.

A report should be prepared by the Commission on cloning.

13.4.11. **Food additives**

13.4.11.1. *Current position*

General introduction

Council Directive 89/107/EEC on the approximation of the laws of the Member States concerning food additives authorised for use in foodstuffs intended for human consumption lays down the general principles for authorisation of food additives in the European Union. This Directive is complemented with the European Parliament and the Council Directives 94/35/EC on sweeteners for use in foodstuffs, 94/36/EC on colours for use in foodstuffs and 95/2/EC on food additives other than colours and sweeteners which lay down the list of authorised food additives and their conditions of use to the exclusion of all others.

A new Regulation (EC) No 1333/2008 on food additives was adopted on 16 December 2008, most provisions of which will apply from 20 January 2010. The Regulation:

- simplifies the food additive legislation by consolidating the provisions of Directives 89/107/EEC, 94/35/EC, 94/36/EC and 95/2/EC;

- confers implementing powers on the Commission to update the EU lists of authorised food additives;

- sets up a re-evaluation programme for all existing food additives;

- establishes a system for a review of all current additives authorisations for their compliance with the principles of the Regulation (EC) No 1333/2008 by 20 January 2011 and transfer of these provisions in the Annex of this Regulation. Until this transfer is completed, the Annexes to Directives 94/35/EC, 94/36/EC and 95/2/EC continue to apply. In addition, powers to adopt implementing measures were conferred to the Commission to amend the annexes to Directives 94/35/EC, 94/36/EC and 95/2/EC until the establishment of the EU list of food additives in the Annex of Regulation (EC) No 1333/2008.

Further simplification of the legal framework is ensured by Regulation (EC) No 1331/2008 which establishes an effective, expedient and transparent common authorisation procedure for food additives, food enzymes and food flavourings.

Commission Directive 2009/163/EU amending Directive 94/35/EC of the European Parliament and Council on sweeteners for use in foodstuffs with regard to neotame was adopted on 22 December 2009.

Legislative Changes Underway

A number of implementing measures under Regulation (EC) No 1333/2008 and Regulation (EC) No 1331/2008 are required. The preparation started on the following measures during 2009:

- Commission Regulation setting up a programme for the re-evaluation of approved food additives, taking into account advice from EFSA.

- Commission Regulation establishing the EU list of food additives approved for use in foods and conditions of use, following a review of all current additives authorisations for their compliance with the principles of the Regulation (EC) No 1333/2008.

- Commission Regulation establishing the EU list of food additives and carriers approved for use in food additives, food enzymes and food flavourings and the EU.

- Commission Regulation laying down specifications of the approved food additives.

- Amendments to Commission Directives 95/2/EC and 94/36/EC, following applications for new additives, applications for the extension of use of already authorised additives, where necessary taking into account the opinions of EFSA.

- Preparation of the implementing measures as laid down in article 9 of Regulation (EC) No 1331/2008, concerning the content, drafting and presentation of an application for use of food additives, the arrangements for checking the validity of such applications and the type of information that must be included in the opinion of EFSA on the risk-assessment of these additives.

13.4.11.2. *Evaluation*

Until these implementing measures are for some time in force, it is not possible to fully appreciate the enforcement of Regulation (EC) No 1331/2008, which should finally result in significant improvement (in particular for food business) due the simplification of the authorisation procedure for food additives.

13.4.12. **Food Flavourings**

13.4.12.1. *Current position*

General introduction

The general framework for food flavourings in the EU was established by Council Directive 88/388/EEC of 22 June 1988 on the approximation of the laws of the Member States relating to flavourings for use in foodstuffs and to source materials for their production. This Directive lays down general requirements for safe use of flavourings in food and provides definitions for different types of flavourings. It also establishes maximum levels for certain substances that are naturally present in flavourings and in food ingredients with flavouring properties, but which may raise concern for human health.

Commission Directive 91/71/EEC of 16 January 1991 completing Council Directive 88/388/EEC sets out labelling rules on flavourings.

It was necessary to update these Directives in the light of technical and scientific developments. Therefore, the Commission proposed on 28 July 2006 a new Regulation on flavourings and certain food ingredients with flavouring properties.

The new Regulation (EC) No 1334/2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods was adopted on 16 December 2008. It repeals Council Directive 88/388/EEC and Commission Directive 91/71/EEC as from 20 January 2011.

Similar to the previous legislation, the Regulation lays down general requirements for safe use of flavourings and provides definitions for different types of flavourings. The Regulation sets out flavourings and source materials for which an evaluation and approval is required. The Regulation prohibits the addition of certain substances as such to food and lays down maximum levels for certain substances, which are naturally present in flavourings and in food ingredients with flavourings properties, but which may raise concern for human health. The Regulation also sets out the rules for labelling of flavourings from business to business and for sale to the final consumers. It also describes the specific requirements for use of the term "natural".

Currently, Regulation (EC) No 2232/96 sets out the basic rules for the use of flavouring substances in or on foodstuffs and lays down a procedure for the establishment of a EU list of flavouring substances. The Regulation will become obsolete after the establishment, foreseen by the end of 2010 at the latest, of the EU list provided for in Regulation (EC) No 1334/2008, when only those flavouring substances listed will be allowed to be added to foods.

The European Parliament and the Council Regulation (EC) No 2065/2003 on smoke flavourings used or intended for use in or on foods establishes an EU procedure for the safety assessment and the authorisation of smoke flavourings in order to ensure a high level of

protection of human health and protection of consumers' interests, as well as to ensure fair trade practices.

In addition, a separate Regulation (EC) No 1331/2008 establishes an effective, expedient and transparent common authorisation procedure for food additives, food enzymes and food flavourings.

13.4.12.2. *Evaluation results*

The EU list on flavouring substances is scheduled to be adopted by end 2010 and will form part of the Regulation (EC) No1334/2008. An implementing measure for guidance on applications for authorisations on flavourings will be elaborated under Regulation (EC) No 1331/2008 by end 2010.

A common methodology for monitoring flavourings will be elaborated under Regulation (EC) No 1334/2008.

The EU list on smoke flavourings will be established in 2nd quarter of 2010 as the EFSA adopted all the opinions on smoke flavourings in the end of November 2009.

13.4.13. **Food Contact Material**

13.4.13.1. *Current position*

General introduction

Regulation (EC) No 1935/2004 of the European Parliament and of the Council on materials and articles intended to come into contact with food (FCM) sets out the basic requirements for a harmonised European market on food contact materials, while ensuring a high level of protection of human health. This legal act empowers the Commission to set material specific rules in specific legislation.

Specific legislation exists for ceramic materials, regenerated cellulose film, plastic food contact materials and recycled plastics.

Work done in 2009

In 2009 specific legislation was adopted for active and intelligent materials and articles to be used in contact with food. These are materials and articles that can interact with the food by absorbing or releasing substances or that monitor the conditions of the packaged food. Commission Regulation (EC) No 450/2009 sets down additional requirements for these materials and articles to the ones already contained in Regulation (EC) No 1935/2004 in order to ensure their safety. These additional requirements are for example a list of authorised substances and specific labelling requirements.

In February 2009, a number of Member States detected the presence of a chemical, 4-Methylbenzophenone, in certain food products. The substance migrated from the printed cardboard package into the food. Paper and inks for use in contact with food are not yet harmonised at EU level. Therefore, the Commission immediately coordinated the actions of Member States in order to respond efficiently to the crisis. An urgent Standing Committee meeting was called and a common strategy was agreed by Member States. The European

Food Safety Authority was consulted and their opinion supported scientifically the conclusions reached by the Standing Committee.

13.4.13.2. *Evaluation*

Harmonisation of legislation for plastic food contact materials started in 1980 and led to a series of 13 Directives setting out a list of authorised substances, limits for the substances in food and testing regimes. Simplification and rationalisation of this legislation dispersed over several Directives will be achieved by the adoption of a Commission Regulation, foreseen in 2010. This Regulation will speed up authorisation of new substances and simplify rules on migration testing.

While the harmonisation of legislation on plastic food contact materials at EU level is nearly complete, only the basic principles are set out for other materials such as paper and board, printing inks, adhesives. In 2010 it will be analysed how and to what extent harmonisation at EU level of other materials could be possible.

13.4.13.3. *Evaluation results*

In the future a system tackling non-yet-harmonised materials will need to be developed. This system will have to avoid overregulation of the sector but at the same time will have to be efficient and able to ensure that the safety of citizens is guaranteed.

13.4.14. **Plant Protection Products – Pesticide Residues**

13.4.14.1. *Current situation*

The yield of agricultural and horticultural crops can be severely reduced as a result of infestation by pests and diseases. In order to protect crops before and after harvest, plant protection products (or pesticides) are used. Such pesticides could have severe undesirable effects if they are not strictly regulated.

The legislation in this area regulates the placing on the market and use of plant protection products (Directive 91/414/EEC and Regulation (EC) No 1107/2009) and the maximum residue levels (MRLs) of pesticides that can be found in or on food and feed (Regulation (EC) No 396/2005).

The evaluation, marketing and use of plant protection products in the EU are regulated under Council Directive 91/414/EEC. This Directive lays out a comprehensive risk assessment and authorisation procedure for active substances and products containing these substances. Each active substance has to be proven safe in terms of human health, including residues in the food chain, animal health and the environment, in order to be allowed to be marketed. It is the responsibility of industry to provide the data showing that a substance can be used safely with respect to human health and the environment.

The rules for the placing on the market and use of plant protection products provide that persons or companies, wishing to secure the inclusion of active substances in the positive list of Annex I of Directive 91/414/EEC, submit by a certain date a dossier meeting the requirements of the Directive in order to demonstrate that it may be expected that plant protection products containing those active substances are sufficiently safe for human or animal health or for the environment.

In 2009 the Commission finalised a program reviewing the active substances already on the market at the moment that the Directive became applicable. Certain producers of active substances, had challenged before the Court of Justice Commission decisions not including active substances on the positive list of Annex I of Directive 91/414/EEC or the conditions provided for in that Annex by invoking errors during the assessment of the substances or with regard to legal flaws during the decision making. In 2009 the Court dismissed 4 such cases519.

Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market, was published on 24 November 2009 and is based on a Commission proposal of July 2006 and which was subject to detailed discussions in Council and European Parliament.

This Regulation will enter into force in June 2011 and will repeal Council Directive 91/414/EEC, which is the current legislative framework for the placing on the market of plant protection products. Like Directive 91/414/EEC, Regulation (EC) No 1107/2009 provides for a system for approval of active substances at EU-level and authorisation by Member States of plant protection products containing approved substances. It ensures a high level of protection of both human and animal health and the environment by setting strict and clear approval criteria for active substances, safeness and synergists in plant protection products, which increase the level of safety particularly for consumers, farmers and the environment. The Regulation provides also for comparative assessment of products containing substances which are identified at EU level as candidates for substitution leading to substitution by safer alternatives. At the same time it intends to safeguard competitiveness of EU agriculture and industry by setting a more streamlined assessment procedure, improved rules on monitoring and control and new rules on data protection. A system of obligatory mutual recognition in 3 agro-climatic zones will ensure a more harmonised availability of plant protection products.

As regards Regulation (EC) No 396/2005, in 2009 the Commission adopted three Regulations to set several new maximum residue levels (MRLs) for following the evaluation of new MRLs applications by manufacturers as well as third countries. On 16 November 2009 the Commission also adopted the Regulation (EC) No 1097/2009 to reduce the permitted MRLs of eleven pesticide active substances because of safety concerns. New information on toxicology, consumer exposure and the expected pesticide residues indicated that the existing MRLs for these substances might no longer be safe for all EU consumer groups. In addition, in November 2009, following repeated findings of high levels of the pesticide amitraz in pears from Turkey, the Commission took emergency measures imposing controls on at least 10% consignments at import of Turkish pears. These measures were laid down in Commission Decision 2009/835/EC, which provided also for a possible review of the degree of control on the basis of the results that had to be reported by Member States to the Commission on a 2-week basis. The results received in 2009 suggested that the Turkish authorities took measures on their side and suspended or reduced export of pears to the EU. Although there was no need

519 Case T- 326/07 - Cheminova v. Commission – judgment of 3.9.2009

Case T- 420/05 - Vischim v. Commision – judgment of 7.10.2009

Case T- 380/06 - Vischim v. Commision – judgment of 7.10.2009

Case T- 334/07 - Denka v. Commission - judgment of 19.11.2009

to readjust the degree of control, the provision to check for amitraz in 10% of consignments will remain in place also for 2010.

13.4.14.2. *Legislative Changes Underway*

In 2010 the Commission's activity in this area will be mainly aimed at the implementation of Regulation (EC) No 1107/2009. In parallel, the activity under Directive 91/414/EEC will also continue, with a special focus on the dossiers submitted by several manufacturers under Regulation (EC) No 33/2008. This Regulation lays down rules concerning the re-submission of dossiers regarding substances previously not included in the positive list of Directive 91/414/EEC (Annex I). In the course of 2009 more than 70 dossiers were submitted by industry, for which the evaluation shall be finalised in 2010.

13.4.14.3. *Evaluation*

Although this policy area is characterised by complex technical issues the enforcement of the legislation seems to be adequate. Only few complaints on the bad application by the Member States of Directive 91/414/EEC have been received. One infringement has been referred to the Court (Case C-363/09 concerning incorrect transposition by Spain of provisions concerning data protection) on 11.9.2009.

13.4.15. **Contaminants in food**

13.4.15.1. *Current position*

General introduction

The EU harmonisation of legislation on contaminants in food fulfils two essential objectives: the protection of public health and the removal of internal barriers to trade.

Council Regulation (EEC) No 315/93 of 8 February 1993, laying down community procedures for contaminants in food, is the framework for the EU action on contaminants.

The Regulation provides that:

- Food containing a contaminant in an amount which is unacceptable from the public health viewpoint shall not be placed on the market;
- Contaminant levels shall be kept as low as can reasonably be achieved by following good practices at all stages of the production chain;
- In order to protect public health, maximum levels for specific contaminants shall be established where necessary (by comitology); and
- The consultation of EFSA for all provisions which may have an effect upon public health is mandatory.

Based on this framework Regulation, maximum levels for the following specific contaminants in foodstuffs have been established by Commission Regulation (EC) No 1881/2006 of 19 December 2006:

- Nitrate;

- Aflatoxins, ochratoxin A, Fusarium-toxins, and patulin (mycotoxins);
- Lead, cadmium, mercury (heavy metals);
- Dioxins and PCBs;
- 3-MCPD;
- Inorganic tin;
- Benzo(a)pyrene (as marker substance for the group of PAH).

In addition, several Regulations have been adopted containing provisions as regards the sampling and methods of analysis to be used for official control of the compliance with the maximum levels established on contaminants, in order to ensure a harmonised enforcement approach:

- Commission Regulation (EC) No 1882/2006 of 19 December 2006 laying down methods of sampling and analysis for the official control of the levels of nitrates in certain foodstuffs;
- Commission Regulation (EC) No 1883/2006 of 19 December 2006 laying down methods of sampling and analysis for the official control of the levels of dioxins and dioxin-like PCBs in certain foodstuffs;
- Commission Regulation (EC) No 401/2006 of 23 February 2006 laying down methods of sampling and analysis for the official control of the levels of mycotoxins in foodstuffs;
- Commission Regulation (EC) No 333/2007 of 28 March 2007 laying down methods of sampling and analysis for the official control of the levels of lead, cadmium, mercury, inorganic tin, 3-MCPD and benzo(a)pyrene in foodstuffs.

Work done in 2009

In response to frequent findings of high levels of aflatoxins in some products originating from some third countries, specific measures have been introduced by Commission Regulation (EC) No 1152/2009 of 27 November 2009 imposing special conditions governing the import of certain foodstuffs from certain third countries due to contamination risk by aflatoxins and repealing Decision 2006/504/EC520 imposing special conditions on the import of pistachios from Iran, peanuts from Egypt and China, hazelnuts, dried figs and pistachios from Turkey, Brazil nuts in shell and peanuts from Brazil and almonds from the United States. The Regulation (EC) No 1152/2009 provides for a strengthening of the import procedure compared to Commission Decision 2006/504/EC.

Furthermore, other safeguard measures taken in 2008 have been updated in 2009 to take into account the control results at import and/or the outcome of an inspection of the Food and Veterinary Office (FVO).

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520 OJ L 313, 28.11. 2009, p. 40

- Commission Regulation (EC) 1151/2009 of 27 November 2009 imposing special conditions governing the import of sunflower oil originating in or consigned from Ukraine due to contamination risks by mineral oil and repealing Decision 2008/433/EC521; and

- Commission Regulation (EC) No 1135/2009 of 25 November 2009 imposing special conditions governing the import of certain products originating in or consigned from China, and repealing Commission Decision 2008/798/EC522.

Discussions on an update of the provisions of Commission Decision 2008/352/EC of 29 April 2008 imposes special conditions governing guar gum originating in or consigned from India due to contamination risks of those products by pentachlorophenol and dioxins have been finalised but adoption and entry in force of these new provisions is foreseen for early 2010.

13.4.15.2. *Legislative Changes Underway*

Initiatives for possible changes to the contaminant legislation include the development of proposals to limit the presence in food of other contaminants (T-2 toxin, HT-2 toxin and PCBs) and to review some existing provisions (heavy metals, polycyclic aromatic hydrocarbons (PAHs) and dioxins).

Discussion on the review of the existing provisions as regards aflatoxins and ochratoxin A have been finalised in 2009, but adoption and entry in force of these new provisions is foreseen for early 2010.

The presence of acrylamide in food is under continual close scrutiny, pending availability of further scientific information and new monitoring.

Data is being collected on a number of other contaminants, such as brominated flame retardants (polybrominated diphenyl ethers (PBDE's)…), acrylamide, furan, perfluorooctane sulfonates/acids (PFOS/A).

In the contaminants area new and emerging risks are difficult to predict, but require continuous attention to protect public health.

13.4.15.3. Evaluation

Much attention is paid to the effective and uniform enforcement of the legislation on contaminants and of related safeguard measures. Consideration is given to enforcement issues from the very first stages of the discussions on new measures, in order to ensure optimal uniform enforcement across the EU.

Enforcement issues are discussed in the Standing Committee on the Food Chain and Animal Health and in relevant expert groups thereof. These discussions result in some cases in guidance documents for the control of the legislation, publicly available and published on DG "Health and Consumer" web pages:

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521 OJ L 313, 28.11.2009, p. 36

522 OJ L 311, 26.11.2009, p. 3

- Guidance document for competent authorities for the control of compliance with EU legislation on aflatoxins523;

- Guidelines for the enforcement of provisions on dioxins in the event of non-compliance with the maximum levels for dioxins in food524;

- Guidance on sampling of whole fishes of different size and/or weight525;

- Report on the relationship between analytical results, measurement uncertainty, recovery factors and the provisions of EU food and feed legislation, with particular reference to the contaminants legislation526.

13.4.16. **Zoonoses and antimicrobial resistance**

13.4.16.1. *Current position*

General introduction

Zoonoses are diseases and infections that can be transmitted from animals to humans, directly or, in particular, through food (e.g. Salmonella in eggs) The monitoring of zoonoses along the entire food chain and in humans is necessary to assess related risks. Zoonoses, in particular at the level of primary production, must be adequately controlled.

The main pieces of legislation relating to zoonoses are:

- Directive 2003/99/EC of the European Parliament and of the Council on the monitoring of zoonoses and zoonotic agents, amending Council Decision 90/424/EEC and repealing Council Directive 92/117/EEC527.

- Regulation (EC) No 2160/2003 of the European Parliament and of the Council on the control of salmonella and other specified food-borne zoonotic agents528. Implementing provisions include the setting of targets for the reduction of *Salmonella* in flocks of poultry

523 http://ec.europa.eu/food/food/chemicalsafety/contaminants/aflatoxin_guidance0309_en.pdf;

524 http://ec.europa.eu/food/food/chemicalsafety/contaminants/guidelines-july_2004_en.pdf;

525 http://ec.europa.eu/food/food/chemicalsafety/contaminants/guidance-sampling%20-whole-fish-with%20exemples- dec2006.pdf

526 http://ec.europa.eu/food/food/chemicalsafety/contaminants/report-sampling_analysis_2004_en.pdf

527 OJ L 325, 12.12.2003, p. 31.

528 OJ L 325, 12.12.2003, p. 1.

and approval of *Salmonella* control programmes in third countries needed to continue the import of live poultry and eggs.

Reports have been published by EFSA and the European Centre for Disease Prevention and Control (ECDC) on the increasing risk of antimicrobial resistance (AMR) in zoonotic agents, jeopardizing the treatment of these infections in humans.

Report of work done in 2009

After the end of a transitional period, a definitive target for the reduction of *Salmonella* in flocks of breeding hens has been agreed on529.

Control programmes in flocks of breeding turkey submitted by third countries have been evaluated, approved530 or rejected.

A staff working paper of the services of the Commission was adopted. The purpose of the paper is to serve as a basis of discussion and further reflections on the ways to tackle the growing public and animal health problem of AMR. The working paper provides an overview of the activities already undertaken of the EU in combating the AMR in the past decades. The paper collects the activities related to AMR in the areas of public health, zoonoses control, animal health and welfare. It covers among others monitoring, risk assessment, risk management and research on AMR. It also identifies areas where further actions, like improvement of surveillance systems in human medicine and ensuring the prudent use of antimicrobials in animal husbandry, may need to be reflected.

At the request of the Commission, ECDC, EFSA, the European Medicines Agency (EMEA) and the European Commission's Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR) have published a joint scientific opinion on AMR focused on infections transmitted to humans from animals and food.

13.4.16.2. Evaluation based on the current situation

The monitoring of zoonoses need to be reconsidered continuously in order to better assess the spread of emerging risks such as methicilin resistant *Staphylococcus aureus* (MRSA) and Q-fever and to further harmonise monitoring and reporting. The need for further harmonisation arises from difficulties to use current data in a comparable way between Member States or for risk assessment.

The step-by-step transition from targets set for a transitional period on the reduction of *Salmonella* in flocks of poultry to definitive targets, are useful occasions to improve the legal provisions on minimum requirements for control programmes based on the experience gained.

Evaluation of the staff working paper on AMR and its suggested initiatives will happen when an ongoing consultation is finalised.

529 SANCO/5971/2009

530 SANCO/5541/2009

13.4.16.3. *Evaluation results*

Priorities

Priority is given to consultation and reflections on the need for further initiatives in the area of AMR in zoonotic agents.

Planned actions

- Consultation of all relevant parties on the staff working document of the services of the commission on AMR. It might result in additional request for risk assessment, improved monitoring or the consideration of additional measures.
- Setting of a definitive target for the reduction of *Salmonella* in flocks of laying hens, including improving current provisions based on the experience gained.
- Reconsideration of monitoring activities (harmonisation, introduction of emerging agents).

13.4.17. **Transmissible Spongiform Encephalopathies**

13.4.17.1. *Current position*

General introduction

Regulation (EC) No 999/2001531 of the European Parliament and of the Council lays down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (TSEs).

The EU has made great strides in its battle against bovine spongiform encephalopathy (BSE). The consistent decline in the number of BSE/TSE incidents bears witness to the effectiveness of strong, comprehensive EU measures put in place to combat this disease. The Commission has at no point stopped monitoring or reacting to the challenge of BSE. As a result, consumers' confidence has increased.

In the light of the reduction of BSE cases, new developments in science, and in accordance with the TSE Roadmap adopted by the Commission on 15 July 2005532, new measures have been adopted to target surveillance and eradication schemes better, revise the list of specified risk materials and set import rules linked to the BSE risk status of countries.

In light of this positive trend, and new developments in science and technology, the TSE Roadmap considers possible amendments to certain BSE measures currently in place while still making food safety and consumer protection the highest priority. Any adaptations made to the BSE measures, however, will not affect in any way the fundamental objectives of TSE eradication and the protection of the EU citizens. These have always been and will continue to be the main considerations of EU policy making in this area.

Report of the work done in 2009

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531 OJ L 147, 31.5.2001, p. 1

532 Com(2005)322 final

In 2009 following measures were adopted for updating the TSE legislation:

Commission Regulation (EC) No 103/2009 of 3 February 2009 amending Annexes VII and IX to Regulation (EC) No 999/2001 introduced specific eradication measures for ovine and caprine animals.

Commission Regulation (EC) No 162/2009 of 26 February 2009 amending Annexes III and X to Regulation (EC) No 999/2001 modified certain approved laboratory methods for the diagnostic of TSEs.

Commission Regulation (EC) No 163/2009 of 26 February 2009 amending Annex IV to Regulation (EC) No 999/2001 amended certain feed ban provisions.

13.4.17.2. *Evaluation based on the current situation*

In relation to the legislation applicable to TSE, priority is being given to the review of the provisions related to the total feed ban and eradication measures in small ruminants on the basis of evolving science and supported by a favourable epidemiological situation and trend. Efforts will focus on the need to adjust existing measures to new scientific findings and thus to risk.

13.4.17.3. *Evaluation results*

Priorities

The majority of short and medium term actions envisaged in the TSE Roadmap have been achieved. The goal for the coming years is to continue the review of the TSE measures based on science, while maintaining the current high level of food safety. It is the intention to propose to the European Parliament and Member States a TSE Road Map II, covering the next five years. It will be a reflection paper for future amendments of the legislation. The tentative timing to present the Road map is May-June 2010.

Planned actions

- The goal for the coming years is to continue the review of the TSE measures while maintaining and assuring the high level of food safety. For this purpose, a TSE Roadmap II covering the period 2010-2015 is being prepared. Any amendments to the TSE rules are and will be supported by a solid scientific basis.

- One of the points covered will be a revision of the current feed ban provisions which should be risk-based but at the same time taking into account the control tools to differentiate between ruminant and non-ruminant proteins. The future amendment would only target the use of non-ruminant proteins into feed but taking into account the prohibition on intra-species recycling (cannibalism) e.g. only chicken MBM can be given to pigs and vice versa. There is however no intention to re-authorise the use of ruminant proteins into feed.

13.4.18. **Animal Health – Non Zoonotic Diseases**

13.4.18.1. *Current position*

General introduction

Animal health is an important factor for a functioning agriculture and the safe supply of food. It has been part of the EU acquis from the very beginning of the EU and legislation in force dates back to the 1960s.

Animal health legislation has been adapted over the years, in order to accommodate new diseases such as BSE or changes in the spread of existing diseases such as avian influenza or bluetongue. Outbreaks of e.g. classical swine fever and foot and mouth disease have triggered adoption of specific legislation.

The result is a body of law of over 60 acts (mostly Directives) laying down horizontal and vertical principles for intra-community trade, imports of animals and their products, health and movement controls (veterinary checks), the notification of diseases and financial support.

Formal complaint cases in this area are few. Most refer to isolated cases of alleged incorrect implementation at local level which usually cannot be solved by the EU institutions but have to be dealt with in national courts.

Nevertheless, requests for interpretation and the difficulties arising from the complexities and inconsistencies have shown that this framework does not fully comply with more modern requirements for simplicity, transparency and flexibility. Thus on 19 September 2007 the Commission presented its plans to improve the situation through a New Animal Health Strategy533. This triggered a broad consultation involving stakeholders, trade partners and institutions. As a result, a Communication on an Animal Health Action Plan534 was published, listing all actions considered necessary for a new approach on animal health until 2013. The most important action is the work preparing a proposal on a new animal health law.

Against this background the challenge to address acute animal health concerns effectively remains. Animal health is under consistent threat of outbreaks within the EU, in neighbouring countries or on the territory of trade partners.

