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COMMISSION STAFF WORKING PAPER

Functioning of the system

Accompanying the document

REPORT FROM THE COMMISSION

Second Evaluation Report on EU Pilot

{COM(2011) 930 final}

1. ORGANISATION IN THE COMMISSION AND IN THE MEMBER STATES

1.1. Organisation in the Commission

The EU Pilot system is centrally managed by the Secretariat General of the Commission, acting as a central Contact Point for the Member States. The Secretariat General is responsible for the overall management of the system, monitoring its functioning, developing the IT application, responding to questions and providing guidance on its operation.

Each Commission service responsible for the application of EU law has put a team of Contact Points in place (usually consisting of 1 to 6 people). The Contact Points in the services initiate files and ensure the coherence of the system in the Directorate General concerned. They attribute files to file-handlers and are responsible for contacts with the Member States.

File-handlers in each Directorate General of the Commission draft requests for information (explanations, issue descriptions and questions) to Member States and upload them into the system. They assess responses provided by the Member States and propose any appropriate follow-up.

1.2. Organisation in the Member States

As with the Commission services, each Member State appoints a Central Contact Point who is responsible for the overall management of the process. The main task of these Contact Points is to ensure coordination between the authorities of the Member State and the Commission services.

The form of organization varies according to the Member State:

Austria

The Austrian contact point is located in the Federal Chancellery in the division which is responsible for infringement cases with the EU Commission and procedures at the ECJ. It attributes the files submitted through EU Pilot to the competent ministries or regions and coordinates the official Austrian responses.

Belgium

The Contact Point is part of the European Law Directorate within the Directorate General for Legal Affairs of the Federal Public Service of Foreign Affairs, Foreign Trade and Development Cooperation. This Directorate is also responsible for the coordination of infringement cases and transposition. The Contact Point attributes the files to the competent authorities and monitors the overall operation of the EU Pilot. The responsible authorities upload their answer in the system, but will not send their answer to the Commission. It is up to the Contact Point to send the Belgian answer to the Commission once the answer of all competent authorities is received.

Bulgaria

The Contact Point is located in the EU Affairs Directorate of the Council of Ministers' administration, which is also responsible for the management of infringement and SOLVIT cases. After the file is received in EU Pilot, it is uploaded into an internal database (INFRASOLVE), which sends automatic notifications to the line ministries responsible for the matter in question. The line ministries prepare draft answers, consult on them within a relevant working group (there are 35 inter-ministerial working groups on different EU

policies, which communicate mostly via e-mail). The final replies are sent for information to the members of the Council on EU Affairs and uploaded by the Contact Point into the EU Pilot database.

Cyprus

The contact point is a Counsel of the Republic working in the EU Law Section of the Law Office of the Republic of Cyprus, which is also in charge of the infringement proceedings. The EU Pilot files are attributed to a file handler within the Law Office of the Republic, who forwards them to the Ministry concerned. A deadline is set for the competent Ministry to deal with the case and to submit a draft of the answer proposed. The answer is finalized by the file handler. The answer is uploaded to the system by the contact point.

Czech Republic

The Czech Contact Point is located in the EU Law Department of the Foreign Affairs Ministry. The same department is in charge of the infringement proceedings; however, there is shared responsibility among the Ministry of Foreign Affairs and the competent Ministry.

Denmark

The Contact Point belongs to the Ministry of Foreign Affairs. EU Pilot files are treated by a special committee for Legal Affairs, chaired by the Ministry of Justice. Files are forwarded to all Ministries concerned and discussed in the committee.

Estonia

The Contact Point is located in the EU Litigation unit of the Ministry of Foreign Affairs. The unit is also responsible for coordination of infringement cases and litigation before the European Court.

The Contact Point attributes EU Pilot cases to the contact officer in the Ministry in charge and forwards the Ministry's response to the Commission via the EU Pilot database. The Contact Point fulfils an overall monitoring and coordination function, but as a rule is not involved in preparing the answer.