Diseases such as classical swine fever and foot and mouth disease, which cause heavy economic losses, are constantly at our gates. Modified agricultural practices increase the importance of fish diseases and tuberculoses. Changes in the environment especially in the climate foster the spread of bluetongue.

While the Highly Pathogenic Avian Influenza H5N1 virus has not posed to the EU a major threat in 2009, the emergence of the new human pandemic (H1N1) 2009 influenza virus which contains genes of human, avian and pig origin, further underlined the importance of international coordination and integrated efforts of human and animal health professionals to fight similar threats.

Work done in 2009

In 2009 the Commission has pursued the actions to implement the Animal Health Action Plan mentioned above.

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533 COM(2007)539final.

534 COM(2008)545final.

Serious disease outbreaks can have devastating impacts on farmers, society and the economy, the new strategy is based on the principle that "prevention is better than cure" and thus puts greater focus on precautionary measures, disease surveillance, controls and research. The aim is to reduce the incidence of animal disease and minimise the impact of outbreaks when they do occur.

One part of this approach is the review of the existing animal health legislation while creating an overarching EU Animal Health Law. It will in particular provide the principle rules for some fundamental issues, such as responsibilities of animal keepers, business operators, competent veterinary authorities, as well as concerning disease prevention and protection from biological threats (biosecurity). It will clarify the links between animal health policy and other relevant EU policies and thus insure coherence. The new law will embrace the principles of smart legislation by providing flexibility to adapt to new circumstances and to take account of new developments in science, relevant technology and animal husbandry.

Preparatory work has been ongoing in 2009 for a proposal and Impact Assessment of this Law. The above key issues have been discussed at several occasions and in various fora (such as the Animal Health Advisory Committee). A web-based public consultation was open from mid-October to end of December 2009. It generated over 150 replies from stakeholders across the board and the EU, among them national veterinary authorities, industry organisations at all levels, non-government organisations and business operators.

The movement of pet and companion animals (such as dogs and cats) is of practical importance to citizens. The application of the Regulation on the intra-EU movement of pets535 continued to be problematic due to the different regimes applicable to certain Member States, related to disease status and traditions. In 2009 the Commission proposed to finally fully harmonise the regime in the whole EU, after a limited (1,5 year) prolongation of the special regime, to facilitate the transition.

Work was also ongoing on the area of electronic identification of ovine and caprine animals. In preparation of the application of the new rules applicable as from 1 January 2010, that were established by the Council with the support of the European Parliament at the end of 2007, the Commission has addressed this issue at several fora and regularly required reports from Member States on their efforts to correctly implement the rules. Last but not least, in 2009 the Commission has made full use of its regulatory powers and adopted legislation to further cushion the transition from the old to the new regime and reduce administrative burden for operators.

Due to fundamental changes in the regulatory framework in this area, all the provisions of Council Decision 79/542/EEC regulating certain aspects of import of fresh red meat into the EU will be laid down in a Commission Regulation which the Commission is expected to adopt soon. From the moment that that Regulation will enter into force, the Commission will for the sake of clarity and transparency propose the repeal of Decision 79/542/EEC.

Disease situation

Successful disease control not only relies on an adequate legal framework but also on its consequent implementation. In 2009 Member States again have responded to outbreaks, in

535 Regulation (EC) No 998/2003

particular, of avian influenza, in a swift and successful manner, by applying the provisions of Council Directive 2005/94/EC on the control of avian influenza. None of the outbreaks had an impact on public health or major economic losses. In fact the Commission and the Member States are now in a better position than ever to base their decisions on solid data, as implementing measures by Comitology under to the Directive keep providing reliable data from obligatory surveillance.

The control of the spread of bluetongue has been successful. During 2009 the vaccination campaign has continued and proven very effective. This contributed to the significant drop of outbreaks, from several tens of thousands of outbreaks observed in 2007-2008, just to a few hundred.

Nevertheless, bluetongue is a complex disease to manage because it is transmitted by insects (vector borne) and has 24 different (known) serotypes which behave differently, depending on the host, the vector involved, the geographical areas, weather conditions and other factors. Also, currently the legal environment (although effective) is less than optimal for several reasons.

The bluetongue situation in the EU has evolved considerably since the year 2000 when the basic Directive was adopted. Not all facts/assumptions factored into the Directive have proven to be valid and because of this, the current EU policy appears not (fully) sustainable and is not (fully) supported by many stakeholders. Implementing rules on movements from restricted zones are also complex and needed to be adjusted quite often due to the complex behaviour of the disease.. This makes them rather difficult to apply for local farmers, traders, local and national veterinary services and other stakeholders.

Therefore in 2009 a Discussion paper was produced which reviews critically the developments of the last years and outlines the principles for the establishment of an enhanced, harmonised, sustainable and effective bluetongue policy with appropriate control measures to reduce direct and indirect economic losses caused by bluetongue.

13.4.18.2. *Evaluation*

Considering the above, while the animal health framework for handling various disease generally is adequate and effective (as shown above). It can however be improved by smarter and more efficient solutions. Hence the area is currently in a phase of reform with the purpose to identify opportunities of further enhancing efficiency and reduce unnecessary burden.

In addition to the discussions on the general framework, the specific reflection on bluetongue will continue in 2010 and might lead to new EU rules on this area in the next years. The key elements for this exercise are simplification and proportionality/ sustainability.

So far, strategic discussions of the EU policy for bluetongue have been deeply influenced by the assumptions on feasibility of eradication. In the light of the disease evolution since 2000 and the more recent evolution in 2006-2009 it is highly questionable that eradication is feasible throughout the EU considering the bluetongue serotypes which continue to circulate and taking into account the constant threat from neighbouring countries.

Future rules based on the few principles of simplified movement restriction and vaccination accompanied by basic surveillance should ensure proportionality and feasibility.

13.4.18.3. *Evaluation results*

Priorities

The combat of disease outbreak is the first priority dictated by the circumstances. The second priority remains the further development of the Animal Health Strategy as a long term goal.

Planned action

In 2010 work will continue on the creation of the Animal Health Law with the view that the final proposal could be adopted by early 2011. The Commission will also continue a fundamental reflection process on effective measures to combat bluetongue within the EU.

Preparatory work has already started on the important area, how the EU finances certain animal health measures (whether emergency measures or planned and systematic eradication of diseases). This will also continue well into 2010 and 2011 and should result latest in 2012 in an impact assessment and proposal for the review of Decision 2009/470/EC, the financial instrument for EU veterinary expenditure.

On the area of pet animals, developments of 2009 both in the EP and Council seem to indicate that despite previous political difficulties, compromise can be reached on the timetable envisaged by the proposal. At the same time however agreement with the EP and Council must be reached also in relation to the new changes introduced by the Lisbon Treaty to the exercise of delegated and implementing powers by the Commission. Therefore, this challenge continues well into 2010.

13.4.18.4. *Summary of Sector*

This sector with a long common regulatory tradition faces major overhaul. The goal is to consolidate a long term and largely successful and profound collaboration in a more modern system by integrating tried and tested methods within an improved framework. The challenge to swiftly and effectively react to epidemics will remain.

13.4.19. **Zootechnics**

13.4.19.1. *Current position*

Zootechnical legislation is closely linked with the Animal Health acquis as it establishes minimum genetic criteria to ensure free trade in breeding animals and their genetic material (semen, embryos). The current system of EU zootechnical legislation has been established in the 1980s in order to abandon trade barriers. The result is a body of law of over 30 pieces of legislation (6 basic Directives and their implementing acts) laying down principles on the registration of breeding animals in herd books and the work of breeding organisations.

13.4.19.2. *Work done in 2009*

The results of the above are being considered by the Commission with a view to proposing legislation simplifying and clarifying existing procedures for the recognition and supervision of breeding organisations. A series of consultations has taken place with stakeholders and Member States in the framework of the Standing Committee on Zootechnics. Advice was given to the Member States on the implementation of the legislation.

13.4.19.3. *Evaluation*

The present system has generally worked well. However, it has been recognised that there is scope to clarify the legislation and to adapt it to structural changes in the breeding sector. About 10 complaints are pending in this area. Most refer to specific cases of alleged incorrect implementation at national level.

The main problems identified with the current legislative framework are the following:

- The current legislation does not specifically address cross border activities of approved breeding organisations. Breeding organisations are increasingly serving breeders in several Member States and breeding programmes are carried out at international level.

- Due to lack of clarity of the legislation there are disparities in the application and the implementation of zootechnical legislation. That can cause unjustified obstacles to EU trade and threaten the uniform application of EU law.

13.4.19.4. *Evaluation results*

Priorities

Supporting Member States in the implementation of the legislation is the first priority. The second priority will be to amend implementing measures with view to clarification and simplification.

Planned action 2010 and beyond

It is foreseen to continue the actions in managing the acquis and enforcing the acquis (complaints and infringement work) as well as updating existing legislation.

13.4.20. **Animal by-products**

13.4.20.1. *Current Situation*

General introduction

Animal by-products not intended for human consumption include slaughterhouse waste, fallen stock and dairy products going to animal feed, as well as a variety of other products for different applications. The health rules for those animal by-products are currently laid down in Regulation (EC) No 1774/2002 and a number of implementing measures. The Regulation relies on a risk-based categorisation of animal by-products, which determines the options for their use and obligations for their disposal. Experience with the application of the Regulation since 2003 revealed that the interaction with other EU legislation, its risk-benefit ratio, and the proportionality of the prescribed measures in particular as regards their use for technical applications, posed problems and needed to be reviewed. Therefore, the Commission adopted a proposal for a revised animal by-products Regulation in 2008536. The European Parliament and the Council started their discussions on this proposal in the second half of 2008. Currently 8 complaint cases concerning animal by-products are open. These were either triggered by

536 COM(2008)345final.

unsatisfactory results of inspection by the FVO (see under point 4.3) or complaints of stakeholders that considered their products not adequately classified.

Report on Work Done in 2009

Through a close cooperation with the European Parliament and with the French and Czech Presidencies of the Council, the Commission was able to contribute to an early agreement on the revised Animal by-products Regulation (EC) No 1069/2009537, which was adopted in October 2009 and will become applicable on 4 March 2011. The Commission also started its preparations for implementing measures for that Regulation, which only lays down the general principles that are applicable to animal by-products.

13.4.20.2. *Evaluation*

The new Regulation (EC) No 1069/2009 provides for clearer, more risk-proportionate rules for animal by-products. It clarifies the relationship between veterinary rules on animal by-products and environmental rules, as well as with food safety legislation. Thus, it contributes to the overall objective of the Commission to simplify Union law. Experience with the current legislation on animal by-products suggests that stakeholders will benefit from the wider options to use animal by-products for technical purposes and from the reduction in administrative burden from the revised Regulation.

13.4.20.3. *Evaluation results*

Planned Action

The Commission will carry out further, wide consultations of all stakeholders for the purposes of the preparation of the implementing measures for Regulation (EC) No 1069/2009. Once the shape of the new rules is clear, the organisation of training courses, in particular, under the "Better Training for Safer Food" initiative, will be organised in order to contribute to a smooth transition to the new framework.

13.4.20.4. *Summary of Sector*

Significant achievements marked 2009. The challenge now is to finalise the legislative work and to assist the players in the sector (both the authorities of the Member States and the economic operators) to learn, understand, correctly implement and enforce the new rules and benefit from those maximally.

13.4.21. **Feed**

13.4.21.1. *Current Situation*

General introduction

New rules for the *feed marketing and feed labelling* sector have been adopted through Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009,

537 OJ L 300, 14.11.2009, p.1.

which will apply as from the 1st of September 2010. Until that date of application, the following Directives still apply:

- Directive 79/373/EEC with the rules for the circulation of compound feeding stuffs in the EU (e.g. labelling requirements). It also covers pet food;
- Directive 93/74/EEC which contains the principle rules for feeding stuffs intended for particular nutritional purposes ("dietetic feeds");
- Directive 96/25/EC on general rules for the circulation and use of feed materials; and
- Directive 82/471/EEC concerning the marketing conditions for certain products, belonging to the category feed materials, used in animal nutrition ("bio-proteins").

Council Directive 90/167/EEC still apply to *medicated feed* but new legislation is in preparation (see below).

As regards the *feed additives* sector, Regulation (EC) No 1831/2003 of the European Parliament and of the Council provides for the rules on the authorisation for placing on the market and use, including labelling, of these products. Detailed rules for the preparation and presentation of applications for authorisation are laid down in Commission Regulation (EC) No 429/2008, while the Community Reference Laboratory (CRL)'s duties and tasks are developed in Commission Regulation (EC) No 378/2005.

Undesirable substances in feed are governed by Council and European Parliament Directive 2002/32/EC.

Report of work done in 2009

Feed marketing and labelling

New Regulation (EC) No 767/2009 on the placing on the market and use of feed was adopted by the EP and the Council on 13 July 2009 (OJ L 229 of 1.9.2009, p. 1). This Regulation, which contributes to the Commission's "Better Regulation" plan, replaces old Directives 79/373/EEC, 96/25/EC, 82/471/EEC and 93/74/EEC in order to simplify and modernise the regime applicable to the marketing and use, including labelling, of feed, both for farm animals and pets. The Regulation, which will apply from 1 September 2010, brings legal clarity and will allow harmonised implementation and smooth functioning of the internal market in the feed sector. It aims at increasing the competitiveness of the EU feed and farming sector, but also providing adequate information for users and consumers, while assuring the high level of feed safety and thus of protection of public health in the EU.

As soon as Regulation (EC) No 767/2009 entered into force in September 2009, the preparation of the necessary implementing measures could start, including:

- the establishment of the Community Catalogue of feed materials;
- the definition of guidelines to clarify borderlines between different types of feed;
- the update of the list of prohibited materials in feed;

- the granting to operators of transitional measures for the application of the new labelling rules.

Medicated feed

Council Directive 90/167/EEC on medicated feed is outdated and not consistent anymore with current legislation both on feed and veterinary medicinal products. The preparatory works for recasting and modernising the legislation for this specific type of products have started in 2009, including:

- the completion of a questionnaire by the Member States on the current national situation in this sector;

- the launch and conclusion of an external study on the evaluation of the EU legislative framework in the field of medicated feed.

Feed additives

In 2009, more than 30 authorisation Regulations were adopted by the Commission (mostly zootechnical additives) after completion of a procedure involving EFSA, the CRL and the Member States, and applicants' requests of confidentiality of the data submitted have been processed by the Commission.

The preparatory works for the re-evaluation of current additives authorisations, as provided for in Regulation (EC) No 1831/2003, have been carried out in collaboration with EFSA and the CRL, including a priority-setting exercise, in view of the large amount of applications to be received by November 2010.

Undesirable substances in feed

In 2009, maximum levels of certain contaminants in feed have been set or reviewed in the context of Directive 2002/32/EC, taking account of EFSA risk assessments. In particular, the Commission took measures in order to tackle the situation resulting from the unavoidable carry-over of coccidiostats, a category of additives, in feed and food that should not contain such substances (Commission Directive 2009/8/EC and Commission Regulation EC No 124/2009).

Committee and expert groups

The management of the above mentioned feed sectors is subject to close co-operation with the Member States through regular (generally monthly) meetings of the Standing Committee on the Food Chain and Animal Health, section on Animal Nutrition, and punctual expert groups meetings where appropriate.

International issues

In 2009, the Commission continued its participation to task forces' works in OIE, CODEX and FAO in the feed sector.

13.4.21.2. *Evaluation based on the current situation*

The adoption in 2009 of a Regulation (Regulation (EC) No 767/2009) replacing a series of old Directives concerning the *marketing and labelling of feed* was very much expected, in order to remedy to difficulties due to a lack of uniform application in the Member States and to sometimes obsolete provisions. Priority action is now to prepare required implementing measures before the formal entry into application of the Regulation on 1 September 2010.

EU legislation on *medicated feed* is obsolete and no more in line with current legislation on feed, in particular the Feed Hygiene Regulation, but also legislation on veterinary medicines. This makes the preparation of new legislation in this sector a priority action.

In the field of *undesirable substances* in animal feed, the setting of maximum levels of contaminants is decided through successive amendments to the Annex to Directive 2002/32/EC. This complicates the legibility of such measures and makes necessary to integrate and re-structure all amendments into a new tool.

13.4.21.3. *Evaluation results*

Priorities

Given the EU legislation on medicated feed is in need of reform because it is not coherent with the Feed Hygiene Regulation as well as legislation on veterinary medicines, this will be a priority for the next couple of years. A full impact assessment will be carried out in 2010, taking into account the preparatory works already carried out, in order to present possibly by the end of 2010 a Commission proposal recasting and modernising the legislation in this field.

Planned action

As regards the *feed marketing and labelling* sector, it is intended to adopt a series of implementing measures of new Regulation (EC) No 767/2009 in view of its full application on 1 September 2010.

The main challenge in the *feed additives* area will be the optimal implementation of the review exercise of all current authorisations. By the deadline of 8 November 2010, it is expected that around 2000 applications will have been received by the Commission. In addition, requests for authorisation of feed additives submitted to the Commission will continue to be processed within the time-limits prescribed by Regulation (EC) No 1831/2003.

As far as *undesirable substances* in feed are concerned, in addition to the continuous review of maximum levels in the framework of Directive 2002/32/EC, it is envisaged to take measures concerning the presence of pharmaceuticals in feed for non-target animals and to adopt legislation on acceptability criteria for detoxification/decontamination processes in feed. The possibility to consolidate the annexes of Directive 2002/32/EC will also be considered in 2010.

13.4.21.4. *Sector summary*

In summary, the following actions are to be considered as main priorities for 2010 and beyond in the feed sector:

- adoption of implementing measures of Regulation (EC) No 767/2009 on the placing on the market and use of feed;

- launch of impact assessment and preparation of new legislation in the field of medicated feed;

- implementation of the re-evaluation exercise of current feed additives authorisations.

13.4.22. **Animal welfare**

13.4.22.1. *Current Situation*

General introduction

Animals are key to our food supply and human nutrition. Animal welfare concerns have grown in our society and there is a growing insistence on high animal welfare standards. As the world's largest trader (exports plus imports), Europe leads in promoting high levels of animal welfare. The Treaty on the Functioning of the European Union recognises this trend and has made animal welfare a very explicit objective of Union policy. It provides a stronger legal basis for animal welfare and will be explored further by the Commission.

Animal welfare in holdings/on the farm

Council Directive 98/58/EC on the protection of animals kept for farming purposes sets general rules for the protection of animals of all species kept for the production of food, textiles or for other farming purposes. It defines general principles and minimum standards on appropriate feeding, comfort and prevention of unnecessary suffering. More specific rules apply to species raised in intensive systems such as laying hens, calves and pigs. From 30 June 2010, specific rules will also apply to broilers.

Animal welfare during transport

Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations intends to reduce the stress and harm that animals can experience when moved. It sets general principles and introduces standards for vehicles and equipment, and requirements for those dealing with animals in transport. It also provides rules for enforcement of EU rules, such as the use of satellite navigation systems.

Animal welfare during slaughter and killing

Every year nearly 360 million pigs, sheep, goats and cattle, several billion poultry and 25 million fur animals are slaughtered in the Union for the production of meat and textiles. The control of contagious diseases may require the killing of thousands to millions of animals.

The technical requirements of Directive 93/119/EC on the protection of animals at the time of slaughter or killing have become outdated. New technologies, international standards and scientific opinions from the EFSA as well as the need for a level playing field for operators called for the revision of the Directive. On 24 September 2009, Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing was adopted. It will apply from 1 January 2013.

Ban on cat and dog fur

Regulation (EC) No 1523/2007 of 11 December 2007 bans the placing on the market and the import to, or export from, the EU of cat and dog fur, and products containing such fur. The ban applies since 31 December 2008.

Complaints:

- The number of complaints on animal welfare remains relatively high because in recent years, the general public, together with Civil Society, have become more aware of issues related to animal welfare standards. The Commission is often placed in a position of resolving difficult judgement calls involving:

- The fact that a number of welfare requirements are in conflict with some economic interests;

- The fact that animal welfare science is a relatively new area and consequently stakeholders are not aware of the benefits of respecting some provisions of the EU legislation.

Different levels of priority are given to animal welfare in Member States due to the following factors:

- The need for compromise on minimum standards which lead to complaints against Member States applying stricter rules;

- Animal welfare not being high on the political agenda of some Member States.

Moreover agricultural practices or cultural traditions accepted in one Member State upset citizens in other Member States who seek improvement via the EU institutions.

In 2009, most of the complaints were either related to the conditions of transport of animals or to the conditions under which pigs are kept.

13.4.22.2. *Report on Work Done in 2009*

Animal welfare in holdings/on the farm

The Commission followed closely the results of research projects which will have an impact on future welfare legislation. In particular, on 8 and 9 October 2009 in Uppsala, the Commission participated in the presentation of the outcomes of Welfare Quality, an EU funded research project, which developed a series of animal based welfare indicators and a system to enable overall assessment of welfare at farm level. The Commission intends to integrate animal based welfare indicators into future legislation on farm animals.

Additionally, the results of two research projects on pig castration (PIGCAS and ALCASDE) were delivered and will be used as a basis to move forward on this issue in 2010.

The Commission aware of the difficulties of Member States to implement certain requirements of the Directive on the protection of pigs took the initiative to organise a workshop on 17 November 2009 where the main stakeholders and veterinary experts from Member States could exchange information and best practices regarding the provisions of enrichment material and the avoidance of routine tail docking in pig farms. The Commission received strong support from stakeholders to continue this experience.

The Commission monitored closely through FVO inspections the implementation of Directive 1999/74/EC laying down minimum standards for the protection of laying hens and in particular actions taken so far by Member States to phase out battery cages by 1 January 2012.

Animal welfare during transport

The number of complaints and numerous requests for specific amendments reveal that Council Regulation (EC) No 1/2005 on transport of animals is not properly enforced. Based on a study on travelling times and space allowances, an impact assessment on the effects of rules concerning improved requirements on comfort for animals and traceability of animal during transport was published. During the consultation process, stakeholders asked for an update of the scientific data regarding the conditions of transport of animals and for an evaluation of the current application of Regulation (EC) No 1/2005 which is in force since January 2007. The Commission is now working in order to address these issues.

The Commission is convinced that better enforcement of the transport Regulation can be achieved by ensuring a proper network and use of control posts for resting animals transported over long journeys. To this effect, with the financial support from the European Parliament, the Commission engaged in a preparatory action to promote high quality control posts.

Animal welfare during slaughter

On 24 September 2009, Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing was adopted. The new Regulation will improve from 1 January 2013 the conditions for animals when slaughtered or culled. The new Regulation simplifies the existing legislation and aligns it to the food hygiene regulations; it integrates welfare considerations into the design of slaughterhouses and requires the regular monitoring of the efficiency of stunning techniques. The Regulation aims at increasing the responsibility of operators on animal welfare and the level of competence of the staff in slaughterhouses. Several changes are also introduced in order to take into account the technological changes and the new scientific knowledge in this field.

Animal Welfare Labelling and European Network of Reference Centres

The Commission adopted on 28 October 2009 a report in which it outlines a series of options for animal welfare labelling, to facilitate an in-depth political debate with other institutions. The overall goal is to make it easier for consumers to identify and choose welfare friendly products, and thereby give an economic incentive to producers to improve the welfare of animals. The report also presents options for the possible establishment of a European Network of Reference Centres for the protection and welfare of animals. Such a network, modelled on the existing Community Reference Laboratories for animal health, could provide technical support for the development and implementation of animal welfare policies, including regarding certification and labelling. The document, based on an external study and a broad stakeholder consultation, is the Commission's response to the conclusions of the May 2007 Agriculture Council which called for a report that would allow an in-depth debate on animal welfare labelling. Although the report does not endorse any of the options outlined, it identifies those which are considered to be the most feasible today.

Ban on cat and dog fur

The ban entered into application on 31 December 2008. The Commission is monitoring the analytical methods used by Member States to identify the species of fur as well as the system of penalties applicable in case of infringements to the ban.

FVO Inspections Findings

FVO missions found that in a small number of Member States, where enforcement was strong, good implementation of the laying hens Directive had been achieved and progress had been made in phasing out conventional cages. However the majority of Member States are lagging behind on this issue.

In the pig sector only a handful of Member States have made progress in implementing requirements from 2001 and there is a general lack of enforcement of long standing requirements such as provision of enrichment materials and avoidance of routine tail-docking. Concerning the transport of animals, requirements of vehicle for long journeys and controls of journey times are in general not sufficiently dealt with. The conditions of transport of horses for slaughter are still a problematic issue.

Although on farm emergency slaughter has been implemented in a number of Member States, the issue of the transport of injured cows to slaughterhouses continues to be a significant problem in others.

13.4.22.3. *Evaluation*

Animal welfare remains an issue attracting public attention given that ordinary citizens are keenly interested in how livestock is raised and whether the required animal welfare standards are being respected. Member States are our key partners in ensuring implementation of animal welfare legislation. The Member States' role is not only crucial in ensuring transposition of Directives in this area but also in effectively deploying the resources and mechanisms needed to ensure compliance with the EU's animal welfare requirements.

Some resources are devoted to dealing with situations for which we lack powers to regulate. Stray dogs and cats, for instance, do not fall under the scope of the Treaty but yet the Commission devotes considerable resources in replying to citizens complaining about cruelty towards pet animals.

The different relevance and political weight that animal welfare has amongst Member States makes it difficult to set rules that satisfy agriculture, animal welfare organisations and consumers at the same time.

In December 2009, the Commission has mandated an external consultant to perform an evaluation of the EU policy on animal welfare. The evaluation will last one year and the results will contribute to the reflection for possible Union's action on animal welfare. This initiative will ensure consistency within policy initiatives and Article 13 of the Treaty on the Functioning of the European Union.

Priorities

It will remain important to react swiftly and adequately to the concerns of interested stakeholders. The FVO will continue to put an emphasis on establishing data on the compliance of Member States with Union rules on animal welfare in order to detect

shortcomings but also in order to understand more precisely why certain Member States have difficulties to comply with welfare rules.

The Commission will continue to raise awareness on animal welfare by developing further already existing tools such as "Farmland", by pursuing its active participation in the "Better Training for Safer Food" programme and by organising an international conference on education and animal welfare on 1 and 2 October 2010.

13.4.22.4. *Evaluation results*

Planned Actions

A number of actions which have been initiated in the previous years will be maintained and expanded.

Regarding farmed animals, the Commission will continue to examine the best way to address the concerns on their welfare in a more general approach. The work of the Commission will be based on the principles highlighted in the Community Action Plan on Animal Welfare538 and will take into account the latest scientific opinions of the EFSA on dairy cattle and pigs as well as the results of the EU funded research project Welfare Quality. One of the possibilities the Commission is working on is a revision of the general Directive 98/58/EC in order to integrate animal based welfare indicators. The preparation of the second action plan on animal welfare will probably start in 2010 and the results of the evaluation will indicate the way EU welfare law will have to be shaped in the next years. In parallel, the Commission will continue to develop initiatives to improve the enforcement of the Directive on the protection of pigs but also to facilitate exchange of information on the issue of pig castration by organising specific workshops on these topics.

Directive 2007/43/EC laying down minimum rules for the protection of chickens kept for meat production ("broilers Directive") has to be transposed by 30 June 2010. At the same time, the scientific opinions of EFSA on the welfare of broilers will be published. On this basis, the Commission will work on a report to the European Parliament and to the Council concerning the influence of genetic parameters on identified deficiencies resulting in poor welfare of chickens.

Concerning the transport of animals, the Commission requested in January 2010 EFSA to update the scientific information available on the welfare of animals during transport. The EFSA scientific opinion should be available by December 2010. On this basis, the Commission will work on a report to the European Parliament and to the Council on the impact of Regulation (EC) No 1/2005 on the protection of animals during transport.

The implementation of the ban on cat and dog fur within the Union will be assessed in a report which will be submitted to the European Parliament and to the Council.

Regarding animal welfare labelling and the European Network of Reference Centres, the Commission’s reflections in shaping possible future policy options will depend from the

538 The Community Action Plan on the Protection and Welfare of Animals 2006-2010

http://ec.europa.eu/food/animal/welfare/actionplan/actionplan_en.htm

outcome of the discussions on the report in Council and the European Parliament. The Commission will be ready to contribute in any further step.

During 2010, the Commission will be strongly involved in an in depth evaluation of its policies on animal welfare. The report of the Committee on Agriculture and Rural Development of the European Parliament on evaluation of the Action Plan on the Protection and Welfare 2006-2010 as well as the report of the external consultant mandated by the Commission will constitute strong basis to identify the appropriate actions to improve EU policies in animal welfare.

13.4.22.5. *Summary of Sector*

The challenge in this sector is to reply to the growing European citizens' concerns on animal welfare both in the EU and internationally, and to balance expectations of animal welfare organisations with the requirements of a competitive agriculture, while seeking to simplify legislation and reduce administrative burden.

13.4.23. **Plant Health**

13.4.23.1. *Current Situation*

Work done in 2009

In 2009, the strategy of the Commission in this field has gone in two directions:

First, ensure the application of the current acquis through, in particular, a stricter enforcement of existing legislation, a revision of some emergency measures and an increased budget for co-financing eradication actions in Member States. A stricter enforcement of existing legislation has been initiated in the domains of recognition and maintenance of protected zones within the EU, actions against repeated interceptions at import (e.g. potatoes from Egypt) and a strengthened implementation of the emergency measures against the red palm weevil – *Rhynchophorus ferrugineus* which threatens most palms species in the Mediterranean areas. The main emergency measures being revised relate to pinewood nematode - *Bursaphelenchus xylophilus* (further strengthening of the measures following the notification of new outbreaks in Portugal and an isolated case in Spain) and Western corn rootworm - *Diabrotica virgifera virgifera* (completion of a study and initiation of an impact assessment before developing a new EU strategy as this pest is now widespread in certain areas within the EU). Upon request of Member States and in order to ensure a better and harmonised protection against the spread of new pests and diseases in the territory of the Union, the EU co-financing of eradication dossiers was increased significantly up to 14 million euro, especially to combat extremely harmful pests like pinewood nematode, red palm weevil and citrus longhorn beetle.

In parallel, steps have been undertaken to develop a new common plant health strategy. The existing regime aims to protect the EU territory against introduction and spread of regulated organisms which are harmful to plants. It lays down specific requirements for imports of all plants and some plant products into the EU and for internal movement of a limited number of plants within the EU. Terms of reference have been finalised in consultation with the competent authorities of the Member States and stakeholders for conducting an overall evaluation of the current plant health regime. This evaluation exercise has been outsourced. It started in June 2009 and will take a full year's study. The first objective of the evaluation is to analyse the results of the existing regime. The second objective is to clarify which aspects of

the current regime need to be improved and to suggest potential options for amendment, including possible improvements to its structure and working practices.

13.4.23.2. *Legislative Changes Underway*

The preparatory work to allow a recast of the main plant health Directive (Directive 2000/29/EC) was completed in 2009 and the main study which will be the basis for a fundamental revision of the EU plant health policy was initiated. The results of that study will be discussed in 2010 with Member States' competent authorities and stakeholders.

An impact assessment study has been launched to analyse the economic, social and environmental impacts of options for the long-term EU strategy against Western Corn Rootworm, a regulated harmful organism of maize.

13.4.24. **Seeds and Plant Propagating Material**

13.4.24.1. *Current Situation*

Work done in 2009

In the sector of seeds and plant propagating material (S&PM) the current legislation was kept updated and further developed. However, an increasing part of the work concentrated on the review of the legislation. In the year 2009, a number of international meetings on plant genetic resources took place. In addition, an ad hoc working group 'on seeds and propagating material' for the stakeholders of the sector, including plant variety rights, was created in the framework of the advisory group on the food chain to improve consultation and participation of all relevant stakeholders and organisations.

The common catalogues on varieties of agricultural and vegetable plant species were updated 12 times and both had a consolidated edition published. Altogether 1680 new varieties of agricultural plant species and 1060 vegetable varieties were included in the catalogues. The Community list of Forest Reproductive Material was also regularly updated and a new common catalogue for vine propagating material was created. In 2009, the Member States made 29 requests on less stringent requirements of the minimum germination under Regulation (EC) 217/2006 and Delegation decisions were made for 23 of them.

In November 2009, the Commission adopted Directive 2009/145/EC providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties.

Concerning the review of the legislation, a conference on 'Seed Availability in the 21st Century' was organised on 18 March 2009 to present and discuss the evaluation results with various stakeholders. Around 200 stakeholders participated and, overall, they supported the Commission's intention to revise the legislation. The Commission services developed an S&PM Action Plan539 which was presented and discussed with the Member States and with

539 Action plan for the review of the Community legislation on marketing of seed and plant propagating material and related issues. (SEC(2009) 172 final).

other stakeholders. On the basis of the Action plan, the preparation of the impact assessment started and terms of reference were prepared for an external consultant to collect necessary data for the impact assessment.

The Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (FAO) held its 3rd session in Tunis in June 2009. The 12th Regular session of the Commission on Genetic Resources for Food and Agriculture (FAO) held a session in Rome in October 2009. At the same time, work continues for the establishment of an International Regime on Access and Benefit Sharing under the Convention on Biological Diversity.

13.4.24.2. *Legislative Changes Underway*

Notwithstanding the work done on the review of the legislation, different actions have been undertaken to ensure the updating and adaptation of the EU S&PM legislation to current needs. Following the adoption of the Council Directive 2008/90/EC on the marketing of fruit plant propagating material and fruit plants intended for fruit production (recast), work is under way to update and develop the necessary implementing rules As regards to further implementing measures to conserve and protect natural environment, a proposal on grass seed mixtures is being currently developed. In addition, following the adoption of a new international standard on seed potatoes, the current legislation will be updated and aligned.

Concerning the review of the legislation, the aim is to finalise the necessary impact assessments in 2010 and prepare a proposal for the new legislative framework by the end of 2011.

13.4.25. **Plant Variety Rights**

13.4.25.1. *Current Situation*

The EU Plant Variety Rights system was created by Council Regulation (EC) No 2100/94 and provides protection of new plant varieties valid throughout the EU. On the basis of a single application to the Community Plant Variety Office based in Angers (FR), a breeder may be granted an EU-wide intellectual property right for his/her new variety. In 2009, the number of applications for the first time was decreasing by about 6% (e.g. due to the financial crisis, breeders' strategies for protection, the number of merges between the breeding companies). Currently, more than 16.600 varieties of plants are protected under the EU Plant Variety Rights system.

In the framework of "Better Regulation", during the course of 2009, Commission Regulation (EC) No 1239/95 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office was recasted and replaced by Commission Regulation (EC) N° 874/2009.

13.4.25.2. *Evaluation*

As the Community Plant Variety Right regime dates back to more than 15 years, the Commission has started to draft in the last quarter of 2009 the Terms of Reference for an external evaluation on the regime. This external evaluation should be carried out in 2010/2011.

13.4.26. **Enforcement of the rules applicable to the food and feed chain**

13.4.26.1. *Current situation*

Sustained attention to and coordination of enforcement action remains a priority in all areas related to food and feed safety, plant health, animal health and animal welfare.

Consideration will be given to the possibility of strengthening cooperation on enforcement matters with and among Member States' competent authorities and to a more transparent use and efficient handling of the vast amount of enforcement related data which is available to the Commission and to Member States.

Information contained in several reports from FVO audits carried out in 2009 indicate that in some Member States the recent economic crisis might have reverberated also on the availability of resources allocated for official controls to verify compliance with the food chain *acquis* (food and feed law, animal and plant health and animal welfare rules). Lack of resources is of course not a valid justification for non compliance with EU rules, and all cases where insufficient controls result in a violation of Union law will be dealt with accordingly.

The finite nature (and sometimes the scarcity) of control resources is a fact however which deserves attention. The Commission has therefore started a review of the rules on the financing of official controls, as set out in Regulation (EC) No 882/2004, with a view to improving the mechanisms intended to ensure appropriate resourcing of control activities at national level and to ultimately promote a more efficient use of available resources.

13.4.26.2. *Legislative changes underway*

The impact assessment on the mentioned review on the legislation on the financing of official controls has now started and it is foreseen it will be finalized during 2010. It will include extensive consultation with Member States and other stakeholders in order to assess advantages and disadvantages of the different options available for change. The related data will be acquired in the course of the consultation or, where needed, through specific surveys. A proposal for change, if required, can therefore be expected for the end of 2010 or early 2011 (further details can be found at the following web address:

http://ec.europa.eu/food/food/controls/inspection_fees/index_en.htm).

The review of Council Directive 96/23/EC will be continued through the year starting with the impact assessment with the involvement of Member States and other stakeholders with the idea of presenting a proposal by the first half of 2011. The general objectives of the review are the simplification of the existing rules and to ensure consistency with Regulation (EC) No 882/2004 allowing for the introduction of risks assessment criteria.

Regulation (EC) No 669/2009 on increased level of official controls on imports of certain feed and food of non-animal origin and implementing Article 15.5 of Regulation (EC) No 882/2004 becomes applicable on 25.1.2010 and extensive work is being carried out to ensure a smooth application of the new rules. This includes specific training activities in the context of Better Training for Safer Food, the creation of a dedicated webpage with the list of Designated Points of Entry and the regular review of Annex I to the Regulation containing the list of relevant feed and food products of non-animal origin.

13.5. Overall evaluation

13.5.1. **Better application of the health and consumer acquis is everyone's concern**

The Commission seeks to use Treaty powers at its disposal to the fullest possible extent, while engaging society at large in our efforts to ensure that citizens and business fully benefit from our policies in this area. But the Commission cannot deliver alone better application of the EU's health and consumer acquis without the cooperation of the Council, the European Parliament and Member States. Member States are primarily responsible for implementation and the Commission can only build partnerships and bridges of cooperation to ensure that legislation becomes reality on the ground.

During the course of 2009 the Commission has found that the EU Pilot Project has been a useful tool that has enhanced communication and resolution of enforcement problems in this domain. It is key that further Member States who are keen to step up to the plate to improve their record on enforcement of EU legislation in this area participate in the pilot project. Cooperation between national enforcers is also essential starting as early as the design phase of any new legislation.

The Commission is mindful that this area of legislation is often technical, complicated and not easy to understand by enforcers, economic operators and ordinary citizens. Every effort is being made to promote a regulatory environment that is modern, simple and proportionate but that does not give up the necessary protection afforded by our policies in this area.

This area is very close to many concerns that citizens have about Europe. The Commission will seek to increase transparency on actions being taken by Member States' enforcement actors to ensure compliance. At the same time the Commission will seek to empower citizens, consumers and patients through information to enable them to support implementation practices and outcomes in Member States.

13.5.2. **Prevention**

Laws cannot be properly applied unless they are fully understood by those that enforce it or apply it in order to comply with its provisions.

The Commission services have issued implementation guidelines on the correct application of the food and safety and public health policy areas. In the public health policy area, an operational manual was published for competent authorities for the inspection of tissue and cell procurement and tissue establishments in order to ensure a harmonised application of Directives 2006/17/EC and 2006/86/EC. In the consumer policy area the Commission revised the RAPEX guidelines. This revision was necessary because of the significant increase in the number of notifications through the RAPEX network that has be followed up in the Member States and of the need to increase the traceability of dangerous products notified via the system.

In addition the Commission organized workshops either to assist the Member States with the implementation of Directives which they are in the process of transposing (e.g. the consumer credit Directive 2008/48/EC) or to promote an exchange of information and best practices between industry and veterinary experts from Member States (as for example on how to minimise animal suffering during pig tail docking).

Also for the implementation and consistent application of Directive 91/414/EEC concerning the placing of plant protection products on the market, the Commission continued to develop further guidelines and currently 47 guidelines documents are available.

In 2006 the Commission launched a training programme entitled "Better Training for Safer Food". This is aimed at organising a Community training strategy for food and feed law, animal health and welfare rules and plant health rules. Training is designed for Member State competent authority staff involved in official control activities. It aims to keep them up-to-date with Community law in the areas specified above and to ensure more uniform and efficient controls across the EU.

Better Training for Safer Food comprises training programmes on subjects where needs for improved application of EU law have been identified. The number of programmes and the number of people trained have increased each year since the initiative's launch.

Subjects covered for the first time in 2009 included training on controls of food of non-animal origin, feed law and GMO analysis. Further new actions are to be launched in 2010. These include training on new subjects such as animal health of aquaculture animals and of bees and exotic zoo animals and food testing on SPS issues.

Another type of prevention is provided for in Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations. This Directive obliges Member States to notify to the Commission, before they are adopted, draft acts containing technical standards and regulations. During 2009 the Commission services responsible for health and consumers examined approximately 200 notifications of draft legislations in order to avoid that Member States adopt legislation which would be incompatible with EU law.

Furthermore, the rapid alert system for food and feed (RASFF) is an effective tool to exchange information about national measures taken responding to serious risks detected in relation to food or feed540. This is a concrete and visible result of a successful European integrated approach to ensure food safety. It helps Member States to act more rapidly and in a coordinated manner in response to a health threat caused by food or feed. Its effectiveness is ensured by keeping its structure simple: it consists essentially of clearly identified contact points in the Commission and at national level in member countries, exchanging information in a clear and structured way by means of templates. The Commission together with Member States continues to work hard in further shaping this essential tool that is contributing to high food safety standards in the EU, preventing dangerous food or feed from reaching the consumer and allowing swift action to be taken to remove such products from the market. . In 2009 a total of 3201 original notifications were transmitted through the RASFF; 1745 market notifications and 1456 border rejections. 558 market notifications were classified as alerts, and 1187 as information notifications.

A similar tool is the EU rapid information system RAPEX for dangerous non-food consumer products found and consequently withdrawn from the market. A number of notifications in

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540 The legal basis of RASFF is Article 50 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, OJ L 31, 1.2.2002, p. 1.

RAPEX led to the adoption of Decision 2009/251/EC which bans the dimethyl fumerate in consumer products. The Commission will take initiatives to strengthen the RAPEX system.

Discussions with Member States or with stakeholders in, for example, workshops, often identify areas of difficulty in fully appreciating the nature of specific legislative instruments. The Commission services often provide detailed interpretations of specific provisions in order to achieve broad but uniform understanding of specific provisions.

13.5.3. **Regular review of legislation**

The health and consumer legislation is regularly reviewed after careful evaluation of impacts as well as continuous and fruitful dialogue with citizens, consumers and other stakeholders in order to:

– optimise the legislation for ensuring that policy goals are met

– simplify and clarify the legislation

– take into consideration the burdens to business and enforcers

– to introduce new technologies into the legislation

– clarify the interaction with other EU legislation.

In 2009, as a result of that work, the adoption Regulation (EC) No 767/2009 on the placing on the market and use of feed, Regulation (EC) No 1069/2009 laying down health rules as regards animal by-products and derived products not intended for human consumption, Regulation (EC) No 1099/2009 on the protection of animals at the time of killing and Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market, finalised the revision of several key legislations.

New evaluations of the existing legislation have been carried out and will the basis of impact assessments in 2010 and likely for future major legislative revisions (e.g. in the plant seed legislation as well in the genetically modified organisms legislation). Further evaluation is about to be launched (inter alia on the plant variety rights legislation).

13.5.4. **Audits, Inspections and market surveillance**

Another aspect of prevention is the ability of the Commission services to see for themselves the realities of enforcement on the ground.

Enforcement of the food safety legislation would be weak if the FVO was not able to examine whether Member States and third countries from which food is imported, properly apply food and feed safety controls.

Each year the FVO develops an audit and inspection programme identifying priority areas and countries. It carries out around 250 audits and inspections, including both general and specific audits, annually. Following each, a report is issued which sets the actions needed to improve compliance. The large majority of weaknesses in control systems identified by the FVO are normally addressed through specific action plans drawn up by national authorities in response to its recommendations.

In recent years, the FVO has developed overall country profiles for each Member State and for the EU's main trading partners. These profiles bring together and summarise the results of general and specific audits and inspections over time and across all relevant sectors. They can thus help to identify systemic weaknesses in the overall design and application of national control systems. As these results are progressively refined and validated, remedial action can be proposed that addresses the underlying cause of weaknesses that are common to a number of specific sectors, for example, the absence of a system of documentary records of controls or the absence of an effective system of sanctions for non-compliance.

In the consumers policy area the Commission for the third time carried out a market surveillance exercise in the form of a sweep on sites selling electronic goods (see point 3.1.2.10). Such sweeps allow the Commission to identify the existing incompliant conditions on websites and through contacts with the involved companies to obtain corrections on the websites.

13.5.5. **Processing and prioritisation of infringements**

The Commission during the course of 2009 has been taking internal measures to improve its processing speed through prevention, improved cooperation with Member States (e.g. EU Pilot project) and prioritisation (e.g. strategy paper and implementation planning). A strategy for prioritisation of infringements was largely conceived in 2008 and implemented within 2009.

Due to prioritisation and accurate case planning the Commission has in the course of 2009 considerably improved its efficiency in handling complaints and infringements in this domain. Better application of consumer and health legislation has been integrated a cross-cutting theme throughout all of our policy areas. Adequate planning has also been put in place to ensure that Member States are accompanied during the transposition process and are adequately supported for implementation of new legislation.

DG SANCO is at the forefront of evolving challenges inherent in its sector that is prone to changes in technology and innovation in production methods. The Commission in this area has to ensure an optimised use of its tool-box for better application of EU law in a results-orientated way so that EU citizens see the real benefits in our efforts to better apply our acquis. At the same time several Member States have initiated discussion on how best to maximise efficiency in complying with legislation in this area.

13.5.6. **Challenges**

The credibility and legitimacy of our actions invariably depends on how effectively our legislation is implemented and the policy results achieved. Without reducing the efforts to further simplify the regulatory environment, the Commission will continue to pay increasing attention to better application of the consumer and health acquis. Our challenge for 2010 will be to show leadership in engaging society at large while promoting transparency on enforcement action and output.

14. JUSTICE, FREEDOM AND SECURITY

14.1. Immigration and integration

14.1.1. Current position: general introduction

Community legislation in the field of immigration and integration currently consists of nine directives, two of which were adopted in 2009.

As concerns legal migration, four sets of measures of have been adopted:

- a first set of measures adopted in 2003: the Family Reunification Directive 2003/86541 and the Long-term Residents Directive 2003/109542;
- 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 authorities543;
- the Students Directive 2004/114544 and the Researchers Directive 2005/71545;
- the Highly-skilled Workers Directive 2009/50546 ("EU Blue Card"), adopted in May 2009.

Three directives concern illegal immigration:

- a first pair of directives adopted in 2001/2002: the Carriers Liability Directive 2001/51547 and Directive 2002/90548 defining facilitation;

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

542 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.

543 OJ L 261, 6.8.2004, p. 19.

544 Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375, 23.12.2004, p. 12.

545 Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289, 3.11.2005, p. 15.

546 Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L 155, 18.6.2009, p. 17.

- the Employer Sanctions Directive 2009/52549, adopted in June 2009, which aims to reduce illegal immigration by prohibiting the employment of illegal staying migrant workers and providing for sanctions against employers who infringe the prohibition.

The EU's comprehensive migration policy continues to be developed, and consequently efforts in this area remain as much about developing new legislation as ensuring the application of existing legislation. As concerns labour migration, the Commission in its 2005 Policy Plan on Legal Migration550 announced its intention to present proposals for a general framework directive and directives for specific categories of paid workers. In 2009, the first such specific directive – the EU Blue Card – was adopted and discussions continued in the Council on the proposed Framework Directive551. The Commission pursued its preparation of proposals for two of the remaining Directives (seasonal workers and intra-corporate transferees). The third proposal, on remunerated trainees, will be prepared after the evaluation of the Students Directive.

14.1.2. **Current position: Report on work done in 2009**

In line with the call of the Stockholm Programme for the Commission to evaluate and, where necessary, review the Family Reunification Directive, taking into account the importance of integration measures552, it remains the intention of the Commission to carry out a wider consultation – in the form of a Green Paper – on the future of the family reunification regime. This could lead to proposals, at earliest in 2012, to amend the current directive.

As regards non-communication cases, in the course of 2009 the remaining two Member States that had not initially complied with the transposition deadlines of Directives from 2005 and earlier did so.

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547 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.

548 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.

549 Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168, 30.6.2009, p. 24.

550 COM(2005) 669 final.

551 Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, COM (2007) 638 final of 23.10.2007.

552 Presidency Conclusions, document EUCO 6/09. The Programme itself is in document 17024/09.

As regards suspected infringements disclosed by complaints, the Commission continued its infringement procedure against the Netherlands in relation to the high level of fees charged to those applying for long-term residents permits and in January 2010 decided to bring the matter before the Court of Justice. The Commission started an infringement procedure against another Member State in relation to the rules under which third-country national students are permitted to work in that Member State; the Commission considers that the Students Directive 2004/114 requires third-country national students to be allowed to work under less restrictive conditions.

As concerns the management of the existing *acquis*, a meeting of the contact committee on the legal migration directives provided the opportunity for a useful exchange of views between the Commission and national experts involved in the application of the legal migration directives. A meeting of the national contact points appointed under the Long-term Residents Directive 2003/109 was also held. Alongside discussions in the contact committee, the European Migration Network553 (EMN) continued to be a means for Member States (and the Commission) to address ad-hoc queries to obtain a quick overview on how other Member States transpose specific provisions of the directives.

The Commission launched the procedures to commission external transposition studies for the Students Directive and Researchers Directive with a view to preparing implementation reports on the directives as well as, where relevant, proposals for their amendment in order further to enhance the attractiveness of EU as a centre of excellence for studies and research. The procedure was also launched to update the earlier study on the Long-term Residents Directive.

As concerns the development of new legislation, the EU Blue Card and Employer Sanctions Directives were adopted. Member States have until respectively June and July 2011 to transpose the Directives into national law. First meetings of contact committees were held in late 2009 (employer sanctions) and early 2010 (EU Blue Card), enabling a useful exchange of views between the Commission and national experts involved in the national transposition of the directives.

Legislative discussions in Council and European Parliament continued on the third of the three proposals presented in 2007: the general framework directive for labour migration which will provide for a single permit (residence and work) and basic socio-economic rights for migrant workers. In addition, the Commission continued preparing its proposals for directives on other specific categories of paid workers (seasonal workers and intra-corporate transferees and remunerated trainees) in line with the 2005 Policy Plan. Presentation of those proposals was postponed, taking notably into account the change of legal basis resulting from the Lisbon Treaty and the need to evaluate the Students Directive.

14.1.3. **Evaluation based on the current situation**

The complete EU-wide transposition only in 2009 of Directives dating from 2005 and before reinforces the need for Member State to make renewed efforts to complete the transposition of

553 Council Decision 2008/381/EC of 14 May 2008 establishing a European Migration Network, OJ L 131, 21.5.2008, p. 7.

the most recent directives in this field – the EU Blue Card and employer sanctions – within the deadline of mid-2011.

The Commission continued – and will continue – to pursue the most important suspected infringements disclosed by complaints. In order however to ensure the correct application of the *acquis*, the Commission intends to pursue with other directives the approach started with the Family Reunification Directive: first an external study, then a Commission report as a basis for further action.

Legislative activity (preparing new proposals as well as legislative discussions themselves) continued to be important in this sector. The Lisbon Treaty has introduced codecision in the area of legal immigration, thus notably giving an enhanced role of the European Parliament. This has given an impetus to the legislative discussions on the general framework directive for a single permit and rights.

14.1.4. **Evaluation results: Priorities**

These remain unchanged and are:

(1) Reviewing the Family Reunification Directive 2003/86. This was the first legislative instrument on legal migration at EU level and, as a result several Member States554 for the first time have a detailed set of rules on the right to family reunification in their national legislation.

(2) Preparing Commission reports on the application of other priority directives.

14.1.5. **Evaluation results: Planned action (2010 and beyond)**

As regards the first priority, the Family Reunification Directive 2003/86, the Commission will follow up its report on the directive by launch a wider consultation by way of a Green Paper on the future of the family reunification regime. This could lead to proposals, at earliest in 2012, to amend the current directive.

As regards the second priority, the Commission will in 2010 present reports on the Victims of Trafficking, and Students Directives, and in 2011 on the Long-term Residents and Researchers Directives. On the basis of those reports the Commission will decide on what further action is needed.

Other activity will include:

– Handling individual enquiries and complaints.

– Presenting proposals for directives on other specific categories of paid workers: seasonal workers and intra-corporate transferees.

554 EL, CY, MT, RO.

14.1.6. **Summary**

Priority will be given to following up the first Commission report on a directive in this sector, the Family Reunification Directive. A Green Paper will launch a consultation on whether the rules should be changed. The Commission will prepare reports for the other directives in this area. Given the ongoing development of the EU's comprehensive migration policy, attention also needs to be given to the good preparation of new proposals and the following of the transposition of the two directives adopted in 2009.

14.2. Asylum

14.2.1. **Current position: Report on work done in 2009**

Work with regard to the development and implementation of the EU asylum *acquis* in 2009 was characterised by further very significant progress in the development of new legislation and the pursuit of appropriate infringement actions.

On 18 February 2009, the Commission adopted a proposal to create a European Asylum Support Office (EASO) as an independent EU agency to manage practical cooperation in the asylum field, including an amendment of the Decision establishing a European Refugee Fund.555 In November 2009, political agreement was reached on the proposal in the Council and European Parliament, and it is expected that it will be formally adopted early in 2010.

On 2 September 2009, the Commission adopted a proposal for the establishment of an EU-wide scheme aimed at facilitating the resettlement in the EU of refugees hosted in third countries, in the form of a Communication from the Commission to the Council and European Parliament and an amendment to the Decision establishing a European Refugee Fund. The scheme is aimed at developing resettlement within the EU into a more effective instrument for the protection of refugees, by providing for closer strategic and practical cooperation among EU Member States.

On 10 September 2009, the Commission adopted an amended proposal for the EURODAC Regulation (Regulation 2725/2000) which aimed, on the one hand, to integrate the amendments suggested by the European Parliament in its resolution of May 2009 and, on the other hand, to allow law enforcement authorities and Europol access to the EURODAC in order to strengthen their capacity to fight terrorism and serious crimes.

On 21 October 2009, the Commission adopted proposals for the revision of the Qualification Directive (Directive 2004/83) and of the Asylum Procedures Directive (Directive 2005/85). Discussion of these two proposals commenced in December 2009 and is expected to continue throughout 2010. The main purpose of the proposed revision of the two directives is to ensure a higher degree of protection to victims of persecution, to simplify and consolidate substantive and procedural standards of protection across the Union, thus preventing fraud and improving efficiency of the asylum, and to improve coherence between EU asylum instruments. The proposals were accompanied by Impact Assessment Reports which evaluated in detail the content of the two directives, as well as how they had been

555 Council Decision No 573/2007/EC.

implemented by Member States in practice, with a view to identifying deficiencies to be remedied by legislative amendment.

Discussion of the three Commission proposals for revision of the Reception Conditions Directive, the Dublin Regulation, and the EURODAC Regulation556 in the Council Working Group and in the European Parliament took place throughout 2009 and is expected to continue in 2010.