Finland

The Contact Point has been set up in the Ministry for Foreign Affairs Unit for EU Litigation which is also responsible for the preparation of EU court cases and infringement matters. The Contact Point attributes the cases covered by the Pilot project to the contact officer in the Ministry in charge and forwards the Ministry's response to the Commission through the Pilot's IT system. The Contact Point does not take part in the preparation of the answer. If the case falls within the sphere of authority of several ministries, they take care, as a rule, of the coordination of the matter among themselves. The same procedure is applied if the response requires the participation of the Åland Islands in the consideration of the case.

France

The Contact Point has been set up in the Legal service of the Secretariat General of European Affairs which depends directly from the Prime Minister. The Legal service is also dealing with litigation cases and preliminary references before the ECJ, but the EU Pilot team itself is also working on SOLVIT. Another Contact Point belongs to the Permanent Representation in Brussels. All correspondence from the Commission and vice versa is channeled by these Contacts Points. In order to elaborate a satisfying answer for the Commission, the Contact Point informs the concerned person in the Legal service and transmits the file to the

competent units of the Secretariat General of European Affairs which consult every concerned Ministry, set a deadline for preliminary responses allowing sufficient time for the work required for any finalisation and organise meetings if necessary. The official finalised answer is charged in the database by the Contact Point of the Permanent Representation in Brussels.”

Germany

The Contact Point is part of the Federal Ministry of Economics and Technology (BMW) and fulfils an overall monitoring and coordination function. All correspondence from the Commission and vice versa is channelled through BMW. The unit in charge of the EU Pilot is also in charge of infringement cases within the Federal Government. Although BMW checks all messages to the Commission and gives legal advice as appropriate, the political responsibility remains with the line Ministry or the German Länder – in keeping with their political competence.

Greece

The Central Contact Points are located in the Legal Service – Department of EU Law in the Ministry of Foreign Affairs and the Legal Service at the Permanent Representation of Greece to the EU. The Legal Services are also responsible for the coordination of infringement cases and administrative letters. They cooperate closely, allocating files to file-handlers, who are designated in every Ministry. The file-handlers upload answers into the EU Pilot system. The Department of EU Law in the Ministry of Foreign Affairs scrutinizes the answers, and ensures the coordination and cooperation of the various competent authorities. Finally, the Contact Point at the Permanent Representation submits the reply to the Commission.

Hungary

The Contact Point for the EU Pilot is located in the Ministry of Foreign Affairs. The Section for EU Law of the EU Internal Market and Legal Affairs Department is responsible for the co-ordination of EU Pilot, as well as is in charge of notification of national transposing legislation and infringement procedures. The Contact Point is to dispatch the letters to the responsible line-ministries, and to ensure that a co-ordinated answer is adopted and given to the Commission. The formulation of the answer is done in an expert group operated in shared competence by the Ministry of Foreign Affairs and the Ministry of Public Administration and Justice. The expert group is part of the overall governmental co-ordination system governed by the Inter-ministerial Co-ordination Committee for EU Affairs that oversees and manages all matters related to the functioning of Hungary as a Member State.

Once a letter is received in the EU Pilot, the Contact Point establishes the ministry with primary competence in the issue area, as well as the other concerned ministries, and sends a notification letter thereto asking for an official position on the matter. The answer is drafted by the Contact Point on the basis of the positions received from the involved ministries, and is conciliated and finalised in the expert group via e-mail, as a main rule. The expert group is convened for a meeting on a case-by-case basis, should the matter at stake so require. The draft response is debated in the expert group until all parties reach a final agreement. Once the response is finalised it is uploaded by the Contact Point to the EU Pilot interface, and is sent back to all parties participating in the expert group for their database.

Ireland

The Contact Point is in the process of moving from the Department of Foreign Affairs to the Prime Minister’s Department. The contact point asks the responsible Departments to handle the files, which raise issues falling within their area of responsibility in the system. The Departments concerned upload the answers into the system. Following a recent Government decision, responsibility for EU affairs is to be transferred to the Prime Minister’s Department.

The staff of EU Division, including those who deal with the EU Pilot, are in the process of transferring from DFA to the Prime Minister's Department. While the exact working arrangements have yet to be finalized, it is expected that this will lead to oversight of EU legislation, including transposition/Pilot and infringements being centralized in the Prime Minister's Department.