In February 2009, the Commission's case against Finland for non-communication of measures fully transposing the Qualification Directive (Directive 2004/83) resulted in a ruling by the Court of Justice that Finland had breached Article 226 EC Treaty (now Article 258 TFEU).557 In July 2009, Finland communicated measures fully transposing the Directive. Accordingly, the case was closed.

In April 2009, the Commission's case against the UK for non-communication of measures fully transposing the Qualification Directive (Directive 2004/83) resulted in a ruling by the Court of Justice that the UK had breached Article 226 EC Treaty.558 A few days before the judgement was rendered, the UK communicated measures fully transposing the Directive. Accordingly, the case was closed.

In May 2009, the Commission's case against Sweden for non-communication of measures fully transposing the Qualification Directive (Directive 2004/83) resulted in a ruling by the Court of Justice that Sweden had breached Article 226 EC Treaty.559 In January 2010, Sweden communicated legislative measures which it claims fully transpose the Directive. The case will be closed.

In July 2009, the Commission's case against Spain for non-communication of measures fully transposing the Qualification Directive (Directive 2004/83) resulted in a ruling by the Court of Justice that Spain had breached Article 226 EC Treaty.560 In November 2009, Spain communicated legislative measures which it claims fully transpose the Directive. The case will be closed.

In January 2009, the Commission sent letters of formal notice to two Member States for non-communication of transposition measures relating to Article 15 of the Asylum Procedures

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556 On 3 December 2008, in the 'first phase' of its legislative proposals, the Commission adopted proposals to revise three legislative instruments: the Reception Conditions Directive (Directive 2003/9), the "Dublin" Regulation (Regulation 343/2003), and the EURODAC Regulation (Regulation 2725/2000).

557 Case C-293/08, *Commission v Finland*; judgement of 5 February 2009.

558 Case C-256/08, *Commission v the United Kingdom*; judgement of 30 April 2009.

559 Case C-322/08, *Commission v Sweden*; judgement of 14 May 2009.

560 Case C-272/08, *Commission v Spain*; judgement of 9 July 2009.

Directive (Directive 2005/85). The deadline for transposition of this provision was 1 December 2008, whereas the deadline for the transposition of the remainder of the Directive was 1 December 2007.

In September 2009, the Commission sent reasoned opinions to four Member States for non-communication of measures fully transposing the Asylum Procedures Directive (Directive 2005/85), including Article 15 thereof. All four Member States have replied to these letters, and these are being examined by the Commission. Three of the replies were accompanied by the notification of measures claiming to fully transpose the Directive.

In December 2009, proceedings against two Member States for non-communication of transposition measures relating to the Qualification Directive (Directive 2004/83), and against five Member States for non-communication of transposition measures relating to the Asylum Procedures Directive (Directive 2005/85), were still pending.

In November 2009, the Commission sent a letter of formal notice to one Member State for incorrect application of the asylum *acquis*, in particular as regards access to the asylum procedure and the treatment of asylum seeking unaccompanied minors. The letter also raised concerns about possible failure by that Member State to respect fundamental rights, including the principle of *non-refoulement*, in its application of the Schengen Borders Code, in particular when conducting border controls.

During 2009, the Commission also pursued activities aimed at enhancing practical cooperation between Member States in the asylum field, notably by organising a series of workshops focused on the assessment of the protection needs of asylum seekers from particular countries-of-origin and on other asylum-related matters. One workshop, which included the participation of Member State judges and national experts, focused on various aspects of the implementation of the Dublin Regulation.

14.2.2. **Evaluation based on the current situation**

In line with the ambitions articulated by the Council in The Hague Programme adopted in 2004 and the Stockholm Programme adopted in December 2009, as well as in the Commission's own 2008 Policy Plan on Asylum561, the scope of the asylum *acquis* is in need of being extended and enhanced, in order to ensure the successful completion of the Common European Asylum System (CEAS). More specifically, EU asylum legislation should guarantee higher levels of protection generally, a more level playing field for persons seeking asylum in the different Member States, greater efficiency in the treatment of asylum applications, better coordination of the external aspects of asylum policy, and more solidarity between Member States in sharing the burdens associated with receiving asylum seekers.

Moreover, the Commission is particularly concerned by the fact that, notwithstanding the existence of the common minimum standards and a significant degree of harmonisation via the current *acquis*, the rates of recognition of asylum seekers as qualifying for protection still

561 COM(2008)360 "Policy Plan on Asylum – an integrated approach to protection across the EU", 17 June 2008.

varies very considerably between Member States. This deficit can be attributed to a number of causes, including insufficiently far-reaching legislative harmonisation, variation in the manner in which the current legislation is applied in practice, and variation in the nature of the information on the situation in countries-of-origin upon which asylum decisions are taken.

In view of these shortcomings, the Commission intends to continue to pursue a "twin track" approach consisting of, on the one hand, working to extend and improve the EU *acquis* and, on the other, of consolidating the *acquis* by means of (a) taking infringement actions against Member States for non-transposition and/or incorrect application of the *acquis*, and (b) enhancing practical cooperation activities, in particular by ensuring that the future European Asylum Support Office (EASO) is placed on a sound footing.

14.2.3. **Evaluation results: Priorities and planned action (2010 and beyond)**

To date, the Commission has given priority to the creation and further development of EU legislation in the asylum field, and to facilitating practical cooperation among Member State authorities.

The Commission intends to pursue the following priorities in relation to the development, application and monitoring of EU law in the asylum field in the coming years:

The further development of EU legislation in the asylum field, notably as regards the amendment of the existing legislative instruments and the possible adoption of new ones;

Pursuit of practical cooperation efforts, aimed at improving the practical implementation/application of the *acquis* in the Member States, with a view in particular to ensuring an effective transition to the establishment of the EASO;

Monitoring and evaluation of the implementation of EU legislation in the asylum field;

Contribution to the Commission's intervention before the Court of Justice with regard to requests by national courts for preliminary rulings on the interpretation of EU legislation in the asylum field, and follow-up of individual complaints about compliance with EU legislation in the asylum field in the Member States.

14.2.4. **Summary**

EU law in the asylum field is still in the process of being developed. Some shortcomings have been identified in the scope and impact of the existing *acquis* and of the manner in which it is applied. Priority in the short to medium term should be accorded to extending and improving EU legislation in the asylum field. At the same time, it is necessary to intensify practical cooperation between Member States with a view to ensuring more consistency in their application of the *acquis*, in particular by ensuring the successful establishment of a European Asylum Support Office. The Commission will moreover continue to monitor and evaluate the implementation of EU legislation in the asylum field, to intervene before the Court of Justice with regard to requests by national courts for preliminary rulings on its interpretation, and to follow up complaints against Member States for incorrect application of the *acquis*.

14.3. European visa policy

14.3.1. Current situation: Report on work done in 2009

Currently, the issuance of short-stay visas is still governed by a number of legal instruments drawn up over the last 15 years which were mostly developed within the Schengen framework.

On 13 July 2009, the European Parliament and the Council adopted a Regulation establishing a Community Code on Visas562. The Visa Code recasts the legal framework for the common visa policy and will enhance transparency, equal treatment of applicants and legal certainty and bring about a harmonisation of the procedures for issuing short stay visas. In line with Article 51 of the Visa Code, the Commission is currently elaborating a Commission decision containing operational instructions on the practical application of the Visa Code (Visa Code Handbook)563.

14.3.2. Evaluation based on the current situation

Due to the process of revision of the Community *acquis* on short-stay visas during the years 2007 - 2009, the handling of infringement procedures initiated in 2007 which are related to incorrect implementation of legislation to be replaced by the new instruments, was not considered as a priority.

In 2009, the Commission continued to receive complaints from individuals related to the incorrect implementation of EU law in the field of visas. The complaints received reflected the weakness of the current Visa *acquis*; a large majority of these weaknesses will be resolved with the introduction of the new Visa Code which includes *inter alia* provisions on mandatory motivation of visa refusal and right to appeal, harmonised deadlines for the visa handling process, enforcement of local consular cooperation and development of consular representation at local level. In addition, the introduction of biometrics is expected to ensure sharing of information between Member States Consular offices and to resolve the problem of visa shopping.

14.3.3. Evaluation results: Planned action (2010 and beyond)

In light of the legislative changes intervening on 5 April 2010, ensuring timely, correct and efficient implementation of the new legislative framework by all Member States will be a priority for the Commission. Due to the importance of visa policy in EU external relations as well as the impact of an efficient visa policy for fighting against illegal migration, the Commission intends to closely monitor the implementation of the Visa Code. Existing fora such as the Visa Working Group in Council or the Visa Committee will continue to play an

562 Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas.

563 Draft Commission Decision of […] establishing the Handbook for the processing of visa applications and the modification of issued visas.

important role for identifying issues of common interest and solving them in the appropriate way wherever possible.

At local level, the involvement of EU delegations in third countries should increase and as they should play a stronger role in ensuring that visa policy is implemented in a right and harmonised way by all Member States' consulates. Based on information received through these various channels, the Commission will continue using its institutional prerogative in this area which has been identified as a specific challenge for DG JLS in 2010.

14.4. Document Security (European passport and residence permits)

14.4.1. Current situation: Report on work done in 2009

The main achievement on document security is the adoption - for the first time in co-decision procedure of the amendment of Regulation (EC) No 444/2009 on standards for security features and biometrics in passports and travel documents issued by Member States introducing exceptions from the requirements of taking fingerprints and of the principle "one person-one passport".564 It entered into force on 26 June 2009. Member States shall apply the Regulation (a) as regards the facial image at the latest 18 months and (b) as regards fingerprints at the latest 36 months following the adoption of the additional technical specifications. The obligation to issue passports and travel documents as separate documents shall be implemented at the latest on 26 June 2012.

In the same area, the Commission adopted three decisions in comitology procedure; one, modifying the technical specifications for the uniform format for residence permits for third country nationals introducing biometric identifiers and at the same time starting the delay for their implementation,565 a second as regards the implementation of the certificate policy for passports issued by Member States introducing a single point of contact,566 and a third in

564 Regulation (EC) No 444/2009 of the European Parliament and of the Council of 28 May 2009 amending Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States introducing exception from the requirements of taking fingerprints and introducing the principle "one person-one passport".

565 Commission Decision of 20.5.2009 modifying the technical specifications for the uniform format for residence permits for third country nationals introducing biometric identifiers.

566 Commission Decision of 5.10.2009 amending Commission Decision C (2008) 8657 final laying down a certificate policy as required in the technical specifications on the standards for security features and biometrics in passports and travel documents issued by Member States introducing a single point of contact.

view of the implementation of the Visa Information System laying down further technical specifications for the uniform format for visas as regards the numbering.567

14.4.2. **Evaluation based on the current situation**

During 2009, the Commission continued to closely monitor the correct implementation of Regulation 1030/2002 laying down a uniform format for residence permits for third country nationals. In this context, reasoned opinions had already been sent to Italy and Belgium for incorrect implementation of Article 9 of the Regulation in 2008. In the absence of progress made by Italy, the Commission referred this case to the Court of Justice in November 2009.568

In order to collect information on the correct and timely implementation by all Member States of the second biometric identifier (finger prints) in respect of passports and travel documents of EU citizens in accordance with the provisions of Regulation 2252/2004 which became mandatory as of July 2009, the Commission circulated a questionnaire to all Member States in October 2009 in order to collect specific information on the state of implementation.

14.4.3. **Evaluation results: planned action (2010 and beyond)**

Ensuring the correct application of Regulation 2252/2004 will remain a priority action for the Commission also in 2010. The analysis of the replies to the questionnaire is ongoing and the necessary measures in case of infringement will be taken in due time.

14.5. Border management and return policy

14.5.1. **Current position: General introduction**

In the field of border management and return policy, the Commission mainly carried out its control of the application of EU law, which resulted in the follow up of infringement proceedings in few cases launched in 2008. Moreover, the Commission handled numerous consultations with Member States on the compatibility of draft bilateral agreements with third countries in the framework of the Local Border Traffic Regulation. Strategic priority was given to provide the ground for a timely and correct transposition of the Return Directive 2008/115/EC.

14.5.2. **Current position: Report on work done in 2009**

The Commission has received and followed-up several complaints from individuals related to the incorrect application of EU law in the field of border management, and particularly of the Schengen Borders Code. Most of these complaints concern the non compliance with provisions related to the abolition of internal border controls at the land and air borders and to

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567 Commission Decision of 20.5.2009 modifying the Commission Decision C (96) 352 of 7 February 1996 laying down further technical specifications for the uniform format for visas as regards the numbering.

568 C-486/2009.

the removal of obstacles to traffic at road crossing points at internal borders between the Member States.

Within the framework of the Local Border Traffic Regulation, multiple consultations took place between the Commission and a number of Member States on the compatibility of bilateral draft agreements with third countries with the LBT Regulation, in form of exchange of information and informal advice, expert's meetings as well as formal exchange of correspondence. On 24 July 2009, the Commission issued its first report to the European Parliament and the Council on the implementation and functioning of the local border traffic regime introduced by Regulation (EC) No 1931/2006 of the European Parliament and of the Council laying down rules on local border traffic at the external land borders of the Member States569, which gives a detailed overview on the activities carried out and the problems encountered so far.

As far as the implementation of the Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data is concerned, the evaluation of the transposition measures communicated by all Member States except one Member State has been completed. An infringement procedure against that Member State opened in 2008 for non communication is still ongoing.

In the field of return action focused on some remaining open cases of non-communication of transposition of Directives 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals (cases related to incomplete transposition against three Member States were closed; one remaining case is due to be closed in early 2010) and 2003/110/EC on assistance in cases of transit for the purposes of removal by air.

In order to facilitate the correct and homogenous transposition of the European Parliament and Council Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third country nationals (due to be transposed by 24 December 2010), the Commission Services convened in 2009 three meetings of a Contact Group, providing an informal forum for an exchange of views between Member States and the Commission on how the requirements set out in the Directive might be met.

The Commission also actively intervened in a first ECJ case related to the interpretation of the Return Directive: In its first judgment on this Directive (judgment of 30 November 2009 in Case C-357/09 PPU, *Kadzoev*), the ECJ followed the position taken by the Commission and confirmed the protective provisions on detention contained in the Return Directive (absolute character of the 6/18 months maximum period; no possibility to abuse detention as a form of "soft imprisonment" for public order reasons; and obligation to release the detainee immediately if there are no more reasonable prospects of removal).

14.5.3. **Evaluation based on the current situation**

The correct application of EU legislation in the field of border management and particularly in the absence of internal border controls has a substantial impact on the area without internal

569 COM (2009) 383 final

borders in which the free movement of persons has to be ensured. Alleged internal border checks at the land borders and at the airports have been reported. The Commission endeavours to closely monitor the situation in these internal border zones. Moreover, the Commission closely follows the developments regarding the dismantling of remaining traffic obstacles at road border crossing-points at internal borders.

In March 2009, the Commission adopted a proposal for a Council Regulation on the establishment of the evaluation mechanism to verify the application of the Schengen *acquis*570. This proposal provides for a possibility for the Commission to carry out unannounced on-site visits to verify the absence of controls at internal borders. Although, following the entry into force of the Lisbon Treaty the current proposal will have to be reviewed, such a draft provision should be maintained as it will considerably contribute to the correct application of the absence of internal border controls.

In the field of return, the main achievement was the adoption of the European Parliament and Council Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third country nationals.

The Directive was formally adopted by EP and Council on 16 December 2008 and published in OJ L 348 of 24 December 2008, with a transposition period for Member States until 24 December 2010 (2011 in relation to free legal aid). This means that the States which are bound by the Directive (all Member States except Ireland and UK plus the associated Schengen States) will have to adapt their national legislation in order to comply with the Directive by these dates. The Commission expressly encouraged all States to assure compliance with the Directive as quickly as possible, bearing notably in mind that most of the obligations of Member States under the Return Directive are not new in substance: many obligations are directly inspired by the "Council of Europe Guidelines on forced return" which had been formally accepted in 2005 by the Committee of Ministers of the Council of Europe. Member States are therefore already today *politically* committed to respect these standards. Moreover, most of these standards are directly related to already existing relevant provisions of the European Convention on Human Rights and other pertinent international law instruments.

In order to facilitate the correct and homogenous transposition of the Directive, the Commission Services started to convene regular meetings of a Contact Group, providing a forum for an exchange of views between Member States and the Commission on how the requirements set out in the Directive might be met. Three meetings of this Group took place in 2009. Further meetings are scheduled for 2010. These meetings also include special workshops at which not only Member States but also IOs/NGOs which have concrete practical experiences on selected issues, such as "*forced return monitoring - Article 8(6)"* and "*assistance by appropriate bodies for unaccompanied minors - Article 10(1)"* are invited to report and to share their knowledge with participants of the Contact Group.

570 COM(2009)102 final

14.5.4. **Evaluation results: Priorities**

In 2009, priority has been given to the follow-up of complaints received from citizens in the field of internal land and air borders, notably with relation to the checks carried out on persons in internal border zones and at the airports and with the remaining obstacles to traffic at the road crossing points at internal borders. The Commission regularly addressed national authorities of the Member States in order to obtain explanations, particularly on the alleged checks on persons within the internal border zones and exchanged on the remaining traffic obstacles in order to better understand the difficulties linked to their dismantling.

In the field of return, strategic priority was given to provide the ground for a timely and correct transposition of the Return Directive 2008/115/EC. Numerous complaints and petitions related to return issues have been received but no concrete follow-up could – yet - be given, due to the fact that the transposition period for the Directive had not expired yet.

14.5.5. **Evaluation results: Planned action (2010 and beyond)**

As one of the fundamental objectives, the Commission will continue to closely monitor the correct application of EU legislation in the field of absence of internal border controls and remaining traffic obstacles. The aforementioned Commission's proposal on the Schengen evaluation mechanism, which will be revised following the entry into force of the Lisbon Treaty, could undoubtedly contribute to the accomplishment of this objective. Priority will thus still be given to complaints received from individuals in relation with checks carried out on persons at the internal borders or in internal border zones and with the remaining obstacles to traffic at road crossing points at internal borders. It is expected that the volume of enquiries increases, as the sensitivity of the border acquis increases.

In 2010, the Commission will submit to the European Parliament and the Council a report on the application of Title III (Internal borders) of Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), paying particular attention to the application of Article 21 of the Schengen Borders Code (checks within the territory and in particular in internal border zones) and to the difficulties arising from the reintroduction of border control at internal borders.

Moreover, the Commission will continue to carry on consultations with Member States and analyse the compatibility of draft local border traffic agreements with EU law. The Commission committed itself to submit a second report on the implementation and functioning of the local border traffic regime to the European Parliament and the Council in the second half of 2010.

The Commission will continue the launched infringement proceeding against Poland for non communication of transposition measures concerning the Directive 2004/82/EC.

Continued strategic priority will have to be given in 2010 to prepare the ground for a timely and correct transposition of the Return Directive 2008/115/EC (by convening further Contact Groups). In addition, from 2010 onwards, an analysis of the national implementing measures will have to be started in order to check the correct transposition of the Directive by Member States. Finally, the end of the transposition period on 24 December 2010 will allow the Commission to become more active with regard to the numerous complaints and petitions

related to return issues which are already now being received by the Commission. Depending on the number of complaints received, there will be a need for priority setting.

14.6. Free movement of persons

14.6.1. Current position: General introduction

Free movement of persons constitutes one of the fundamental freedoms of the internal market, to the benefit of EU citizens and their families, of the Member States and of the competitiveness of European economy. It is one of the most cherished rights by EU citizens. Citizenship of the Union confers on every EU citizen a primary and individual right to move and reside freely in the EU.

Article 21(1) of the Treaty on the Functioning of the European Union stipulates that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. The respective limitations and conditions are to be found in Directive 2004/38/EC571 which codified the existing legislation and case-law in the area of free movement, streamlined the procedures, cut the red tape and simplified the legal text in the interest of reader-friendliness and clarity.

14.6.2. Current position: Report on work done in 2009

Building on the 2008 report572 on the application of Directive 2004/38/EC which concluded that the transposition of the Directive in Member States was rather disappointing and identified a large number of shortcomings, the single most important activity in 2009 was adoption of guidelines for better transposition and application of Directive 2004/38/EC573 to provide guidance to Member States on how to apply Directive 2004/38/EC correctly; with the objective of bringing a real improvement for all EU citizens and of making the EU an area of security, freedom and justice.

The guidelines provided detailed guidance on key issues covered by Directive 2004/38/EC *(personal scope of family members, entry visas for family members who are not EU citizens themselves, sufficient resources, restrictions on grounds of public policy and public security and abuse and fraud, such as marriages of convenience).*

The Council and the European Parliament welcomed the Guidelines in JAI Council Conclusions of 21 September 2009 and EP Resolution of 22 July 2009.

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571 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 (OJ L 158 of 30 April 2004, p. 77).

572 COM(2008)840 final.

573 COM(2009)313 final.

A newly established group of Member States' experts on the practical application of Directive 2004/38/EC met four times in 2009 and discussed issues related to correct application of EU law in the area of free movement, particularly on fighting abuses and frauds. The exchange of views, know-how and best practices are contributing towards improved implementation of EU law and the case-law of the Court of Justice of the European Union. The group will continue to meet on a regular basis.

In the second semester 2009, in accordance with the priorities established in the 26th Annual Report on the Control of Application of Community law (2008), the Commission initiated bilateral meetings with Member States to discuss all the issues of implementation of Directive 2004/38/EC identified as problematic. The Commission endeavours to meet all Member States by mid-2010.

In 2009, the Commission continued to deal with a large number of enquiries and complaints in the area of free movement of persons – 1000 were replied in 2009 compared with 1070 in 2008. Complaints management was also a significant part of ensuring full and proper implementation of Directive 2004/38/EC. In 2009, 205 complaints were registered with the Secretariat-General (compared with 81 registered in 2008).

There were 37 written EP questions and 36 petitions in the area of free movement of persons in 2009.

The Commission also made an extensive use of informal dispute-settlement mechanisms, such as SOLVIT. According to the 2009 report on development and performance of the SOLVIT network, number of cases in the residence rights area tripled in comparison with 2008 *(549 cases handled and closed with 92 % of cases solved)*. The issues of residence related complaints became the area with the biggest share of complaints dealt by with the SOLVIT for the first time ever *(38 % of all complaints)*, underlining the significance of this part of EU law and expectations of EU citizens.

In 2009, 12 cases were submitted to the EU Pilot scheme (compared with 9 in 2008).

Concerning implementation of priorities established in the previous Annual Report in the area of free movement of persons for 2009, progress was satisfactory. All Article 260 TFEU *(ex-Article 228 EC)* cases have been closed and progress has been made with regard to other cases under Article 258 TFEU *(ex-Article 226 EC)*, where priority was given to older cases.

Concerning cases raising issues of principle or having particularly far reaching negative impact for citizens, the Commission closed 15 cases concerning delays in handling residence applications of third country family members of EU citizens by the a Member State's authorities in January 2010.

14.6.3. **Evaluation based on the current situation**

Priorities set in the previous Annual Report have proven adequate to allow the Commission to focus its efforts in 2009 to the most important areas.

However, despite the efforts of the Commission, the situation in the area of free movement of persons requires further improvement. The report on the application of Directive 2004/38/EC concluded that the overall transposition of the Directive was rather disappointing. The situation is improving only gradually.

To address the unsatisfactory implementation, the Commission will also continue working at technical level with the Member States within the group of experts. The work of the group in 2009 focused on the sensitive areas of fighting frauds and abuses. EU Member States do not follow one single approach *(some Member States do not consider this as problematic, some attach major importance to these issues and EU action)* and tools employed to address these issues are consequently different *(most of the Member States are not taking any active measures as they have not recorded abuses, few Member States report trends or statistics and have rules to be able combat abuse effectively)*. The disparate situation is making it difficult to assess the extent of the phenomenon and to suggest further action at the EU level.

In addition to incorrect transposition of Directive 2004/38/EC, many EU citizens have complained about Member States not implementing correctly their national law transposing EU law in the area of free movement of EU citizens. The single most numerous issue in 2009 concerned delays in handling residence applications of EU citizens and their family members by one Member State. Since October 2008, the Commission received a high number of individual complaints (300) alleging that the authorities of that Member State were failing to meet the deadlines imposed by national and EU law. Following contacts with the Member State, a comprehensive solution was implemented and the situation is significantly improving *(according to the MS's authorities, new applications are handled within the deadlines and the backlog of 77.000 cases has been halved)*. The Commission continues to closely monitor the situation.

This particular issue underlines the crucial role Member States play in practical implementation of EU law and that correct transposition must be accompanied by robust measures enabling national authorities to effectively apply the law. This is even more important in the areas of direct concern to large groups of EU citizens, such as with regard to applications for residence.

In 2010, an improvement can be expected for the second semester, once the bilateral meetings between Member States and the Commission will have been completed and issues of transposition of Directive 2004/38/EC thoroughly discussed. The Commission expects that a significant proportion of the issues can be resolved or clarified through the bilateral meetings and ongoing discussion with Member States. Improvement of transposition must remain to be a priority for the Commission as it has potential to prevent future violations of EU law.

14.6.4. **Evaluation results: Priorities**

Priorities for 2010 and beyond must be slightly changed compared to those for the previous period.

The main emphasis in the next years will be to conclude infringement proceedings for non-conformity. Priority will be also given to start package infringement cases related to incorrect transposition of Directive 2004/38/EC and cases raising issues of principle or having

particularly far reaching negative impact for citizens, notably with regard to the number of aggrieved EU citizens.

14.6.5. **Evaluation results: Planned action (2010 and beyond)**

In 2010 and the next years, the Commission will step up its efforts to ensure that the Directive is correctly transposed and implemented across the EU. In order to achieve this result, the Commission will use fully its powers under the Treaty and launch infringement proceedings, when necessary.

The Commission will continue working at technical level with the Member States in the group of experts.

The Commission will also continue to inform EU citizens about their rights under the Directive. To this end, information on the Directive will be a priority. A simplified guide on EU law for EU citizens on freedom of movement will be updated, published and widely distributed in 2010.

The Commission will encourage Member States to launch awareness-raising campaigns to inform EU citizens of their rights under Article 34 of the Directive.

14.6.6. **Summary**

The Commission attaches priority to the concrete fulfilment of the fundamental and personal right of EU citizens and their family members to move and reside freely. The transposition and implementation of the Directive in Member States needs to be further improved. In the next years, the Commission will step up its efforts and use infringement proceedings, where necessary. The Commission will continue to work closely together with Member States at technical level to provide guidance as to how resolve more problematic issues of free movement. This, together with intensified information to citizens, should bring real improvements in the daily life of EU citizens and their family members.

14.7. Citizenship

14.7.1. **Current position: General introduction**

Article 22 of the Treaty on the Functioning of the European Union grants the right to EU citizens to vote and to stand as a candidate in municipal and European elections in the Member State where they reside, without holding the nationality of that State. These rights were put into effect by Directive 1993/109/EC574 as regards European Parliament elections

574 Council 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

and Directive 94/80/EC575 as regards municipal elections. Directive 1994/80 was modified by Directive 1996/30/CE and Directive 2006/106/EC in view of consecutive enlargements of the Union.

14.7.2. **Current position: Report on work done in 2009**

In 2009, the Commission dealt with an increasing number of enquiries and complaints on citizenship and electoral rights of the EU citizens: 140 (compared to 80 in 2008) of which 40 on citizenship and 100 on electoral rights. In 2009, there were 12 written EP questions and 12 petitions in this area. This shows the increasing awareness and interest of EU citizens concerning their electoral rights and it clearly reflects that EP elections were organised in 2009.

Concerning implementation of priorities established in the 26th Annual Report on the Control of Application of Union law in the area of citizenship, the only infringement proceeding for non communication of Directive 2006/106/EC (adapting Directive 94/80/EC on municipal elections by reason of the accession of Bulgaria and Romania to the EU) was closed on 8 October 2009576.

An important activity on electoral matters was to accompany the correct implementation of Directive 93/109/EC in the June 2009 European elections. The Commission assisted the Member States by providing updated guidelines to the national administrations for the implementation of the Directive, and namely to improve the efficiency of the information exchange system that the Member States put in practice for preventing double vote and double candidacy in the elections. The Commission provided information in its website referring to the modalities of the exercise of the right to participate in the EP elections.

14.7.3. **Evaluation based on the current situation**

Essentially, all Member States transposed the Union legislation in electoral matters. No infringement proceedings were open as of 31 December 2009. The situation in the field of the electoral rights of EU citizens can be considered satisfactory.

A compatibility study was concluded in February 2009. It covers the EU-12 Member States for Directives 94/80/EC and 93/109/EC and the EU-27 for the 1976 Act on European elections577. This will assist the Commission in the assessment and actions to be taken to ensure the correct and complete transposition and implementation of Union law in the national legislations.

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575 Council Directive 94/80/EC 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

576 Infringement proceeding n°2007/0215

577 Act of 1976 on the election of representatives of the European Parliament annexed to Decision 76/787/ECSC, EEC, Euratom, last as amended by Council Decision 2002/772/EC, Euratom

A Commission Report assessing the implementation of Directive 93/109/EC is planned for 2010.

14.7.4. **Evaluation results: Priorities**

The priorities set in 2009 remain applicable in 2010. The focus is to ensure conformity of national legislations of the Member States with Directives 93/109/EC (participation of EU citizens in European elections) and Directive 94/80/EC (participation of EU citizens in municipal elections and conformity across the EU member states with the 1976 Act on the elections of the representatives of the European Parliament.

14.7.5. **Evaluation results: Planned action (2010 and beyond)**

In 2010 and following years, the Commission will step up its efforts to ensure that the instruments in electoral matters are correctly transposed and implemented. The Commission will continue working at technical level with the Member States in the group of experts and launch infringement proceedings when necessary.

A report on the implementation of Directive 94/80/EC (participation of EU citizens in municipal elections) is planned for 2011.

On the basis of a study on possible developments of the EU law on electoral rights, launched in 2009 and to be concluded in 2010, the Commission will consider how to go forward with the modification of Directive 93/109. A proposal to amend the Directive was presented by the Commission in 2006578,which is currently with the Council. The objective is to introduce more flexibility in the administrative procedure and enhancing participation.

14.7.6. **Summary**

Electoral rights of the EU citizens accompany their right to free movement and are part of the rights attached to the Citizenship of the Union: EU law in the electoral field grants the right to the EU citizens to participate in municipal and European elections in the Member State where they reside without holding the nationality of that State (Article 22 TFEU). Detailed arrangements for the exercise of these rights are to be found in Directive 94/80/EC with regard to municipal elections and in Directive 93/109/EC with regard to European elections. The Act of 1976 on the election of representatives of the European Parliament as amended by Council Decision 2002/772/EC, lays down common principles for the Member States in the organisation of the European elections.

Transposition of Union law in electoral matters can generally be considered satisfactory.

However, the Commission should continue to focus on checking and ensuring correct transposition and implementation of Directives 93/109/EC and 94/80/EC and the Act of 1976, as amended by Council Decision 2002/772. This will need close work at technical level with the Member States and use of infringement proceedings, where necessary.

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578 COM(2006)791Proposal for a Council Directive amending Directive 93/109

The Commission shall report on the implementation of Directive 93/109/EC on EP elections in its Communication planned for 2010.

14.8. Fundamental rights

14.8.1. Current position: General introduction

Under the Treaty on the Functioning of the European Union and the Treaty on European Union, the European Commission has no general powers to intervene in individual cases of violations of fundamental rights. It shall however ensure that fundamental rights are protected in the application of Union law.

Since the entry into force of the Lisbon Treaty, the corpus of rule ensuring the respects of fundamental rights within the Union was enriched by the inclusion of the Charter of Fundamental Rights, which is now legally binding. The foreseen adhesion of the EU to the European convention of Human rights will supplement the whole framework.

The important number of letters received by the Commission reveals a strong interest and expectation from citizens on fundamental rights in the Member States. It also reveals that more information is needed to explain that the Commission has no general powers to intervene in cases of violations of fundamental rights and that it can do so only if an issue of Union law is involved.

Nevertheless, the Commission shall ensure that when implementing EU legislation, Member states strictly respects fundamental rights and cases involving fundamental rights should be treated as a matter of priority. This obligation will become even more essential when the EU will gain full membership to the European Convention of Human rights.

14.8.2. Current position – Report on work done in 2009

In 2009, the Commission received a number of individual letters and parliamentary questions as well as petitions generally concerning alleged violations of fundamental rights by Member States: approximately 950 letters and more than 140 parliamentary questions and petitions. Most of the individual cases do not involve Union law and fall outside the powers of the Commission to control the application of Union law.

In 2009, following a number of allegations of ill treatment of migrants at the border, the Commission initiated an infringement procedure against one Member State for failing to fulfil its obligation to respect fundamental rights when implementing the Schengen Borders Code. The infringement procedure also concerns a breach of the EU Asylum *acquis*.

14.9. Protection of personal data

14.9.1. Current position: Report on work done in 2009

The Commission continued the monitoring of the correct application of the Directive 95/46/EC on data protection, the main piece of legislation in this area. It continued to find pro-active solutions outside or in parallel with the infringement procedures through the

'structured dialogue' or bilateral meetings organised with Member States to discuss mainly infringement cases as well as through the EU Pilot (five new files opened in 2009).

Around 160 letters and 46 parliamentary questions were received. There were a total of 10 petitions in 2009.

In 2009, out of total 17 infringement cases in the data protection field, four cases were closed. There were a higher number of cases referring to the incorrect application of the data protection directive than to the non-conformity.

14.9.2. **Evaluation based on the current situation**

The situation and volume of work in 2009 was stable regarding the infringement cases, although the number of letters and enquiries has increased.

14.9.3. **Evaluation results: Priorities and planned action (2010 and beyond)**

Due to the relatively small number of infringement cases in the field of data protection, no prioritisation was applied to them.

Besides the continuous task of monitoring the correct application of the Data Protection Directive 95/46/EC, three studies will be launched in 2010 and will form the basis of the future revision of the data protection legal framework:

3rd implementation report related to Directive 95/46/EC;

study for the evaluation and impact assessment for the future EU legal framework for personal data protection;

evaluation and an impact assessment of the data protection legal framework in all areas of the Union's activities.

14.10. Judicial cooperation in civil matters

14.10.1. **Current position: Report on work done in 2009**

- The Commission continued the monitoring of the correct application of the civil justice *acquis*. In order to ensure the proper implementation of that *acquis*, the Commission adopted two implementation reports in 2009.
- In April 2009, the Commission adopted a Report evaluating the application of Regulation 44/2001 (Brussels I) and issued a Green paper in order to identify ways to improve its functioning.
- Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

The Report concludes that Regulation (EC) No 44/2001 has been generally well received by the courts and the public and that it is generally operating smoothly. Only certain limited difficulties have been reported, relating to rules on jurisdiction. They concern in particular the coordination of parallel judicial proceedings before the courts of the Member States, the autonomy of parties who agree on a choice of court to apply to and the parallel application of the EU rules on choice of court with the new international rules on the subject. These issues must be examined with a view to a revision of the Regulation, on the basis of a public consultation, that would incorporate appropriate solutions to the difficulties identified.

- Green Paper on the review of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

This Green Paper accompanies the Report on the implementation of Regulation (EC) No 44/2001, suggests possible solutions to the difficulties identified and discussed in the Report and asks a number of questions. The Report and the Green Paper will form the basis of a wide-ranging public consultation on the future revision of Regulation (EC) No 44/2001 scheduled for the year 2011.

Also in April 2009, the Commission issued a Report on Directive 2004/80/EC on crime victims:

- Report on the application of Council Directive 2004/80/EC relating to compensation of compensation to crime victims.

The Report shows that

– all Member States but one have enacted national measures transposing the Directive; infringement proceedings have been started against the one Member State that has so far failed to do so;

– not all implementing measures have been brought into line;

– the Member States are providing fair and appropriate compensation for victims; substantial degree of conformity seems to have been achieved across the Member States;

– although the decision-makers and those in charge of providing assistance are satisfied with the way in which the present system is working, applicants for compensation find the application procedure complicated and time-consuming, and the language barrier is a serious obstacle to processing victims' claims.

While the Directive has improved cooperation between the Member States' authorities and made it easier for victims of crime to obtain compensation, it has not yet been possible to exploit its full potential.

Besides the reports, the Commission supported the Member States by giving guidance in the form of the Practice Guides, drafted in cooperation with the European Judicial Network in Civil and Commercial Matters. In 2009, a Practice Guide on the Application of the Regulation

on European Enforcement Order established by Regulation (EC) No 805/2004579 was distributed amongst the legal professionals. A practical guide "Using videoconferencing to obtain evidence in civil and commercial matters under Regulation (EC) No 1206/2001" was also finalised.

14.10.2. **Evaluation based on the current situation**

- The major issue in the area of civil justice was that the Commission decided to take Greece to the Court under Article 260 TFEU (ex-228 TEC) demanding financial sanctions because Greece had failed to implement the EJC Decision issued in 2007 on the non-notification of national implementing measures under Council Directive 2004/80/EC relating to compensation of compensation to crime victims. This infringement is pending at the end of 2009.

- The number of formal complaints pending handling decreased from 18 in 2008 to 10 in 2009. Their limited number does not require prioritization of their treatment. Besides assessment of complaints, the Commission is contributing to correct interpretation of *acquis* through observations to the preliminary questions to the Court of Justice. In 2009, observations were given in around 14 civil justice cases, one of them being a "PPU" (urgent procedure).

- In 2009, as in 2008, a special attention was paid to the correct application of Regulation (EC) No 2201/2003 (the 'Brussels II a Regulation'). The Regulation ensures that children can maintain regular contacts with both parents following a separation and provides clear rules to deter parental child abduction all over the EU. There is one infringement case relating the Brussels IIa Regulation pending at the end of 2009.

- The number of preliminary questions in the area of family law is expected to increase with the new urgent preliminary ruling procedure available since 1 March 2008. The new procedure enables the Court of Justice to deal much more quickly with issues relating to the area of freedom, security and justice. Such an issue may arise, for example, in proceedings concerning parental responsibility if the jurisdiction under EU law of the national court hearing the case depends on the answer to the question referred for a preliminary ruling. In this context, a request for an urgent preliminary ruling (PPU) on a case of parental child abduction was submitted to the Court of Justice in November 2009 (case C-403/09 PPU). The Court, in its answers to the referral questions, confirmed that the law of the Union does not allow a court of a Member State to take provisional measures in matters of parental responsibility granting custody of a child who is in the territory of that Member State to one parent, where a court of another Member State, which has jurisdiction as to the substance of the dispute relating to custody of the child, has already delivered a judgment provisionally giving custody of the child to the other parent, and that judgment has been declared enforceable in the former Member State.

Other options for the Commission to avoid violations of the civil justice *acquis* are to improve the knowledge of the a*cquis* through further training of practitioners (judges, central

579 Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, OJ L 143 of 30.04.2004

authorities and lawyers) as well to promote the use of mediation in the settlement of civil disputes, including family disputes to prevent that these disputes are brought before the courts. The Commission is assisted also by the European Judicial Network in Civil and Commercial Matters, which helps in the correct implementation of the *acquis* through collaboration between contact points. The Commission published leaflets in all languages about the European Judicial Network's tasks and contact points. The aim is to facilitate requests for judicial cooperation between Member States and to make it easier to ensure that EU legislation is properly applied in practice.

14.10.3. **Evaluation results: Priorities**

Increased attention needs to be paid in the coming years to the full and effective implementation, enforcement and evaluation of existing instruments. Legal transposition should be ensured using, to its fullest extent, wherever necessary, existing institutional tools.

The Union should focus on identifying the needs of citizens and practitioners and the appropriate responses. The development of action at Union level should involve Member States' expertise and consider a range of measures, including non-legislative solutions such as agreed handbooks, sharing of best practice and regional projects that address those needs, in particular where they can produce a fast response.

14.10.4. **Evaluation results: Planned action (2010 and beyond)**

a) Consumer legislation

Negotiations on the proposal for a Directive on Consumer Rights will continue in 2010. It may be possible to secure political agreement in Council and a first reading opinion from the European Parliament before the end of the year, with a view to a final adoption in 2011. Once adopted, this Directive will increase consumer confidence by ensuring that consumers benefit from the same rules wherever they shop. It will also make life easier for business by removing the internal market obstacles created by the fragmentation of consumer laws.

Furthermore, the Commission will finalise the impact assessment for a possible future revision of the Package Travel Directive. Recent developments in the travel market such as the emergence of low-cost air carriers and bookings on the Internet have led to a considerable decrease in the market share of traditional package tours. As a consequence, fewer consumers are protected by the Directive when going on holiday. There is therefore a need to revise the Directive to ensure that it is adapted to the current market situation. Following the impact assessment a proposal could be adopted in early 2011.

b) Contract law

In the area of contract law, the Commission will consult in 2010 on the scope and form of a Common Frame of Reference, which could act as toolbox for the EU legislator when tabling proposals with contract law elements.

14.11. Judicial cooperation in criminal matters

14.11.1. Current position: Report on work done in 2009

There are currently 12 mutual recognition instruments in Criminal law, out of which five ought to have been implemented by 2009, or earlier. Legislation in this sector, formerly included in the third pillar, experiences belated and partial implementation by Member States, with the exception of Framework Decision 2002/584/JHA on the European Arrest Warrant, which has been transposed by all Member States. Since the Framework Decision came into operation, in general the time taken to execute a warrant is provisionally estimated to have fallen from more than nine months to five weeks. This does not include frequent cases where the person consents to surrender, for which the average time taken is two weeks.

Three other instruments out of those due have been merely partially implemented so far. More specifically, the situation with these instruments is the following:

Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties580 has been implemented in 17 Member States, while notifications from ten Member States are still missing. The Framework Decision applies the principle of mutual recognition to financial penalties imposed by judicial or other authorities, for the purpose of facilitating enforcement of such penalties in a Member State other than the one in which the penalties were imposed. The Framework Decision applies to all offences in relation to which financial penalties can be imposed. Dual criminality checks were abolished in relation to 39 offences listed in the Framework Decision.

Besides the significant delays in its transposition (by the time the report on implementation was published by the Commission in December 2008581 only eleven Member States had transposed it fully or partially), the quality of implementation leaves much to be desired.

While some of the most important issues such as the abolition of dual criminality and the recognition of decisions without further formality are properly reflected in the implementing provisions, the grounds for refusal have been implemented mostly as obligatory grounds and additional grounds have been added in contravention of the Framework Decision.

Little information is available on the practical application of the provisions of the Framework Decision, although recent workshops organised by the Commission have demonstrated an increasing cross-border use between certain member States.

Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence582 has been implemented by 23

580 Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, OJ L 76/16 of 22.3.2005.

581 Report from the Commission based on Article 20 of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, COM(2008) 888 final.

Member States. It applies the principle of mutual recognition to orders freezing property or evidence. It aims at ensuring that evidence or property located in one Member State can be frozen on the basis of a decision taken by a judicial authority in another Member State. There have been significant delays in its transposition by the Member States. The report issued by the Commission in December 2008583 shows that the implementation of this text is not satisfactory. By December 2008, only nineteen Member States transposed it fully or partially and the national legislations show numerous omissions or misinterpretations. Little information is available on the practical application of the legislation. Feedback from practitioners seems to indicate that the certificate to request the execution of freezing orders is rather difficult to complete and does not contain all the necessary fields. Therefore, judicial authorities tend to revert to the standard mutual legal assistance forms.

Council Framework Decision 2006/783/JHA of October 2006 on the application of the principle of mutual recognition to confiscation orders applies the principle of mutual recognition to confiscation orders issued by a court competent in criminal matters for the purpose of facilitating enforcement of such confiscation orders in a Member State other than the one in which the confiscation order was issued. The Framework Decision applies to all offences in relation to which confiscation order can be issued. Dual criminality checks were abolished in relation to 32 categories of offences listed in the Framework Decision.

At present, notifications on the implementation of the Framework Decision have been received from twelve Member States.

The Framework Decision provides for the publication of an implementation report by the Commission by 24 November 2009. The report is underway and will be issued later in 2010. The delay in preparing this report results from the low number of notifications received by the deadline set by the Framework Decision - only two notifications were received on time. Besides the significant delays, it appears already now that the quality of implementation is not satisfactory, with most national legislations flawed by omissions or misinterpretations even of essential provisions.

14.11.2. **Evaluation based on the current situation**

Since the rules currently in force do not allow the Commission to initiate infringements proceedings in this field (for a transitional period of five years from the entry into force of the Lisbon Treaty), DG JLS decided last year to launch an array of initiatives designed to improve the implementation record in this area by providing Member States' administrations with guidance and help during the implementation stage. These initiatives have included: a series of workshops with national legislators and practitioners on Framework Decisions 2003/577/JHA on freezing order and 2005/214/JHA on financial penalties (two pieces of legislation with the longest overdue implementation deadline); guidance papers for the

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582 Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, *OJ* L 196 of 2.8.2003, p. 45.

583 Report from the Commission based on Article 14 of the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, COM(2008) 885 final.

national legislators and handbooks for practitioners; streamlined contact with national authorities responsible for implementation; participation in national training for judicial professions.

14.11.3. **Evaluation results: Priorities and planned action (2010 and beyond)**

Action started last year will be continued and stepped up in order to improve the implementation record of mutual recognition instruments in the EU. In an attempt to prevent problems stemming from implementation at an earlier stage, Implementation Workshops with national legislators and practitioners this year will concern not only Framework Decision 2006/783/JHA on confiscation orders (with implementation deadline already passed), but also Framework Decisions 2008/947/JHA on probation measures584 and 2008/909/JHA on custodial sentences585, for which the implementation period is still running. Streamlined contacts with Member States may include, especially from 2011, implementation "package meetings" in the capitals, where all the different services involved in the implementation work could benefit from the expertise of the Commission services. Handbooks on the application of the Framework Decisions on Freezing and Financial Penalties will be published.

Security

14.12. Data Retention Directive

14.12.1. **Current position: Report on work done in 2009**

On 15 September 2007, the Member States should have brought into force legal instruments to comply with the Data Retention Directive 2006/24/EC586. 18 Member States587 invoked the clause of Article 15(3) that allowed them to postpone the application of the Directive to the retention of communications data relating to Internet Access, Internet telephony and Internet e-mail until 15 March 2009. This situation means that with regard to the majority of Member States, the procedures for infringement will happen in two steps.

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584 Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, OJ L 337/102, 16.12.2008

585 Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, OJ L 327/27, 5.12.2008

586 Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, OJ L 105 , 13.04.2006

587 The Netherlands, Austria, Estonia, United Kingdom, Cyprus, Greece, Luxemburg, Slovenia, Sweden, Lithuania, Latvia, Czech Republic, Belgium, Poland, Finland, Germany and upoon accession Bulgaria and Romania.

In 2009, the Commission continued the non-communication cases against six Member States. In November 2009 it addressed a reasoned opinion to Luxembourg. Ireland had brought an action for annulment of the Directive (Case C-301/06) on the ground that it should have been adopted with a third pillar legal basis (Title VI TEU). The ECJ dismissed the action in its judgment of 10 February 2009.

Having regard to that judgment and the evolution of the transposition, the Commission referred the non-communication cases regarding Austria, Greece, Ireland, the Netherlands, Sweden and Poland to the Court. After reception of the national legislation of the Netherlands and Poland, the cases for failure to notify legislation against these states were discontinued.

With regard to the application of the second ('internet') part of the Directive as of 15 March 2009, the Commission is continuing to examine the situation in those Member States that might have not transposed the Directive correctly.

14.12.2. **Evaluation based on the current situation**

In the course of the evaluation process, the Commission noted at many occasions that the transposition and application of the Directive was done in a very heterogeneous manner. In order to establish whether the different solutions are in line with the Directive, the Commission must make an in-depth analysis of the national legislations. This, however, is a highly time-consuming task, since the national transposition of the Directive is often embedded in an existing intricate web of national legislation, both in the field of transport and communication as well as in the field of law enforcement and criminal proceedings.

In that respect, procedural monitoring has been feasible because of all DRD-related infringement cases against Member States so far have been cases of non-communication. The legal enforcement of the correct application of this Directive requires more work.

The Commission has observed that the Data Retention Directive is politically highly sensitive in most Member States. National parliaments and civil society are critical. This, and the fact that intensive analysis of the market impact and consultation with stakeholder groups on both privacy issues and complex technicalities that come with implementation of the Directive are necessary, suggests that the initial deadline for transposition may have been too ambitious.

Article 10 of the Directive provides that "Member States shall ensure that the Commission is provided on a yearly basis with statistics on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or a public communications network (…)". For this purpose, the Commission designed, in consultation with stakeholder groups, a template with categories of data that Member States have to provide to the Commission. However, only 11 Member States provided the Commission with their statistical information over 2008. This signals that the provision in the Directive on statistics is not fully applied by all Member States.

A general point of attention based on the evaluation of the operation of the Directive under its Article 14, is the need to also analyse secondary legislative measures as part of legislation transposing a Directive without which the formally notified law does not apply. For example, some Member States notified legislation that would allegedly have transposed the Directive. However, the Commission later found out that the national legislation was not actually

applied in the Member State concerned, because a (royal or presidential) decree necessary for the transposing law to enter into force had not yet been adopted.

On 8 October 2009, the Romanian constitutional court ruled that the Romanian national legislation transposing the Directive had to be considered unconstitutional and was therewith void. This has created a situation where the notified transposition law as a whole is no longer applicable in the Member State. The German constitutional court delivered a judgement with similar effect on 2 March 2010. The Commission will ensure that the Directive is applied properly in all Member States.

Accurate and up-to-date knowledge of the legislation in force in the Member States is necessary to monitor the application of EU legislation and inform infringement procedures. An obligation for the Member States to inform the Commission not only about the formal law that it adopted to transpose a Directive, but also of subsequent amendments to that law, or when replaced by another law would facilitate Commission's tasks. As a matter of good governance, it would also contribute to *inter alia* transparent administration of the law, legal certainty for citizens and enterprises and also to ensure a level playing field for economic operators. Furthermore, national jurisdictions, including constitutional and administrative courts, may adopt judgements that substantially affect the application of the law or related secondary legislation. Further attention will have to be paid to these issues to reinforce current means available to ensure the correct application of EU law.

14.12.3. **Evaluation results: Priorities and planned action (2010 and beyond)**

Article 14 of the Directive stipulates that no later than 15 September 2010, the Commission shall submit to the European Parliament and the Council an evaluation of the application of this Directive and its impact on economic operators and consumers. The state of notifications will also been taken on board in that assessment.

The Commission will advance its infringement cases.

14.13. European Programme for Critical Infrastructure Protection

14.13.1. **Current position: General introduction**

Directive 2008/114/EC on the Identification and Designation of European critical infrastructures and the assessment of the need to improve their protection588 was adopted in December 2008 and entered into force in January 2009.

The objectives of the Directive are:

– establishment of a procedure to identify European Critical Infrastructures (ECIs);

– establishment of a procedure to designate infrastructures as European Critical Infrastructures;

588 OJ L 345 of 23.12.2008

– devising a common approach to assess whether it is necessary to improve the protection of such infrastructures.

14.13.2. **Current position – Report on work done in 2009**

As the deadline for the implementation of the Directive 2008/114/EC is January 2011, most of the Member States are working on the identification of potential ECIs in the energy and transport sectors. Generally, either already existing or new fora/working-groups, bringing together the relevant national ministries or agencies as well as association of operators, are proceeding with the first stages of the identification procedure at national level.

The Commission continued offering its support to this process. Two implementation workshops have already taken place at the Joint Research Centre in Ispra, with the view to exchange practices and information on the implementation procedure in Member States. Both workshops also provided fora to discuss the general framework of the review of the Directive, and both Member States and Commission made preliminary contributions as regards the structure and content of the process leading to the review.

14.13.3. **Evaluation based on the current situation**

The situation and volume of work in 2009 was stable and focused on exchanging information and good practices on the identification and designation of ECI experience in the Member States.

14.13.4. **Evaluation results: Priorities and planned action (2010 and beyond)**

The review of the Council Directive 2008/114/EC will begin on 12 January 2012, i.e. three years after its entry into force. For a smooth review process mutual trust and a sound discussion basis between Member States, the Commission and the European Parliament must be established as early as possible. This is particularly important as the legal basis of the Directive changed since the entry into force of the Lisbon Treaty.

The voluntary "implementation" workshops and the CIP contact point meetings will remain the backbone of the review process throughout 2010 and beyond. If needed, extra meetings could be added, or side-events dedicated to preparing the review could be organised.

The Commission will deliver summary reports providing the results from these workshops. Shortly before the actual start of the review process (12 January 2012), the Commission supported by the Member States will put forward a general report summarising the overall preparatory activities. This report will be the starting point for the political discussions at Council level.

14.14. Third pillar instruments – police and criminal justice cooperation

14.14.1. **Current position: Report on work done in 2009**

Monitoring in the context of third pillar instruments was mainly done on the basis of implementation reports. These had to be produced following specific provisions in articles in the legal instrument itself.

Similarly, under Article 11 of the Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism, the Commission has to draw up a written report on the measures taken by the Member States to comply with this instrument.

In accordance with that Article, a first implementation report from the Commission was adopted on 8 June 2004. The Council's response to the Commission's report was adopted on 25 and 26 October 2004 and it decided to invite those Member States which had not yet fully complied with the Framework Decision to do so as soon as possible and to provide information on progress made; invite the Member States concerned to provide further information as asked for in the Commission's report; and invite the new Member States to provide information on their implementation of the Framework Decision. On the basis of the Council's response, a second evaluation report from the Commission was adopted on 6 November 2007.

In the case of the Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA, Article 3 requests Member States to take the necessary measures to comply with the Framework Decision by 9 December 2010. During 2010, the Commission intends to assist Member States by organising an expert meeting on the implementation of the Framework Decision. If there is a need, the Commission will organise a follow-up meeting.

The Commission is currently preparing an update of the first implementation report on the application of Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector.

The Swedish Framework Decision (Council Framework Decision 2006/960/JHA589) concerning the simplification of the exchange of information and criminal intelligence across the European Union requires that the Commission submit an evaluation report to the Council before 18 December 2010. Just four months after the original implementation deadline had expired, the Commission organised a conference that sought to review the implementation experience of this instrument. The outcome of that 2009 conference, including detailed replies to the Commission's questionnaire, will feed into a second conference on implementation, to be organised in the second half of 2010. The Commission will then finalise its evaluation report before 18 December 2010.

The Prüm Decisions (Council Decision 2008/615/JHA590 and 2008/616/JHA591) concerning the automated exchange of DNA, fingerprints and car registration data are currently being

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589 Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386/89 of 29.12.2006

590 Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ L 210/1 of 6.8.2008

591 Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ L 210/12 of 6.8.2008

implemented by Member States. As of this date, 10 Member States have been authorised by the Prüm Treaty's Council of Ministers to exchange DNA; five to exchange fingerprints data; and seven to exchange car registration data. The Commission is playing an active role in the rolling evaluation of this instrument and has recently launched its ambitious European Information Exchange Model exercise, which seeks to 'map' the current landscape of information exchange in the EU. This mapping exercise will later feed into the Commission's evaluation of the Prüm Decisions, which must be completed before 28 July 2012.

14.14.2. **Evaluation based on the current situation**

It is to be noted that due to particular nature of the third pillar legislation, it takes a long time and several reminders - through Council Working groups - before the Commission obtains the requested information, which often vary in terms of quality

14.14.3. **Evaluation results: Priorities and planned action (2010 and beyond)**

A second Report on the implementation of the Framework Decision 2003/568 on combating corruption in the private sector and a Report on the implementation of the Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, are foreseen for 2010.

With the entry into force of the Lisbon Treaty, other measures in support of implementation of former third pillar legislation could be envisaged (developing guidelines, regular meetings of national experts, using a network of contact points or expert groups) depending on the particular instruments. As regards the Framework Decision 2005/222 on attacks against information systems, the annual meeting of cyber crime experts of Member States is likely to be partially used to discuss the state of play as regards the implementation.

15. TRADE

Trade policy is governed by Article 207 of the Treaty on the Functioning of the Eruopean Union. The bulk of the Community legislation in this field takes the form of regulations, for example, the basic anti-dumping and countervailing duty regulations, the Generalised System of Preferences Regulation, the Trade Barriers Regulation and the Import and Export Regulations.592 There are only two directives. These directives are Council Directive 98/29/EC of 7 May 1998 on harmonisation of the main provisions concerning export credit insurance for transactions with medium and long-term cover and Council Directive

592 Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community as amended; Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community as amended; Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 as amended; Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization as amended; Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports and Council Regulation (EEC) No 2603/69 of the Council of 20 December 1969 establishing common rules for exports.

84/568/EEC of 27 November 1984 concerning the reciprocal obligations of export credit insurance organizations of the Member States acting on behalf of the State or with its support, or of public departments acting in place of such organizations, in the case of joint guarantees for a contract involving one or more subcontracts in one or more Member States of the European Communities. There were no infringements cases open during 2009 in the field of trade policy.

It is not expected that there will be any significant work required on the transposition of these directives or other potential infringements in 2010.

16. ENLARGEMENT

16.1. Current position - Most important legal instruments and related work and reporting on 2009

16.1.1. General instruction

Enlargement policy is based on Article 49 TEU. Association agreements with candidate countries or potential candidates may contain certain rights and obligations which are directly applicable under EU law. Violation of such provisions by a Member State could therefore be subject to infringement proceedings.

This is in particular the case for the 1963 EEC-Turkey Association Agreement, its 1970 Additional Protocol and related Association Council Decisions, particularly Decision 1/80. The Stabilisation and Association Agreements with the former Yugoslav Republic of Macedonia (2004), Croatia (2005), Albania (2009) and Montenegro (2010) fall into the same category of EU law, partly liable for trial in the European Court of Justice as far as implementation or application by Member States is concerned. Similar agreements with the potential candidate countries Serbia and Bosnia and Herzegovina have not yet entered into force.

16.1.2. Report of work done in 2009

The Commission receives a lot of correspondence and complaints from citizens related to legal acts and agreements in the field of enlargement, including financial instruments. However, these cases mainly concern alleged violation of obligations by the third country or other matters not directly related to the application of EU law by Member States. Recourse to infringement proceedings is therefore very limited in the area of enlargement.

In a case on the interpretation of standstill clauses under the EEC-Turkey Association Agreement referred by a Dutch Court for preliminary ruling, the ECJ found in its judgement of September 2009 that the Dutch legislation and practice to charge Turkish workers in the Netherlands markedly higher fees for issuing or prolonging their residence permits than those required for EU nationals in a comparable situation violates EU law. In a similar case referred to the Court by the Commission, a hearing was organised in November 2009, providing the basis for the Court to confirm and further develop its jurisprudence on standstill clauses also with regard to Turkish nationals benefiting from the Association Agreement's provisions on freedom of establishment and freedom to provide services, in full compliance with the Commission's submissions .

In 2009, the Commission received new complaints related to the application and interpretation of certain provisions, including standstill clauses, of the EEC/Turkey Association Agreement, which are being examined with the governments concerned. Following comprehensive explanations by the government, the Commission continued to thoroughly assess possible infringements in several other cases, which concern the compatibility of mandatory integration exams for Turkish nationals working in a Member State as well as the increase of the minimum age of Turkish citizens for issuing residence permits.

16.2. Evaluation based on the current situation

Since EU enlargement in 2004 and 2007, the complaints received with a view to infringement proceedings all concern the application of the EEC/Turkey Association Agreement. Taking into account the references to preliminary rulings pending at the Court, this confirms that the application and interpretation of this Association Agreement is still subject to a variety of legal arguments with regard to residence and work of Turkish citizens in Member States. One of the reasons may be that Member States aim to limit the migration of third country nationals and their family members without differentiating between various categories of third countries and established rights of their nationals.

Other Stabilisation and Association Agreements with Western Balkan countries which have entered into force are, so far, not subject to any infringement case.

The number of complaints that may lead to infringement cases has slightly increased but does not yet require additional prioritisation among them.

16.3. Evaluation results

There is only one priority in the area of enlargement and that is the application of the EEC/Turkey Association Agreement. This priority remains unchanged given the limited number of cases. However, given the number of pending cases and the expected increase of complaints following recent judgements of the Court on standstill clauses under the EEC/Turkey Association Agreement, Enlargement DG will increase in 2010 its resources in order to accelerate the handling of cases.

16.4. Summary by sector

Infringement procedures in the area of enlargement are rare in comparison to other policy areas. All pending cases at the Court and the Commission concern the alleged violation of directly applicable provisions, particularly standstill clauses, under theEEC/Turkey Association Agreement.

17. EUROSTAT

17.1. Current position-

The objective of having statistics of quality is both an operational and a legal requirement insofar as European statistics production must respect the principles set out in Article 338 of the EU Treaty and in Regulation (EC) No 223/2009 of the European Parliament and of the

Council of 11 March 2009 on European statistics593, and in the various sectoral legislative instruments[594] and responds to the following general approach.

Moreover, in accordance with Decision 1578/2007/EC on the Community statistical programme 2008 to 2012595, compliance monitoring of European legislation in the field of statistics is a specific objective of strategic importance for the medium to long-term development of European statistics:

"The quality of Community statistics comprises the fundamental requirement of compliance with the principles of the Treaty and the secondary legislation. Therefore, a vigorous and systematic monitoring of the application of the legislation is a priority. A global and coherent compliance strategy structured around the principles of a realistic legislative policy, the obligation of Member States to apply systematically the statistical legislation and a coherent and systematic monitoring of compliance, will be followed. Close contacts with the competent national authorities throughout all of the phases is part of the compliance process".

17.2. Report on 2009

Since 2006, several Reports (annual or biannual) inform about the state of play and to recommend possible follow-up actions. In addition, the ESS Committee (European Statistical System Committee) has been informed in 2009 of the actions recently carried out in the field of compliance monitoring.

Main outcome of the 2009 report:

As for the previous years, the non-compliance with the transmission deadlines remains the principal problem. However, and even if a large part of the statistical legislation is affected by this transmission problem, constant work and frequent operational contacts allow a regular improvement of the respect of legislation.

Furthermore, it appears also that the evaluation of quality remains a difficult exercise, even at operational level. However, Regulation (EC) No 223/2009 establishes a new framework for quality (article 12) with a list of specific criteria which should be used for the assessment of quality. Those criteria should be systematically included in all new statistical legislation through a standard article.

The improvement of the overall situation can generally be confirmed. Member States in default are making serious efforts to fully comply when they are challenged at suitable level. In most cases, Member States react positively to reminders. In several cases, a solution to the difficulties could be found thanks to reciprocal collaboration with the National Institutes.

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593 OJ L 87, 31.3.2009, p. 164

594 As an indication, the *legal* corpus in the field of statistics comprises around 300 acts of secondary legislation, of which about one third are basic acts, i.e. acts of the Council and/or of the EP.

595 Decision 1578/2007/EC of the European Parliament and the Council of 11 December 2007 on the Community statistical programme 2008 to 2012 - Point 3.2 of Annex I – (OJ L 344, 28.12.2007, p. 15).

It is important to notice that in order to assure a complete follow up of compliance with European statistical legislation, there are also certain parallel systems in place which serve the purpose of assuring fulfilment of the complex methodological rules discussed through cooperation with Member States at different sectoral statistical Committees and expert Working Groups.

Nevertheless, the Annual Compliance Monitoring Reports do not encompass the issue of non-compliance with methodological requirements established by European statistical legislation.

17.3. Evaluation Results

European statistical legislation is mainly composed of Regulations. In this area there only are 5 Directives.

Possible difficulties to apply European statistical legislation are anticipated and addressed when preparing any draft legislative proposal, which is always the result of close cooperation with Member States. In addition, the measures of implementation of the basic acts (as adopted by comitology procedures) are prepared and discussed with Member States.

It is useful to stress that the obligations of Member States in the field of statistics are recurring and therefore need constant follow-up. Thanks to continuous collaboration with the Member States, Commission services are in a position to know beforehand the possible difficulties that a Member State could encounter and can try addressing these difficulties in advance together with the responsible national statistical authority.

The partnership approach has so far led to clear improvements. The administrative letters sent in the pre-infringement phase have indeed had a positive effect and the encouraging results show how useful and effective this strategy is. The successive reports confirmed that the Member States at fault are making a serious effort to comply when they are challenged at suitable level and that, in the majority of the cases, Member States react positively to formal reminders. Thus a solution to the difficulties could be found thanks to reciprocal collaboration between the National Institutes and Eurostat's services.

It is worth noting that in May 2009, the European Statistical System Committee expressed its support to this approach.

17.3.1. **Priorities**

The main priority in this area concerns the efficient co-operation with the Member States to improve the quality of European statistics (accuracy, timeliness and comparability being priorities for the ESS).

Commission will pursue its policy, based on a comprehensive and coherent approach that ensures follow-up and effective control of the application of statistical legislation.

17.3.2. **Planned action**

The objective of having statistics of quality is both an operational objective and a legal requirement insofar as European statistics production must respect the principles set out in Article 338 of the EU Treaty and in Regulation (EC) No 223/2009 of the European Parliament

and of the Council of 11 March 2009 on European statistics596 as well as in the various sectoral legislative instruments.

In the field of statistics, Commission services will continue to monitor the application of European legislation especially through bilateral meetings and discussions with Member States.

Commission services will carry out this *structured dialogue* with the ambition to ensure the full and correct application of statistical legislation without having to recourse to formal infringement proceedings.

Identified as an area in which improvements are needed on an ESS-wide scale, the ESS will join forces to invest in implementing ESS quality management tools and guidelines.

18. HUMAN RESOURCES AND SECURITY

18.1. Current position – Most important legal instruments and related work and reporting on 2009

18.1.1. Existing measures in force

In the field of Human Resources, the Commission seeks to guarantee that Community law is correctly applied to the staff of the EU by ensuring that Member States adopt legislation and implementing provisions in compliance with the Protocol on Privileges and Immunities of the European Union and the Regulations and Rules applicable to officials and other servants of the EU.

In particular, the following legal texts are applicable:

Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 and amendments thereto,

The Protocol on the Privileges and Immunities of EU (PPI), annexed to the Treaty on the European Union of 1965,

Other agreements between the European Commission and Member States regarding the functioning of the Institutions' services.

18.1.2. Report of work done in 2009

In 2009, the Commission pursued infringement proceedings launched in 2007 against Belgium in a case on the application of the Headquarters Agreement with the Commission and in another case the application of Article 3 of the PPI.

An appeal was lodged with the Court of Justice (Case C-132/09) seeking a judgment to confirm that Belgium should comply with its undertaking, to subsidise the cost of equipment for European Schools.

596 OJ L 87, 31.3.2009, p. 164

Proceedings are on going which are directed against national rules providing for the imposition of taxes on EU Institutions based in Brussels contrary to provisions providing for a tax exemption under Article 3 of the PPI.

The Commission has continued to make additional arrangements for the transfer of pension rights for staff who had originally worked and acquired pension rights in Member States. This ongoing process has had a number of successes and some of the competent authorities have already fulfilled their obligations in this regard.

18.2. Evaluation based on the current situation

The measures which may require specific implementation / transposition work

The Commission closely follows the evolution of policy in Member States as regards European Schools. As regards the transfer of pension rights, taking into account the direct applicability of the Staff Regulations, it has not so far been necessary to launch infringement proceedings against Member States which refuse or delay coming to an agreement regarding the implementation of the necessary procedures for such transfers.

The Commission continues to seek pro-active solutions outside or in parallel with the infringement procedure under Article 258 of the Treaty on the functioning of the European Union. Contacts are regularly organised between the institution's administration and the competent authorities of Member States to anticipate and resolve matters which could otherwise lead to such proceedings.

19. BUDGET

19.1. Current position – relevant legal instruments and related work and reporting on 2009

19.1.1. Existing measures in force

The EU budget is mainly financed through three own resources: traditional own resources, the VAT-based own resource and the complementary resource based on Member States' GNI.

In particular, the following legal texts are applicable:

Article 311 of the consolidated Treaty (ex Article 269 TEC),

Council Decision 2007/436/EC, Euratom on the system of the Communities' own resources.

Council Regulation (EC, Euratom) No 1150/2000 implementing the above decision, in its version of Council Regulation EC, Euratom No 105/2009 applicable from January 1, 2007.

Council Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax.

Additional budgetary receipts are obtained under Articles 3 and 4 of the Protocol on the Privileges and Immunities of EC (PPI), annexed to the consolidated Treaty as Protocol n° 7.

The main rules for budget execution are contained in Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities in its version of Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008. This Regulation is at present under review.

19.1.2. **Report of work done in 2009**

19.1.2.1. Main 2009 activities

The area of Own resources is based upon directly applicable Council Regulations and Decisions. Member States therefore need not implement and transpose the concerned EU legislation into their national law. However, conformity of application may be at risk due to different interpretation and non compliance. DG Budget aims at preventing irregularities in Member States mainly via comprehensive control activities and legal and accounting follow-up of detected anomalies, in view of ensuring the correct functioning of the EU own resources system. Consequently, the number of infringement files to be managed (ca. 30 or less on average) can be kept on a low level. In addition, Article 11 of Regulation 1150/2000 is a useful ally in assuring that Member States in general make available own resources in due time since the amount of default interest to be paid under Article11 progressively increases and may often exceed the principal claim depending upon the period of delay.

In 2009, DG Budget detected 155 anomalies in the area of traditional own resources (of which 115 in the course of on-the-spot inspections) and set 72 reservations in the area of VAT/GNI (= 72 VAT+ 0 GNI). Correspondingly, 240 accounting actions for traditional own resources and 201 for VAT/GNI (130 set and 71 lifted) were generated for potential corrective payments (principal amounts and belated interest) by Member States. Most of the newly detected anomalies could be solved at an initial stage in bilateral discussions with Member States, including senior level management meetings, or in the Advisory Committee on Own Resources.

Regarding infringements, the principal activities in 2009 concerned the follow-up of earlier Court decisions and the contribution to pending ECJ cases, mainly relating to the infringement procedures concerning duty-free military importations which the Court decided in favour of the Commission on 15.12.2009 (apart from the case concerning Portugal for which a comparable outcome is expected in the run of 2010) and a priority case against Germany where a rapid Court answer is desirable to whether the German authorities may refuse a request of the European Court of Auditors, for auditing the administrative VAT cooperation of Member States under Council Regulation (EC) No 1798/2003.

Where Member States do not establish own resources or omit the recovery of established amounts, this failure risks to increase the contributory charge of the other Member States. An equal treatment of Member States can only be assured via a strictly monitoring by the Commission services and, if necessary, making use of infringement proceedings. There is hardly room for discretion under the aspect of political opportunity, and the waiving of claims due vis-à-vis Member States (Article 73(2) of Financial Regulation) seems unlikely, if not impossible. DG Budget takes however legal action only if a satisfactory solution cannot be found in bilateral contacts and discussions with Member States in the Advisory Committee for Own Resources. Where infringement situations subsist and rare resources request for prioritization of treatment, the proceedings are followed-up according to their gravity and their impact on the budget.

19.2. Evaluation based on the current situation

As already underlined in earlier Annual Reports, Member States in general fully respect the budgetary legislation by contributing timely and correctly to the EU budget. The Court findings in decisions of the last decade in the area of own resources have contributed to clarify still open interpretation divergences mostly by confirming the Commission's point of view. The common financing system of the EU budget thus has a stable fundament and infringement cases detected by the Commission controllers usually do not reflect any particular systemic problems in the application of EU law.

19.3. Evaluation results

19.3.1. Priorities

Taking into account the current situation as well as the constraint to preserve a fair distribution of the budget financing charge between Member States and estimating that the number of infringement files can be kept at a low level by preventive control activities, DG Budget priorities will remain the same: since any shortage of financing due to an infringement by one Member State may increase the budgetary charge for the other Member States, no discretion will be available whether to start and to continue infringement proceedings while prioritization of infringements will be made according to their gravity and their impact on the budget.

19.4. Summary

The number of infringement cases managed by DG Budget has still decreased. In general, the legislative framework is stable since Member States take satisfactorily account of the EU budgetary rules. Court case-law provides valuable guidance for their future application.

Annex I - List of measures in force and other relevant instruments referred to in the text of the document

I. ENTERPRISE AND INDUSTRY

I.1. Chemicals

REACH and its implementing legislation are available through the following link:

http://ec.europa.eu/enterprise/sectors/chemicals/documents/reach/index_en.htm

REACH and its links to previous legislation on restrictions is available here:

http://ec.europa.eu/enterprise/sectors/chemicals/documents/reach/archives/market-restrictions/index_en.htm

Legislation and documents related to the ***specific chemical sectors*** are available at: http://ec.europa.eu/enterprise/sectors/chemicals/documents/specific-chemicals/index_en.htm

I.2. Pharmaceuticals

In the pharmaceutical sector, the main measures monitored by the Commission are:

- Regulation (EC) No 726/2004 of the European Parliament and of the Council, laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (EMEA);
- Directive 2001/83/EC of the European Parliament and of the Council on the Community code relating to medicinal products for human use;
- Directive 2001/20/EC of the European Parliament and of the Council on clinical trials, complemented by Commission Directives 2003/94/EC and 2005/28/EC;
- Regulation (EC) No 141/2000 of the European Parliament and of the Council on orphan medicinal products, complemented by Commission Regulation (EC) No 847/2000;
- Regulation (EC) No 1901/2006 of the European Parliament and of the Council on medicinal products for paediatric use;
- Regulation (EC) No 1394/2007 of the European Parliament and of the Council on advance therapy medicinal products;
- Directive 2001/82/EC of the European Parliament and of the Council on the Community code relating to veterinary medicinal products;
- Regulation (EC) No 470/2009 of the European Parliament and of the Council of laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90.

I.3. Medical devices

Regulatory Framework:

http://ec.europa.eu/enterprise/sectors/medical-devices/regulatory-framework/index_en.htm

I.4. Cosmetics

Cosmetics Regulatory Framework:

http://ec.europa.eu/enterprise/sectors/cosmetics/regulatory-framework/index_en.htm

I.5. Textiles/clothing

The relevant legislation can be found at the following webpage:

http://ec.europa.eu/enterprise/sectors/textiles/single-market/textiles-names-legislation/index_en.htm

I.6. Non-harmonised area

Treaty Articles:

http://ec.europa.eu/enterprise/policies/single-market-goods/files/treaties/tfeu_en.pdf#page=15

Regulation Mutual recognition regulation

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0021:0029:en:PDF

II. EMPLOYMENT, SOCIAL AFFAIRS AND EQUAL OPPORTUNITIES

List of measures in force

II.1. Free movement of workers and coordination of social security schemes

II.1.1. Free movement of workers

– Art. 45 TFEU (ex-39 TEC)

– Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community. A codification of this regulation is under way and the preparatory work is in an advanced stage.

– 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.

II.1.2 Social Security

– Article 48 TFUE (ex-42 TEC)

– Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, self-employed persons and to the members of their families moving within the Community.

– Regulation (EC) No 859/2003 of the Council of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality.

– Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security schemes.

Recently adopted measures due to enter into force in the sector of the coordination of social security systems

– Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.

– Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 amending Regulation (EC) No 883/2004 on the coordination of social security systems, and determining the content of its Annexes.

New measures already proposed and due to be adopted in the sector of the coordination of social security systems

– Proposal for a Regulation of the Council extending the provisions of Regulation (EC) No 883/2004 and of Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality.

II.2. Labour Law

II.2.1. Working conditions

– Directive 96/71/EC597 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

– Council Directive 97/81/EC598 of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC - Annex : Framework agreement on part-time work;

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597 OJ L 18, 21.1.1997, p. 1–6

– Council Directive 98/23/EC599 of 7 April 1998 on the extension of Directive 97/81/EC on the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC to the United Kingdom of Great Britain and Northern Ireland;

– Council Directive 1999/70/EC600 of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP;

– Council Directive 1999/63/EC601 of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST);

– Council Directive 2000/79/EC602 of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA);

– Directive 2003/88/EC603 of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time;

– Council Directive 2005/47/EC604 of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector;

– Directive 2008/104/EC[605] of European Parliament and of the Council of 19 November 2008 on temporary agency work.

– Council Directive 2009/13/EC implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 and amending Directive 1999/63/EC

II.2.2. Information and consultation of workers

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598 OJ L 14, 20.1.1998, p. 9–14

599 OJ L 131, 5.5.1998, p. 10–10

600 OJ L 244, 16.9.1999, p. 64–64

601 OJ L 167, 2.7.1999, p. 33–37

602 OJ L 302, 1.12.2000, p. 57–60

603 OJ L 299, 18.11.2003, p. 9–19

604 OJ L 195, 27.7.2005, p. 15–17

605 OJ L 327, 5.12.2008, p. 9-14

– Council Directive 94/45/EC606 of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees;

– Council Directive 97/74/EC607 of 15 December 1997 extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees

– Council Directive 2006/109/EC608 of 20 November 2006 adapting Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, by reason of the accession of Bulgaria and Romania;

– Council Directive 2001/86/EC609 of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees;

– Council Directive 2003/72/EC610 of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees;

– Directive 2002/14/EC611 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 - Joint declaration of the European Parliament, the Council and the Commission on employee representation;

– Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast).

II.2.3. Protection of workers

– Council Directive 91/383/EEC612 of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed- duration employment relationship or a temporary employment relationship;

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606 OJ L 254, 30.9.1994, p. 64–72

607 OJ L 365, 31.12.1994, p. 46–51

608 OJ L 363, 20.12.2006, p. 416–417

609 OJ L 294, 10.11.2001, p. 22–32

610 OJ L 207, 18.8.2003, p. 25–36

611 OJ L 80, 23.3.2002, p. 29–34

612 OJ L 206, 29.7.1991, p. 19–21

– Council Directive 91/533/EEC613 of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship;

– Council Directive 94/33/EC614 of 22 June 1994 on the protection of young people at work;

– Council Directive 98/59/EC615 of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies;

– Directive 2008/94/EC616 of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (codified version);

– Council Directive 2001/23/EC617 of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses;

II.2.4. Implementation and application reports

– Implementation reports concerning the transposition of Directives 91/383/EEC, 97/81/EC, 1999/70/EC, 96/71/EC in the 10 new Member States

– Implementation reports concerning the transposition of Directives 2001/23/EC and 80/987/EC (as amended by 2002/74/EC) in all 25 Member States

– Implementation reports concerning Directives 91/533/EEC, 94/45/EC (extended by 97/74/EC) and 98/59/EC in the 10 new Member States

– Implementation reports concerning Directives 2001/86/EC, 2002/14/EC and 2003/72/EC in all 25 Member States

– Implementation reports concerning Directives 94/33/EC and 2003/88/EC in the 10 new Member States

– Implementation report concerning Directive 2000/34/EC in the EU-15 Member States

– Implementation reports concerning Directives 1999/63/EC, 2000/79/EC in all 25 Member States

II.3. Health and safety at work

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613 OJ L 288, 18.10.1991, p. 32–35

614 OJ L 216, 20.8.1994, p. 12–20

615 OJ L 225, 12.8.1998, p. 16–21

616 OJ L 283, 28.10.2008, p. 36-42

617 OJ L 82, 22.3.2001, p. 16–20

– Directive 89/391/EEC[618] of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work;

– Council Directive 89/654/EEC[619] of 30 November 1989 concerning the minimum safety and health requirements for the workplace (first individual directive within the meaning of Article 16(1) of Directive 89/391/EEC);

– Directive 2009/104/EC620 of the European Parliament and of the Council of 16 September 2009 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 – Codification of Directive 89/655/EEC, as amended by Directives 95/63/EC and 2001/45/EC);

– Council Directive 89/656/EEC[621] of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (third individual directive within the meaning of Article 16(1) of Directive 89/391/EEC);

– Council Directive 90/269/EEC[622] of 29 May 1990 on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers (fourth individual directive within the meaning of Article 16(1) of Directive 89/391/EEC);

– Council Directive 90/270/EEC[623] of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment (fifth individual directive within the meaning of Article 16(1) of Directive 89/391/EEC);

– Directive 2004/37/EC[624] of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (sixth individual directive within the meaning of Article 16(1) of Directive 89/391/EEC - Codification of Directive 90/394/EEC);

– Directive 2000/54/EC[625] of the European Parliament and of the Council of 18 September 2000 on the protection of workers from risks related to exposure to biological agents at work (seventh individual directive within the meaning of Article 16(1) of Directive 89/391/EEC) - Codification of Directive 90/679/EEC);

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618 OJ L 183, 29.6.1989, p.1.

619 OJ L 393, 30.12.1989, p.1.

620 OJ L 260, 3.10.2009, p. 5.

621 OJ L 393, 30.12.1989, p.18.

622 OJ L 156, 21.6.1990, p.9.

623 OJ L 156,21.6.1990, p.14.

624 OJ L 229, 29.6.2004, p.23.

625 OJ L 262, 17.10.2000, p.21.

– Council Directive 92/57/EEC[626] of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eight individual directive within the meaning of Article 16(1) of Directive 89/391/EEC);

– Council Directive 92/58/EEC[627] of 24 June 1992 on the minimum requirements for the provision of safety and/or health signs at work (ninth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC);

– Council Directive 92/91/EEC[628] of 3 November 1992 concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling (eleventh individual directive within the meaning of Article 16(1) of Directive 89/391/EEC);

– Council Directive 92/104/EEC[629] of 3 December 1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (twelfth individual directive within the meaning of Article 16(1) of Directive 89/391/EEC);

– Council Directive 93/103/EC[630] of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual directive within the meaning of Article 16(1) of Directive 89/391/EEC);

– Council Directive 98/24/EC[631] of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual directive within the meaning of Article 16(1) of Directive 89/391/EEC);

Commission Directives establishing indicative exposure limit values:

– Commission Directive 91/322/EEC[632] of 29 May 1991 on establishing indicative limit values by implementing Council Directive 80/1107/EEC on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work

– Commission Directive 2000/39/EC[633] of 8 June 2000 establishing a first list of indicative occupational exposure limit values in implementation of Council Directive 98/24/E on the

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626 OJ L 245, 26.8.1992, p.6.

627 OJ L 245, 26.8.1992, p.23.

628 OJ L 348, 28.11.1992, p.9.

629 OJ L 404, 31.12.1992, p.10.

630 OJ L 307, 13.12.1993, p.1.

631 OJ L131, 5.5. 1998, p.11.

632 OJ L177, 5.7. 1991, p.22.

633 OJ L 142, 16.6.2000, p.47.

protection of the health and safety of workers from the risks related to chemical agents at work

– Commission Directive 2006/15/EC[634] of 7 February 2006 establishing a second list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC and amending Directives 91/322/EEC and 2000/39/EC

– Commission Directive 2009/161/EU[635] of 17 December 2009 establishing a third list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC and amending Commission Directive 2000/39/EC

– Directive 1999/92/EC[636] 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 (fifteenth individual directive within the meaning of Article 16(1) of Directive 89/391/EEC)

– Directive 2002/44/EC[637] 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 risk arising from physical agents (vibration) (sixteenth individual directive within the meaning of Article 16(1) of Directive 89/391/EEC);

– Directive 2003/10/EC[638] of the European Parliament and of the Council of 6 February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risk arising from physical agents (noise) (seventeenth individual directive within the meaning of Article 16(1) of Directive 89/391/EEC);

– Directive 2004/40/EC[639] of the European Parliament and of the Council of 29 April 2004 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (18th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC),); as amended by Directive 2008/46/EC[640]

– Directive 2006/25/EC[641] of the European Parliament and of the Council of 5 April 2006 on the minimum health and safety requirements regarding the exposure of workers to risks

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634 OJ L 38, 9.2.2006, p.36.

635 OJ L 338 of 19.12.2009, p. 87.

636 OJ L 23, 28.1.2000, p.57.

637 OJ L 177, 6.7.2002, p.13.

638 OJ L 42, 15.2.2003, p.38.

639 OJ L 184, 24.5.2004, p.1.

640 OJ L 114, 26.4.2008, p. 88

641 OJ L 114, 27.4.2006, p.38.

arising from physical agents (artificial optical radiation) (19th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC);

– Council Directive 92/29/EEC[642] of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels;

– Council Directive 83/477/EEC[643] of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work, as amended by:

– Council Directive 91/382/EEC[644] of 25 June 1991 amending directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work,

– Directive 2003/18/EC[645], of the European Parliament and of the Council of 27 March 2003 amending Council directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work;

– Directive 2007/30/EC[646] of the European Parliament and of the Council of 20 June 2007 amending Council Directive 89/391/EEC, its individual Directives and Council Directives 83/477/EEC, 91/383/EEC, 92/29/EEC and 94/33/EC with a view to simplifying and rationalising the reports on practical implementation.

II.4. Gender equality and anti-discrimination

II.4.1. Gender equality

– Article 157 TFUE

– Directive 2006/54/EC647 of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

– Council Directive 2004/113/EC648 of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services

– Council Directive 96/34/EC649 of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC

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642 OJ L 113, 30.4.1992, p.19.

643 OJ L 263, 24.9.1983, p.25.

644 OJ L 206, 29.7.1991, p.16.

645 OJ L 97, 15.4.2003, p.48.

646 OJ L 165, 27.6.2007, p.21.

647 OJ L 204, 26.7.2006

648 OJ L 373, 21.12.2004

– Council Directive 92/85/EEC650 of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

– Council Directive 86/613/EEC651 of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood

– Council Directive 79/7/EEC652 of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security

II.4.2. Anti-discrimination

– Article 19 TFUE

– Council Directive 2000/78/EC653 of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

– Council Directive 2000/43/EC654 of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

III. ENERGY

III.1. Legislation in force

A full description of the legal basis for controlling the application of the Community *acquis* on energy was provided in the context of the 25th Report (Annex I, paragraph 2.1).

The texts of current Community legislation on energy are available in section 12 of the EUR-Lex database

http://eur-lex.europa.eu/en/legis/20100301/chap12.htm

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649 OJ L 145, 19.6.1996

650 OJ L 348, 28.11.1992

651 OJ L 359, 19.12.1986

652 OJ L 6, 10.1.1979

653 OJ L 303, 2.12.2000

654 OJ L 180, 19.7.2000

Euratom

Primary Law: Euratom Treaty

A number of provisions of the Treaties vest the Commission with specific powers:

– **Article 33 Euratom Treaty**: Verification of conformity of draft legislation in the field of radiation protection and education and training (the Commission may issue recommendations).

– **Article 37 Euratom Treaty**: Assessment of national plans for the release of radioactive waste into the environment, before approval by the national authorities (the Commission shall deliver an opinion).

– **Article 38 Euratom Treaty**: In cases of urgency, the Commission shall issue a directive requiring the Member State concerned to take, within a period laid down by the Commission, all necessary measures to prevent infringement of the basic standards and to ensure compliance with regulations. Article 38 of the Euratom Treaty institutes also a special derogative procedure from the general infringement procedure, allowing the Commission or any Member State concerned to bring the matter before the Court of Justice if the State in question fails to comply with the Commission directive within the period laid down therein.

– **Articles 41/43 Euratom Treaty**: This notification procedure on nuclear investments requires that any new investment related to nuclear activities has to be communicated to the Commission which shall, in return, send its views to the Member State concerned.

– **Article 77 Euratom Treaty**: The Commission shall satisfy itself that, in the territories of member states, (a) ores, source materials and special fissile materials are not diverted from their intended uses as declared by the users; (b) the provisions relating to supply and any particular safeguarding obligations assumed by the Community under an agreement concluded with a third state or an international organisation are complied with.

– **Article 78 Euratom Treaty**: Operators shall declare to the Commission the basic technical characteristics of the installations, to the extent that knowledge of these characteristics is necessary for the attainment of the objectives set out in Article 77.

– **Article 81 Euratom Treaty**: The Commission's nuclear inspectors (Commission's staff!) shall at all times have access to all places and data and to all persons who, by reason of their occupation, deal with materials, equipment or installations subject to the safeguards. If the carrying out of an inspection is opposed, it can be carried out compulsorily (after decision of the president of the Court of Justice; or, even, after Commission's written order, if there is danger in delay).

– **Article 82 Euratom Treaty**: In case of infringement to the safeguards provisions established by its safeguards inspectors, the Commission may issue a directive calling upon the Member State concerned to take, by a time limit set by the Commission, all measures necessary to bring such infringement to an end. Possible direct referral of the matter to the Court of Justice, if the Member State in question does not comply with the Commission directive in the timeframe set up therein, in derogation from the general infringement procedure.

– **Article 83 Euratom Treaty**: In the event of an infringement on the part of persons or undertakings of the obligations on nuclear safeguards, the Commission may impose the following sanctions, in order of severity : (a) a warning ; (b) the withdrawal of special benefits such as financial or technical assistance ; (c) the placing of the undertaking for a period not exceeding four months under the administration of a person or board appointed by common accord of the Commission and the state having jurisdiction over the undertaking; (d) total or partial withdrawal of source materials or special fissile materials.

– **Article 103 Euratom Treaty**: assessment of draft international agreements in the fields of the Euratom Treaty (the Commission may issue comments on the drafts)

– **Article 145 Euratom Treaty**: if the Commission considers that a person or undertaking has committed an infringement of this Treaty (other than to the safeguards provisions), it shall call upon the member state having jurisdiction over that person or undertaking to cause sanctions to be imposed in respect of the infringement in accordance with its national law. If the state concerned does not comply with such a request within the period laid down by the Commission, the latter may bring an action before the Court of Justice to have the infringement of which the person or undertaking is accused established.

Secondary law

The Community *acquis* related to Title II, Chapter 3, can be consulted in section 15 of the EUR-Lex database, the Community *acquis* (heading 15.10.20.10 "Nuclear Safety and Radioactive Waste").

http://eur-lex.europa.eu/en/legis/20100301/chap15102010.htm

A comprehensive list of *acquis* and case-law related to the Euratom Treaty can be consulted in the annexes to the Commission staff working paper (SEC (2007) 347) accompanying the Communication on the 50 years of the Euratom Treaty (COM(2007) 124 final) at

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007SC0347:EN:NOT

III.2. Legislation adopted in 2009

Internal electricity and gas market

Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009)

Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/5(/EC (OJ L 211, 14.8.2009)

Regulation (EC) No 713/2009/EC of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ L 211, 14.8.2009)

Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (OJ L 211, 14.8.2009)

Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmissions networks and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009)

Coal and Oil

Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products (OJ L 265, 9.10.2009)

Renewable energy sources

Directive 2009/28/EC of the European Parliament and of the Council of 5 June 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009)

Energy efficiency of products

Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (OJ L 285, 21.10.2009)

Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters (OJ L 342, 22.12.2009)

Commission Regulation (EC) No 643/2009 of 22 July 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for household refrigerating appliances (OJ L 191, 23.7.2009)

Commission Regulation (EC) No 642/2009 of 22 July 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for televisions (OJ L 191, 23.7.2009)

Commission Regulation (EC) No 641/2009 of 22 July 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for glandless standalone circulators and glandless circulators integrated in products (OJ L 191, 23.7.2009)

Commission Regulation (EC) No 640/2009 of 22 July 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for electric motors (OJ L 191, 23.7.2009)

Commission Regulation (EC) No 278/2009 of 6 April 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to

ecodesign requirements for no-load condition electric power consumption and average active efficiency of external power supplies (OJ L 93, 7.4.2009)

Commission Regulation (EC) No 245/2009 of 18 March 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for fluorescent lamps without integrated ballast, for high intensity discharge lamps, and for ballasts and luminaires able to operate such lamps, and repealing Directive 2000/55/EC of the European Parliament and of the Council (OJ L 76, 24.3.2009)

Commission Regulation (EC) No 244/2009 of 18 March 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for non-directional household lamps (OJ L 76, 24.3.2009)

Commission Regulation (EC) No 107/2009 of 4 February 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for simple set-top boxes (OJ L 36, 5.2.2009)

Euratom

Binding *acquis*

Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations (OJ L 172, 2.7.2009)

Council Regulation (EC) No 1048/2009 of 23 October 2009 amending Regulation (EC) No 733/2008 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station (OJ L 290, 6.11.2009)

Commission Decision on financing for the decommissioning programmes for Ignalina, Bohunice and Kozloduy (C(2009) 7614)

Non-binding *acquis*

Communication from the Commission to the Council and the European Parliament - Communication on nuclear non-proliferation (COM(2009) 143 final)

Commission Recommendation 2009/120/Euratom of 11 February 2009 on the implementation of a nuclear material accountancy and control system by operators of nuclear installations (OJ L 41, 12.2.2009)

Commission Recommendation 2009/527/Euratom of 7 July 2009 for a secure and effective system of transmission of documents and information relating to the provisions of Council Directive 2006/117/Euratom (OJ L 177, 8.7.2009)

Council Decision issuing directives to the Commission for the re-negotiation of the Agreement between the European Atomic Energy Agency Community (Euratom) and the Government of Canada for cooperation in the peaceful uses of atomic energy **(not public)**

Council Decision for the negotiation of an Agreement between the European Atomic Energy Community and the Russian Federation for cooperation in the peaceful uses of nuclear energy **(not public)**

III.3. New measures proposed or in preparation in 2009

Security of supply – gas

Proposal for a Regulation of the European Parliament and of the Council concerning measures to safeguard security of gas supply and repealing Directive 2004/67/EC (COM(2009)363)

Euratom

Legislative proposal on the management of spent fuel and radioactive waste: Based on the 2004 proposal for a Council Directive (Euratom)655, a revised legislative proposal on the management of spent nuclear fuel and radioactive waste is being prepared. The revised legislative proposal is aiming at achieving and maintaining a high uniform level of safe management of radioactive waste and spent fuel throughout the Community as well as providing requirements for the establishment of comprehensive national programmes for the management of radioactive waste and spent fuel. The drafting of an Impact Assessment Report has been started, supported by an Inter-Service Steering Group. In addition to the broad and very positive stakeholder input received already further consultations are underway. In addition, a public consultation is planned for early 2010. A first draft report could be submitted to the Impact Assessment Board in May 2010.

Proposal of Revision and recast of the Basic Safety Standards: The revision of the Basic Safety Standards is also the opportunity for the consolidation of existing radiation protection legislation involving four other Directives and incorporating one Commission Recommendation. In 2009 the revision and recast of the BSS Directive made very good progress. The draft text of the Directive is complete and in an advanced stage. The Article 31 Group of Experts is expected to finalise their opinion in February 2010.

Proposal for a Council Regulation (Euratom) establishing a community system for Registration of carriers of radioactive materials: The objective is to harmonise reporting and authorisation requirements of carriers of radioactive materials under the Basic Safety Standards Directive and thereby in particular facilitate transports of life-saving radioisotopes while keeping up the high safety standards reached and increasing transparency of carriers and authorities involved. The Impact Assessment Board and the Art. 31 Group of experts have approved the impact assessment report and the first draft of the proposal.

Revision of the Commission recommendation on the implementation of Art. 37 of the Euratom Treaty: The aim of the revision of the recommendation 1999/829/Euratom is, on the basis of the experience gained, to clarify, simplify and improve the provisions of the current Commission recommendation. The

655 COM(2004)526final

consolidated draft revised text is planned to be presented in April 2010 to the Article 37 Group of Experts. The final revised Commission recommendation should be adopted mid 2010.

Negotiating mandate for a Euratom-Australia cooperation agreement: The proposal of a Council Decision on the new mandate to renegotiate the Euratom-Australia agreement, due to expire in 2012, was prepared by inter-service consultation. It is to be adopted during first half of 2010.

Negotiating mandate for a Euratom-South Africa cooperation agreement: The proposal of a Council Decision on a mandate to negotiate a Euratom-South Africa agreement is under preparation.

Proposal for a Council Regulation on Community financial assistance with respect to the decommissioning of Units 1 to 4 of the Kozloduy Nuclear Power Plant in Bulgaria "Kozloduy Programme" (COM(2009)581 final).

IV. ENVIRONMENT – Climate sector

The applicable legislation to the ***Climate sector*** is:

- Articles 114 and 191-193 of TFEU (ex 95 and 174-176 of TEC)

- Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations (OJ L 85, 29.3.1999, p. 1).

- Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste (OJ L 332, 28.12.2000, p. 91–111).

- Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants (OJ L 309, 27.11.2001, p. 1–21)

- Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ L 309, 27.11.2001, p. 22–30)

- 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.1-17.)

- Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases (OJ L 161, 14.6.2006, p. 1–11)

- Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version) (OJ L 24, 29.1.2008, p.8-29)

- Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (OJ L 286, 31.10.2009, p. 1–30)

V. INTERNAL MARKET AND SERVICES

V.1. Existing and in force acquis

A list of the existing acquis under the remit of DG Internal Market and services is available at the following web address:

http://ec.europa.eu/dgs/internal_market/mission_en.htm

V.2. Recently adopted measures

– Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay, *OJ L 68, 13.3.2009, p. 3.*

– Commission Directive 2009/27/EC of 7 April 2009 amending certain Annexes to Directive 2006/49/EC of the European Parliament and of the Council as regards technical provisions concerning risk management (2009 L 94 31/10/2010)

– Commission Directive 2009/83/EC of 27 July 2009 amending certain Annexes to Directive 2006/48/EC of the European Parliament and of the Council as regards technical provisions concerning risk management (2009 L 196 31/10/2010)

– Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (2009 L 302 31/10/2010)

– Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims 2009 L 146 30/12/2010

– Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services 2008 L 52 31/12/2010

– Directive 2009/49/EC of the European Parliament and of the Council of 18 June 2009 amending Council Directives 78/660/EEC and 83/349/EEC as regards certain disclosure requirements for medium-sized companies and the obligation to draw up consolidated accounts 2009 L 164 01/01/2011

– Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC 2009 L 267 30/04/2011

– Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) 2009 L 302 30/06/2011

– Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions 2009 L 259 30/06/2011

– Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC

– Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) 2009 L 335 31/10/2012

– Regulation 924/2009 of the European Parliament and of the Council on cross-border payments in the Community,

– Regulation 1060/2009 of the European Parliament and of the Council on Credit Rating Agencies

V.3. New measures already proposed and due to be adopted

Proposals in co-decision

– Proposals for Council Decisions conferring jurisdiction on the Court of Justice in disputes relating to the Community patent, COM/2003/0827 final and COM/2003/0828 final

– Proposal for a Community Patent Regulation, COM(2000)0412 of 01/08/2000

– Proposal for a Directive of the European Parliament and of the Council amending Directive 98/71/EC on the legal protection of designs *(spare parts),* COM(2004)582 of 14/09/2004

– Proposal for a Council Regulation on the statute for a European private company {SEC(2008) 2098} {SEC(2008) 2099} /* COM/2008/0396 final - CNS 2008/0130 */

– Proposal for a Directive of the European Parliament and of the Council amending Council Directives 68/151/EEC and 89/666/EEC as regards publication and translation obligations of certain types of companies {SEC(2008) 466} {SEC(2008) 467} /* COM/2008/0194 final - COD 2008/0083 */

– Term of protection of copyright and related rights Proposal for a Directive of the European Parliament and of the Council amending Dir. 2006/116/EC), COM(2008)464 of 16/7/2008

– Proposal for a Directive of the European Parliament and of the Council on Alternative Investment Fund Managers, COM(2009)207

– Directive amending Council Directive 78/660/EEC on the annual accounts of certain types of companies as regards micro-entities, COM(2009)83

– Proposal for a Directive of the European Parliament and of the Council Amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies, COM(2009)362

– Proposals for Regulations establishing a European Banking Authority (EBA), a European Insurance and Occupational Pensions Authority (EIOPA) and a European Securities and Markets Authority (ESMA), COM(2009) 501 (EBA), COM(2009) 502 (EIOPA), COM(2009) 503 (ESMA)

– Amendment to Directives 2003/71/EC (Prospectus Directive) and 2004/109/EC (Transparency Directive) in relation to information about issuers whose securities are admitted to trading on a regulated market, COM(2009)491

V.4. Other relevant legal documents adopted in 2009 by the Commission

– Recommendation on remuneration policies in the financial services sector, COM(2009)3159

– Recommendation on the remuneration of directors of listed companies, COM(2009)3177

VI. TAXATION AND CUSTOMS UNION

VI.1. CUSTOMS

The following webpage contains a list of legal measures in the **customs area** adopted since 2003:

http://ec.europa.eu/taxation_customs/common/legislation/legislation/customs/index_en.htm

- Relevant **Treaty** provisions:

Art 18;

Art 23-27 TCE;

Art 95 (approximation of laws);

Art 133;

Art 135.

- Relevant **secondary Community law** acts:

Council Regulation (EEC) N° 2913/92 (Council Regulation (EEC) No 2913/92 establishing the Community Customs Code)

Commission Regulation (EEC) N° 2454/93 (provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code);

The Common Customs Tariff (Combined Nomenclature and tariff measures): Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and the duty relief legislation (Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of relief from customs duty);

Regulation (EC) N° 1889/2005 of the European Parliament and of the Council;

International agreements in customs matters or the customs provisions of international agreements;

Specific legislation on customs control (counterfeit, drug precursors, cultural goods, cash control) in particular :

Council Regulation (EC) N° 1383/2003;

Council Regulation (EC) N° 111/2005;

Council Regulation (EEC) N° 3911/92.

VI.2. INDIRECT TAXATION

The following webpage contains a list of legal measures in the **tax area** adopted since 2003:

http://ec.europa.eu/taxation_customs/common/legislation/legislation/taxation/index_en.htm

Existing measures in force *(situation on 31/12/2009)*

- Relevant **Treaty** (TFEU) provisions:

Mainly:

Art 110 (ex Art 90);

Additional:

Art 45 (ex Art 39);

Art 49 (ex Art 43);

Art 56 (ex Art 49);

Art 63 (ex Art 56)**;**

Art 113 (ex Art 93)**.**

- Relevant **secondary Community law** acts:

Directive 2009/132/EC;

Directive 2009/55/EC;

Directive 2008/55/EC;

Directive 2007/74/EC;

Directive 2006/112/EC (+ amending directives);

Directive 2006/79/EC;

Directive 2003/96/EEC (+ amending directives);

Directive 95/60/EC;

Directive 95/59/EC;

Directive 92/84/EEC;

Directive 92/83/EEC;

Directive 92/80/EEC;

Directive 92/79/EEC (+ amending directives);

Directive 92/12/EEC (+ amending directives);

Directive 86/560/EEC;

Directive 79/1072/EEC;

Directive 68/297/EEC (+ amending directive).

Council Regulation (EC) 1798/2003 (+ amending regulations)**;**

Commission Regulation (EC) 1174/2009;

Commission Regulation (EC) 1179/2008;

Commission Regulation (EC) 1925/2004.

VI.3. DIRECT TAXATION

The following webpage contains a list of legal measures in the **tax area** adopted since 2003:

http://ec.europa.eu/taxation_customs/common/legislation/legislation/taxation/index_en.htm

Existing measures in force *(situation on 31/12/2009)*

- Relevant **Treaty** (TFEU) provisions:

Art 21 (ex Art 18)**;**

Art 45 (to 48) (ex Art 39 to 42);

Art 49 (to 54) (ex Art 43 to 48);

Art 56 (to 62) (ex Art 49 to 55);

Art 63 (to 66) (ex Art 56 to 60);

Art 115 (ex Art 94)**;**

- Relevant secondary Community law acts:

Directive 77/799/EEC (+2 amending directives);

Directive 90/434/EEC (+1 amending directive);

Directive 90/435/EEC (+1 amending directive);

Directive 2003/48/EC;

Directive 2003/49/EC (+1 amending directive);

Directive 2008/7/EC;

Directive 2008/55/EC;

Directive 2009/133/EC.

VII. EDUCATION AND CULTURE

A full list of relevant provisions, which also includes non-binding provisions, can be found at:

http://eur-lex.europa.eu/en/legis/20100101/chap1630.htm for education and training

http://eur-lex.europa.eu/en/legis/20100101/chap1640.htm for culture

http://ec.europa.eu/sport/white-paper/doc/wp_on_sport_en.pdf for sport

VIII. HEALTH AND CONSUMERS

Main Measures in Force 31/12/2009

VIII.1. Public Health

*Relevant EU **Treaty** provisions*:

- Art 114 TFEU
- Art 168(4) TFEU

*Relevant **secondary EU law** acts*:

- Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products
- Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components and amending Directive 2001/83/EC
- Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products
- Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells
- Commission Directive 2004/33/EC of 22 March 2004 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components
- Commission Directive 2005/61/EC of 30 September 2005 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards traceability requirements and notification of serious adverse reactions and events

- Commission Directive 2005/62/EC of 30 September 2005 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards Community standards and specifications relating to a quality system for blood establishments

- Commission Directive 2006/17/EC of 8 February 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards certain technical requirements for the donation, procurement and testing of human tissues and cells

- Commission Directive 2006/86/EC of 24 October 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards traceability requirements, notification of serious adverse reactions and events and certain technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells

- Decision No 2119/98/EC of the European Parliament and of the Council of 24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community

- Regulation (EC) No 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European Centre for disease prevention and control

- Commission Decision 2000/96/EC of 22 December 1999 on the communicable diseases to be progressively covered by the Community network under Decision No 2119/98/EC of the European Parliament and of the Council

- Commission Decision 2002/253/EC of 19 March 2002 laying down case definitions for reporting communicable diseases to the Community network under Decision No 2119/98/EC of the European Parliament and of the Council

- Commission Decision 2000/57/EC of 22 December 1999 on the early warning and response system for the prevention and control of communicable diseases under Decision No 2119/98/EC of the European Parliament and of the Council

- Commission Decision 2007/875/EC of 18 December 2007 amending Decision No 2119/98/EC of the European Parliament and of the Council and Decision 2000/96/EC as regards communicable diseases listed in those decisions

- Commission Decision 2008/351/EC of 28 April 2008 amending Decision 2000/57/EC as regards events to be reported within the early warning and response system for the prevention and control of communicable diseases

- Commission Decision 2008/426/EC of 28 April 2008 amending Decision 2002/253/EC laying down case definitions for reporting communicable diseases to the Community network under Decision No 2119/98/EC of the European Parliament and of the Council

- Commission Directive 2009/135/EC of 3 November 2009 allowing temporary derogations to certain eligibility criteria for whole blood and blood components donors laid down in Annex III to Directive 2004/33/EC in the context of a risk of shortage caused by the Influenza A(H1N1) pandemic

- Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251

of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny

- 2009/312/EC: Commission Decision of 2 April 2009 amending Decision 2000/96/EC as regards dedicated surveillance networks for communicable diseases

- 2009/539/EC: Commission Decision of 10 July 2009 amending Decision 2000/96/EC on communicable diseases to be progressively covered by the Community network under Decision No 2119/98/EC of the European Parliament and of the Council

VIII.2. Consumers

*Relevant EU **Treaty** provisions:*

- Art 169 TFEU

Relevant secondary EU law acts:

- Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises

- Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit

- Council Directive 87/357/EEC of 25 June 1987 on the approximation of the laws of the Member States concerning products which, appearing to be other than they are, endanger the health or safety of consumers

- Council Directive 90/88/EEC of 22 February 1990 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit

- Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours

- Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts

- Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts

- Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers

- Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit

- Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests

- Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees

- Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety

- 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

- Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')

- Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising

- Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC

- Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts

- Commission Decision 2006/502/EC of 11 May 2006 requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters

- Commission Decision 2008/322/EC of 18 April 2008 prolonging the validity of Decision 2006/502/EC requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters

- Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93

- Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (Codified version)

- 2009/251/EC: Commission Decision of 17 March 2009 requiring Member States to ensure that products containing the biocide dimethyl fumarate are not placed or made available on the market

- 2009/298/EC: Commission Decision of 26 March 2009 prolonging the validity of Decision 2006/502/EC requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters

- 2009/490/EC: Commission Decision of 23 June 2009 on the safety requirements to be met by European standards for personal music players pursuant to Directive 2001/95/EC of the European Parliament and of the Council

- 2010/15/EU: Commission Decision of 16 December 2009 laying down guidelines for the management of the Community Rapid Information System RAPEX established under Article 12 and of the notification procedure established under Article 11 of Directive 2001/95/EC (the General Product Safety Directive)

VIII.3. Food Safety

*Relevant EU **Treaty** provisions:*

- Art 43 TFEU

- Art 114 TFEU

- Art 168 TFEU

*Relevant **secondary EU law** acts:*

GENERAL

- Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety

- Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules

- Commission Regulation (EC) No 669/2009 of 24 July 2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC

- Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC

- Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs

- Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin

- Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption

- Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs

- Commission Regulation (EC) No 2074/2005 of 5 December 2005 laying down implementing measures for certain products under Regulation (EC) No 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No 854/2004 of the European Parliament and of the Council and Regulation (EC) No 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No 853/2004 and (EC) No 854/2004

- Commission Regulation (EC) No 2075/2005 of 5 December 2005 laying down specific rules on official controls for Trichinella in meat

- Commission Regulation (EC) No 2076/2005 of 5 December 2005 laying down transitional arrangements for the implementation of Regulations (EC) No 853/2004, (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council and amending Regulations (EC) No 853/2004 and (EC) No 854/2004

Food Hygiene

Overview: http://ec.europa.eu/food/food/biosafety/hygienelegislation/index_en.htm.

Guidance documents:

http://ec.europa.eu/food/food/biosafety/hygienelegislation/guide_en.htm

FOOD

- Directive 2000/13/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs

- Council Directive 90/496/EEC on nutrition labelling for foodstuffs

- Directive 2009/39/EC of the European Parliament and of the Council of 6 May 2009 on foodstuffs intended for particular nutritional uses (recast)

- Commission Regulation (EC) No 953/2009 of 13 October 2009 on substances that may be added for specific nutritional purposes in foods for particular nutritional uses

- Commission Regulation (EC) No 1170/2009 of 30 November 2009 amending Directive 2002/46/EC of the European Parliament and of Council and Regulation (EC) No 1925/2006 of the European Parliament and of the Council as regards the lists of vitamin and minerals and their forms that can be added to foods, including food supplements

- Commission Directive 87/250/EEC of 15 April 1987 on the indication of alcoholic strength by volume in the labelling of alcoholic beverages for sale to the ultimate consumer

- Council Directive 89/396/EEC of 14 June 1989 on indications or marks identifying the lot to which a foodstuff belongs

- Council Directive 90/496/EEC of 24 September 1990 on nutrition labelling for foodstuffs

- Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods

- Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings

- Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives

- Regulation (EC) No 1332/2008 of the European Parliament and of the Council of 16 December 2008 on food enzymes and amending Council Directive 83/417/EEC, Council Regulation (EC) No 1493/1999, Directive 2000/13/EC, Council Directive 2001/112/EC and Regulation (EC) No 258/97

- Commission Directive 2009/163/EU of 22 December 2009 amending Directive 94/35/EC of the European Parliament and of the Council on sweeteners for use in foodstuffs with regard to neotame

- Council Directive 88/388/EEC of 22 June 1988 on the approximation of the laws of the Member States relating to flavourings for use in foodstuffs and to source materials for their production

- Council Decision 88/389/EEC of 22 June 1988 on the establishment, by the Commission, of an inventory of the source materials and substances used in the preparation of flavourings

- Regulation (EC) No 2232/96 of the European Parliament and of the Council of 28 October 1996 laying down a Community procedure for flavouring substances used or intended for use in or on foodstuffs

- Regulation (EC) N° 2065/2003 of the European Parliament and of the Council of 10 November on smoke flavourings used or intended for use in or on foods

- Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings

- Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC

- Regulation 1935/2004/EC of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food

- Commission Regulation (EC) No 2023/2006 of 22 December 2006 on good manufacturing practice for materials and articles intended to come into contact with food

- Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements

- Regulation (EC) No 1925/2006 of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods

- Council Directive 92/52/EEC of 18 June 1992 on infant formulae and follow-on formulae intended for export to third countries

- Council Directive 89/108/EEC of 21 December 1988 on the approximation of the laws of the Member States relating to quick-frozen foodstuffs for human consumption

- Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food

- Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients

- Regulation (EC) N° 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed

- 2009/184/EC: Commission Decision of 10 March 2009 authorising the placing on the market of products containing or produced from genetically modified oilseed rape T45 (ACS-BNØØ8-2) resulting from the commercialisation of this oilseed rape in third countries until 2005 pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council

- 2009/813/EC: Commission Decision of 30 October 2009 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize MON 89034 (MON-89Ø34-3) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council

- 2009/814/EC: Commission Decision of 30 October 2009 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize

MON 88017 (MON-88Ø17-3) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council

- 2009/815/EC: Commission Decision of 30 October 2009 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize 59122xNK603 (DAS-59122-7xMON-ØØ6Ø3-6) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council

- 2009/866/EC: Commission Decision of 30 November 2009 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize MIR604 (SYN-IR6Ø4-5) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council

- Regulation (EC) N° 1830/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC

- Directive 1999/2/EC of the European Parliament and of the Council of 22 February 1999 on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation

- Directive 1999/3/EC of the European Parliament and of the Council of 22 February 1999 on the establishment of a Community list of foods and food ingredients treated with ionising radiation

- Commission Directive 2003/40/EC of 16 May 2003 establishing the list, concentration limits and labelling requirements for the constituents of natural mineral waters and the conditions for using ozone-enriched air for the treatment of natural mineral waters and spring waters

- Commission Directive 2008/100/EC of 28 October 2008 amending Council Directive 90/496/EEC on nutrition labelling for foodstuffs as regards recommended daily allowances, energy conversion factors and definitions

- Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs

- Commission Regulation (EC) No 1882/2006 of 19 December 2006 laying down methods of sampling and analysis for the official control of the levels of nitrates in certain foodstuffs

- Commission Regulation (EC) No 1883/2006 of 19 December 2006 laying down methods of sampling and analysis for the official control of levels of dioxins and dioxin-like PCBs in certain foodstuffs

- Commission Regulation (EC) No 401/2006 of 23 February 2006 laying down the methods of sampling and analysis for the official control of the levels of mycotoxins in foodstuffs

- Commission Regulation (EC) No 333/2007 of 28 March 2007 laying down the methods of sampling and analysis for the official control of the levels of lead, cadmium, mercury, inorganic tin, 3-MCPD and benzo(a)pyrene in foodstuffs

- Commission Regulation (EC) No 1151/2009 of 27 November 2009 imposing special conditions governing the import of sunflower oil originating in or consigned from Ukraine due to contamination risks by mineral oil and repealing Decision 2008/433/EC

- Commission Regulation (EC) No 1152/2009 of 27 November 2009 imposing special conditions governing the import of certain foodstuffs from certain third countries due to contamination risk by aflatoxins and repealing Decision 2006/504/EC

- Commission Regulation (EC) No 1135/2009 of 25 November 2009 imposing special conditions governing the import of certain products originating in or consigned from China, and repealing Commission Decision 2008/798/EC

- Commission Decision 2008/352/EC of 29 April 2008 imposing special conditions governing guar gum originating in or consigned from India due to contamination risks of those products by pentachlorophenol and dioxins

- Commission Regulation (EC) No 565/2008 of 18 June 2008 amending Regulation (EC) No 1881/2006 setting maximum levels for certain contaminants in foodstuffs as regards the establishment of a maximum level for dioxins and PCBs in fish liver

- Commission Regulation (EC) No 629/2008 of 2 July 2008 amending Regulation (EC) No 1881/2006 setting maximum levels for certain contaminants in foodstuffs

- Commission proposal for a Regulation of the European Parliament and of the Council on the provision of food information to consumers (COM 2008(40) final).

Directorate general for Health and Consumers' Website

http://ec.europa.eu/food/food/labellingnutrition/foodlabelling/index_en.htm

Nutrition profiles and health claims

The basic act as well as all related legislation and measures adopted may be found at the following address.

http://ec.europa.eu/food/food/labellingnutrition/claims/index_en.htm

The legislation on **dietetic foods** is based on Article 114 of the TFEU and can be found on the following web link:

http://ec.europa.eu/food/food/labellingnutrition/nutritional/index_en.htm.

The legislation on **food supplements and on the addition of vitamins and minerals and of certain other substances to foodstuffs** is based on Article 114 of the TFEU and can be found on the following web links:

http://ec.europa.eu/food/food/labellingnutrition/supplements/index_en.htm

http://ec.europa.eu/food/food/labellingnutrition/vitamins/index_en.htm

The information related to **novel foods** can be found at the following address:

http://ec.europa.eu/food/food/biotechnology/novelfood/index_en.htm

Labelling of foodstuffs:

– General **food labelling**, legislation and decisions on draft national measures notified by Member States:

http://ec.europa.eu/food/food/labellingnutrition/foodlabelling/index_en.htm

Nutrition Labelling:

http://ec.europa.eu/food/food/labellingnutrition/nutritionlabel/index_en.htm

– Information on the Commission proposal for a Regulation of the European Parliament and of the Council on the provision of food information to consumers:

http://ec.europa.eu/food/food/labellingnutrition/foodlabelling/proposed_legislation_en.htm

ANIMAL HEALTH

- Council Decision 2009/470/EC of 25 May 2009 on expenditure in the veterinary field
- Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market
- Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market
- Council Directive 96/93/EC of 17 December 1996 on the certification of animals and animal products
- Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption

- Council Directive 89/608/EEC of 21 November 1989 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of legislation on veterinary and zootechnical matters

- Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC

- Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries

- Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97

- Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine

- Council Directive 2008/71/EC of 15 July 2008 on the identification and registration of pigs

- Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC

- Council Directive 90/426/EEC of 26 June 1990 on animal health conditions governing the movement and import from third countries of equidae

- Council Directive 90/427/EEC of 26 June 1990 on the zootechnical and genealogical conditions governing intra-Community trade in equidae

- Council Directive 2003/85/EC of 29 September 2003 on Community measures for the control of foot-and-mouth disease repealing Directive 85/511/EEC and Decisions 89/531/EEC and 91/665/EEC and amending Directive 92/46/EEC

- Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever

- Council Directive 2002/60/EC of 27 June 2002 laying down specific provisions for the control of African swine fever and amending Directive 92/119/EEC as regards Teschen disease and African swine fever

- Council Directive 92/35/EEC of 29 April 1992 laying down control rules and measures to combat African horse sickness

- Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC

- Council Directive 92/66/EEC of 14 July 1992 introducing Community measures for the control of Newcastle disease

- Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals

- Council Directive 2000/75/EC of 20 November 2000 laying down specific provisions for the control and eradication of bluetongue

- Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies

- Regulation (EC) No 220/2009 of the European Parliament and of the Council of 11 March 2009 amending Regulation (EC) No 999/2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies, as regards the implementing powers conferred on the Commission

- Commission Regulation (EC) No 103/2009 of 3 February 2009 amending Annexes VII and IX to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies

- Commission Regulation (EC) No 162/2009 of 26 February 2009 amending Annexes III and X to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies

- Commission Regulation (EC) No 163/2009 of 26 February 2009 amending Annex IV to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies

- 2009/719/EC: Commission Decision of 28 September 2009 authorising certain Member States to revise their annual BSE monitoring programmes

- Directive 2003/99/EC of the European Parliament and of the Council of 17 November 2003 on the monitoring of zoonoses and zoonotic agents, amending Council Decision 90/424/EEC and repealing Council Directive 92/117/EEC

- Regulation (EC) No 2160/2003 of the European Parliament and of the Council of 17 November 2003 on the control of salmonella and other specified food-borne zoonotic agents

- Zoonoses and Antimicrobial Resistance (AMR):

  Zoonoses: http://ec.europa.eu/food/food/biosafety/salmonella/index_en.htm

  AMR: http://ec.europa.eu/food/food/biosafety/public_consultation_AMR_en.htm

- Council Directive 92/119/EEC of 17 December 1992 introducing general Community measures for the control of certain animal diseases and specific measures relating to swine vesicular disease

- Council Directive 82/894/EEC of 21 December 1982 on the notification of animal diseases within the Community

- Council Directive 91/68/EEC of 28 January 1991 on animal health conditions governing intra-Community trade in ovine and caprine animals

- Council Directive 90/539/EEC of 15 October 1990 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs

- Council Directive 89/556/EEC of 25 September 1989 on animal health conditions governing intra-Community trade in and importation from third countries of embryos of domestic animals of the bovine species

- Council Directive 88/407/EEC of 14 June 1988 laying down the animal health requirements applicable to intra-Community trade in and imports of deep-frozen semen of domestic animals of the bovine species

- Council Directive 90/429/EEC of 26 June 1990 laying down the animal health requirements applicable to intra- Community trade in and imports of semen of domestic animals of the porcine species

- Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to Directive 90/425/EEC

- Regulation (EC) No 998/2003 of the European Parliament and of the Council of 26 May 2003 on the animal health requirements applicable to the non-commercial movement of pet animals and amending Council Directive 92/65/EEC

- Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of ß-agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC

- Council Directive 2004/68/EC of 26 April 2004 laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals, amending Directives 90/426/EEC and 92/65/EEC and repealing Directive 72/462/EEC

- Directive 2004/41/EC of the European Parliament and of the Council of 21 April 2004 repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC

- Council Directive 77/504/EEC of 25 July 1977 on pure- bred breeding animals of the bovine species

- Council Directive 88/661/EEC of 19 December 1988 on the zoo technical standards applicable to breeding animals of the porcine species

- Council Directive 89/361/EEC of 30 May 1989 concerning pure-bred breeding sheep and goats

- Council Directive 90/428/EEC of 26 June 1990 on trade in equidae intended for competitions and laying down the conditions for participation therein

- Council Directive 91/174/EEC of 25 March 1991 laying down zootechnical and pedigree requirements for the marketing of pure-bred animals and amending Directives 77/504/EEC and 90/425/EEC

- Council Directive 94/28/EC of 23 June 1994 laying down the principles relating to the zootechnical and genealogical conditions applicable to imports from third countries of animals, their semen, ova and embryos, and amending Directive 77/504/EEC on pure-bred breeding animals of the bovine species

- Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A (I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425/EEC

- Regulation (EC) No 183/2005 of the European Parliament and of the Council of 12 January 2005 laying down requirements for feed hygiene

- Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation)

Further information related to animal health and animal welfare can be found at the following address:

- Animal Health and Welfare website: http://ec.europa.eu/food/animal/index_en.htm

- The new EU Animal Health Strategy where "Prevention is better than cure": http://ec.europa.eu/food/animal/diseases/strategy/index_en.htm

- The Animal Health Action Plan to implement the Strategy: http://ec.europa.eu/food/animal/diseases/strategy/actionplan_en.htm

ANIMAL WELFARE

*Relevant EU **Treaty** provisions:*

- Article 13 TFEU

*Relevant **secondary EU law** acts:*

- Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes.

- Council Directive 91/629/EEC of 19 November 1991 laying down the minimum standards for the protection of calves codified in Council Directive 2008/119/EC.

- Council Directive 91/630/EEC of 19 November 1991 laying down minimum standards for the protection of pigs codified in Council Directive 2008/120/EC.

- Council Directive 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production.

- Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens.

- Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97, Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97.

- Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing.

- Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing.

- Regulation (EC) No 1523/2007 of the European Parliament and of the Council of 11 December 2007 banning the placing on the market and the import to, or export from, the Community of cat and dog fur, and products containing such fur.

- Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

FEED

*Relevant EU **Treaty** provisions:*

- Articles 43 and 168(4)(b) TFEU

*Relevant **secondary EU law** acts:*

- Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC

- Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs. **Note:** Council Directive 70/524/EEC shall be repealed with effect 18 October 2004. However, Article 16 of Directive 70/524/EEC shall remain in force until 30/8/2010.

- Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition

- Council Directive 79/373/EEC of 2 April 1979 on the circulation of compound feedingstuffs

- Council Directive 96/25/EC of 29 April 1996 on the circulation of feed materials, amending Directives 70/524/EEC, 74/63/EEC, 82/471/EEC and 93/74/EEC and repealing Directive 77/101/EEC

- Directive 2002/32/EC of the European Parliament and the Council of 7 May 2002 on undesirable substances in animal feed

- Commission Directive 2009/8/CE of 10 February 2009 amending Annex I to Directive 2002/32/EC of the European Parliament and of the Council as regards maximum levels of unavoidable carry-over of coccidiostats or histomonostats in non-target feed

- Commission Regulation (EC) No 124/2009 of 10 February 2009 setting maximum levels for the presence of coccidiostats or histomonostats in food resulting from the unavoidable carry-over of these substances in non-target feed

- Council Directive 93/74/EEC of 13 September 1993 on feedingstuffs intended for particular nutritional purposes

- Commission Directive 2008/38/EC of 5 March 2008 establishing a list of intended uses of animal feedingstuffs for particular nutritional purposes

- Council Directive 82/471/EEC of 30 June 1982 concerning certain products used in animal nutrition

- Council Directive 90/167/EEC of 26 March 1990 laying down the conditions governing the preparation, placing on the market and use of medicated feedingstuffs in the Community

PLANT HEALTH

- Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community

- Council Directive 69/464/EEC of 8 December 1969 on control of Potato Wart Disease

- Council Directive 69/465/EEC of 8 December 1969 on control of Potato Cyst Eelworm (until 01/06/2010)

- Council Directive 74/647/EEC of 9 December 1974 on control of carnation leaf-rollers

- Council Directive 93/85/EC of 4 October 1993 on control of Potato Ring Rot

- Council Directive 98/57/EC of 20 July 1998 on the control of *Ralstonia solanacearum* (Smith) Yabuuchi et al.

- Council Directive 2006/91/EC of 7 November 2006 on control of San José Scale

- Council Directive 2007/33/EC of 11 June 2007 on the control of potato cyst nematodes and repealing Directive 69/465/EEC (from 01/06/2010)

- Commission Directive 92/70/EEC of 30 July 1992 laying down detailed rules for surveys to be carried out for purposes of the recognition of protected zones in the Community

- Commission Directive 93/51/EEC of 24 June 1993 establishing rules for movements of certain plants, plant products or other objects through a protected zone, and for movements of such plants, plant products or other objects originating in and moving within such a protected zone

- Commission Regulation (EC) No 690/2008 of 4 July 2008 recognising protected zones exposed to particular plant health risks in the Community

- Commission Directive 92/90/EEC of 3 November 1992 establishing obligations to which producers and importers of plants, plant products or other objects are subject and establishing details for their registration

- Commission Directive 92/105/EEC of 3 December 1992 establishing a degree of standardization for plant passports to be used for the movement of certain plants, plant products or other objects within the Community, and establishing the detailed procedures related to the issuing of such plant passports and the conditions and detailed procedures for their replacement

- Commission Directive 93/50/EEC of 24 June 1993 specifying certain plants not listed in Annex V, part A to Council Directive 77/93/EEC, the producers of which, or the warehouses, dispatching centres in the production zones of such plants, shall be listed in an official register

- Commission Directive 94/3/EC of 21 January 1994 establishing a procedure for the notification of interception of a consignment or a harmful organism from third countries and presenting an imminent phytosanitary danger

- Commission Directive 98/22/EC of 15 April 1998 laying down the minimum conditions for carrying out plant health checks in the Community, at inspection posts other than those at the place of destination, of plants, plant products or other objects coming from third countries

- Commission Directive 2008/61/EC of 17 June 2008 establishing the conditions under which certain harmful organisms, plants, plant products and other objects listed in Annexes I to V to Council Directive 2000/29/EC may be introduced into or moved within the Community or certain protected zones thereof, for trial or scientific purposes and for work on varietal selections

- Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market

- Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC

- Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC

- Commission Regulation (EC) No 1097/2009 of 16 November 2009 amending Annex II to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for dimethoate, ethephon, fenamiphos, fenarimol, methamidophos, methomyl, omethoate, oxydemeton-methyl, procymidone, thiodicarb and vinclozolin in or on certain products

- 2009/835/EC: Commission Decision of 12 November 2009 on emergency measures imposing special conditions on official controls governing the import of pears originating in or consigned from Turkey due to high residue levels of amitraz

SEEDS – PLANT VARIETY

- Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed

- Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed

- Council Directive 68/193/EEC of 9 April 1968 on the marketing of material for the vegetative propagation of the vine

- Council Directive 2008/72/ECof 15 July 2008 on the marketing of vegetable propagating and planting material, other than seed

- Until 29/09/2012

- Council Directive 92/34/EEC of 28 April 1992 on the marketing of fruit plant propagating material and fruit plants intended for fruit production

- From 30/09/2012

- Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production

- Council Directive 98/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants

- Council Directive 1999/105/EC of 22 December 1999 on the marketing of forest reproductive material

- Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species

- Council Directive 2002/54/EC of 13 June 2002 on the marketing of beet seed

- Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed

- Council Directive 2002/56/EC of 13 June 2002 on the marketing of seed potatoes

- Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants

- Commission Decision 80/512/EEC of 2 May 1980 authorizing the Kingdom of Denmark, the Federal Republic of Germany, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the United Kingdom not to apply the conditions laid down in Council Directive 66/401/EEC on the marketing of fodder plant seed, as regards the weight of the sample for determination of seed of Cuscuta

- Commission Decision 85/370/EEC of 8 July 1985 authorizing the Netherlands to assess the satisfaction of the varietal purity standards laid down in Annex II to Council Directive 66/401/EEC for seed of apomictic uniclonal varieties of *Poa pratensis*, also on the basis of the results of seed and seedling testing

- Commission Decision 2004/371/EC of 20 April 2004 on conditions for the placing on the market of seed mixtures intended for use as fodder plants

- Commission Directive 2008/124/EC of 18 December 2008 limiting the marketing of seed of certain species of fodder plants and oil and fibre plants to seed which has been officially certified as 'basic seed' or 'certified seed'

- Commission Decision 80/755/EEC of 17 July 1980 authorizing the indelible printing of prescribed information on packages of cereal seed

- Commission Directive 2004/29/EC of 4 March 2004 on determining the characteristics and minimum conditions for inspecting vine varieties

- Commission Directive 93/61/EEC of 2 July 1993 setting out the schedules indicating the conditions to be met by vegetable propagating and planting material, other than seed pursuant to Council Directive 92/33/EEC

- Commission Directive 93/62/EEC of 5 July 1993 setting out the implementing measures concerning the supervision and monitoring of suppliers and establishments pursuant to Council Directive 92/33/EEC on the marketing of vegetable propagating and planting material, other than seed

- Commission Directive 93/48/EEC of 23 June 1993 setting out the schedule indicating the conditions to be met by fruit plant propagating material and fruit plants intended for fruit production, pursuant to Council Directive 92/34/EEC

- Commission Directive 93/64/EEC of 5 July 1993 setting out the implementing measures concerning the supervision and monitoring of suppliers and establishments pursuant to Council Directive 92/34/EEC on the marketing of fruit plant propagating material and fruit plants intended for fruit production

- Commission Directive 93/79/EEC of 21 September 1993 setting out additional implementing provisions for lists of varieties of fruit plant propagating material and fruit plants, as kept by suppliers under Council Directive 92/34/EEC

- Commission Directive 93/49/EEC of 23 June 1993 setting out the schedule indicating the conditions to be met by ornamental plant propagating material and ornamental plants pursuant to Council Directive 91/682/EEC

- Commission Directive 1999/66/EC of 28 June 1999 setting out requirements as to the label or other document made out by the supplier pursuant to Council Directive 98/56/EC

- Commission Directive 1999/68/EC of 28 June 1999 setting out additional provisions for lists of varieties of ornamental plants as kept by suppliers under Council Directive 98/56/EC

- Commission Regulation (EC) No 1597/2002 of 6 September 2002 laying down detailed rules for the application of Council Directive 1999/105/EC as regards the format of national lists of the basic material of forest reproductive material

- Commission Regulation (EC) No 1598/2002 of 6 September 2002 laying down detailed rules for the application of Council Directive 1999/105/EC as regards the provision of mutual administrative assistance by official bodies

- Commission Regulation (EC) No 1602/2002 of 9 September 2002 laying down detailed rules for the application of Council Directive 1999/105/EC as regards the authorisation of a Member State to prohibit the marketing of specified forest reproductive material to the end-user

- Commission Regulation (EC) No 2301/2002 of 20 December 2002 laying down detailed rules for the application of Council Directive 1999/105/EC as regards the definition of small quantities of seed

- Commission Regulation (EC) No 69/2004 of 15 January 2004 authorising derogations from certain provisions of Council Directive 1999/105/EC in respect of the marketing of forest reproductive material derived from certain basic material

- Commission Decision 2004/678/EC of 29 September 2004 authorising Member States to permit temporarily the marketing of seed of the species *Cedrus libani*, *Pinus brutia* and planting stock produced from this seed not satisfying the requirements of Council Directive 1999/105/EC

- Commission Decision 2005/853/EC of 30 November 2005 authorising France to prohibit the marketing to the end user, with a view to seeding or planting in certain regions of France, of reproductive material of *Pinus pinaster* Ait. of Iberian Peninsula origin, which is unsuitable for use in such territories under Council Directive 1999/105/EC

- Commission Decision 2005/871/EC of 6 December 2005 releasing Denmark and Slovenia from certain obligations for marketing of forest reproductive material under Council Directive 1999/105/EC

- Commission Decision 2006/665/EC of 3 October 2006 temporarily authorising Spain to approve for marketing seed of the species *Pinus radiata* and planting stock produced from this seed imported from New Zealand which does not satisfy the requirements of Council Directive 1999/105/EC in respect of identification and labelling

- Commission Decision 2007/527/EC of 25 July 2007 authorising Bulgaria and Romania to derogate from Council Directive 1999/105/EC on the marketing of forest reproductive material with regard to the stocks accumulated from 1 January 2003 to 31 December 2006

- Council Decision 2008/971/EC of 16 December 2008 on the equivalence of forest reproductive material produced in third countries

- Commission Decision 2008/989/EC of 23 December 2008 authorising Member States, in accordance with Council Directive 1999/105/EC, to take decisions on the equivalence of the guarantees afforded by forest reproductive material to be imported from certain third countries

- Commission Directive 89/14/EEC of 15 December 1988 determining the groups of varieties of spinach beet and beetroot referred to crop isolation conditions of Annex I to Council Directive 70/458/EEC on the marketing of vegetable seed

- Commission Directive 2003/91/EC of 6 October 2003 setting out implementing measures for the purposes of Article 7 of Council Directive 2002/55/EC as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of vegetable species

- Commission Directive 93/17/EEC of 30 March 1993 determining Community grades of basic seed potatoes, together with the conditions and designations applicable to such grades

- Commission Decision 2004/3/EC of 19 December 2003 authorising, in respect of the marketing of seed potatoes in all or part of the territory of certain Member States, more stringent measures against certain diseases than are provided for in Annexes I and II to Council Directive 2002/56/EC

- Commission Decision 97/125/EC of 24 January 1997 authorizing the indelible printing of prescribed information on packages of seed of oil and fibre plants and amending Decision 87/309/EEC authorizing the indelible printing of prescribed information on packages of certain fodder plant species

- Commission Decision 2004/266/EC of 17 March 2004 authorising the indelible printing of prescribed information on packages of seed of fodder plants

- Commission Directive 2008/124/EC of 18 December 2008 limiting the marketing of seed of certain species of fodder plants and oil and fibre plants to seed which has been officially certified as ‘basic seed’ or ‘certified seed’

- Commission Directive 2008/62/EC of 20 June 2008 providing for certain derogations for acceptance of agricultural landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic erosion and for marketing of seed and seed potatoes of those landraces and varieties

- Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights

- Commission Directive 2009/145/EC of 26 November 2009 providing for certain derogations, for acceptance of vegetable landraces and varieties which have been

traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties.

IX. EUROSTAT

- Legislation in application in the sector

http://eur-lex.europa.eu/fr/legis/legis-statistiques.htm

- New measure already proposed by the Commission and due to be adopted in the sector:

Draft Proposal for a Council Regulation amending Regulation (EC) No 479/2009 as regards the quality of statistical data in the context of the excessive deficit procedure (COM(2010) 53)

http://intragate.ec.europa.eu/egreffe/greffe/servlet/FrameCreator?init=true&ticket=ECAS_ST-486923-yxYe6nF8PLkDTcKhPqQzTRDt8tdt15Q7igIWJO0MmKX-wkGjxchnStjMueiTZpKjZG-7UU9zzdBzjGlAo9WaiEywkm

X. BUDGET

In particular, the following legal texts are applicable:

- Article 311 ((ex Article 269 TEC)

  The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.

  Without prejudice to other revenue, the budget shall be financed wholly from own resources.

  The Council, acting in accordance with a special legislative procedure, shall unanimously and after consulting the European Parliament adopt a decision laying down the provisions relating to the system of own resources of the Union. In this context it may establish new categories of own resources or abolish an existing category. That decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.

  The Council, acting by means of regulations in accordance with a special legislative procedure, shall lay down implementing measures for the Union's own resources system in so far as this is provided for in the decision adopted on the basis of the third paragraph. The Council shall act after obtaining the consent of the European Parliament.

- Council Decision 2007/436/EC, Euratom on the system of the Communities' own resources.

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:163:0017:01:EN:HTML

● Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31989R1553:EN:HTML

● Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000R1150:EN:HTML

● PROTOCOL (No 7) ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION

Article 3

The Union, its assets, revenues and other property shall be exempt from all direct taxes.

The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Union makes, for its official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied, however, so as to have the effect of distorting competition within the Union.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

Article 4

The Union shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for its official use: articles so imported shall not be disposed of, whether or not in return for payment, in the territory of the country into which they have been imported, except under conditions approved by the government of that country.

The Union shall also be exempt from any customs duties and any prohibitions and restrictions on import and exports in respect of its publications.