Italy

The Contact Point is located in the Department for European Affairs of the Prime Minister's Office. The Department reports to the Minister for European Affairs. The Contact Point's team deals also with infringement procedures. The files are dealt with by officials who consult every concerned Ministry, setting a deadline for preliminary responses allowing sufficient time for the work required for any finalisation, as necessary. The Ministries work together on given cases, which helps afterwards if the file becomes an infringement. When necessary, special coordination meetings are organized by the Contact Point on single cases.

Latvia

The Contact Point belongs to the Department of Cooperation with the European Court of Justice under the Ministry of Justice. This department is also responsible for the coordination of infringement cases and representation of Latvia before the European Court of Justice.

The Contact Point submits the documents of an EU Pilot case to the responsible institution. The responsible institution drafts a reply and sends it to the Contact Point for an opinion. Afterwards, the final version is drafted by the responsible institution and sent to the Contact Point which uploads it into the system. The overall coordination and supervision of EU Pilot cases is carried out by the Contact Point, although the answer is proposed and drafted by the responsible institution. There is one Contact Point for EU Pilot cases in each Ministry (normally the Contact Point is the person who is responsible for the coordination of infringement cases).

Lithuania

Lithuania has opted for centralized management of EU Pilot. The Contact Point belongs to the European Law Department under the Ministry of Justice, which coordinates and monitors all the EU law infringement procedures in Lithuania. The European Law Department sends documents received through EU Pilot to the responsible institution. With regard to complaints or other documents delivered through EU Pilot, the State institution that is in charge of the transposition or implementation of the relevant EU legal act drafts a reply and submits it for coordination to the European Law Department (if necessary, to other competent institutions as well). The European Law Department provides conclusions on the draft reply. Then the responsible State institution sends the final reply to the European Law Department, which submits the answer to the Commission through EU Pilot.

Poland

In Poland the Contact Point is located in the EU Law Department of the Ministry of Foreign Affairs. The Department is also in charge of infringement procedures and litigation before the Court of Justice of the European Union. The Contact Point attributes EU Pilot cases internally (to the file handler within the EU Law Department) and externally (to the competent Ministries). The Contact Point sets a deadline for the competent Ministry to deal with the case and to submit a draft of the answer proposed. The Ministry drafts a reply and sends it to the Contact Point for an opinion. The reply is either accepted and uploaded in the system or re-drafted by the relevant Ministry.

Portugal

The Contact Point is placed in the Ministry of Foreign Affairs and the same legal experts deal with EU Pilot and infringements files. They ensure coordination if several Ministries are involved. Short deadlines are set. There is one Contact Point for infringement cases, and thus EU Pilot files, in each Ministry.

Romania

The central Contact Point is located in the Ministry of European Affairs, more exactly in the Directorate for European Law and Legislative Harmonization. A network of experts from each central ministry and institution has been set up in order to facilitate the inter-institutional communication. These experts are also participating in the Working Group for European Litigation. Romania has opted for a centralized management of EU Pilot. The Contact Point attributes the cases to the responsible institution (to the contact person and by an official letter). If there are more institutions involved than the Contact Point nominates the institution responsible for drafting the final response, indicating the rest of the institutions that should take part in the process. As a rule, the nominated institution coordinates the matter among the rest of the institutions. In the same time, the Contact Point is responsible for setting a deadline for a preliminary reply allowing for the official reply to be finalized in due time. The European Law Directorate may provide the institutions with an informal opinion on the draft reply. However, the responsible institution is responsible for drafting the final reply and sending it to the Contact Point. The Contact Point will upload the final reply and any other documents in the database. Furthermore, the Contact Point is responsible for monitoring the overall functioning of the EU Pilot at national level.

The Netherlands

The central Contact Point is part of the European Law Division of the Legal Department of the Ministry of Foreign Affairs. This division is also responsible for (the coordination of) infringement cases. The central Contact Point attributes the files to the EU Pilot coordinators of the department(s) concerned, uploads the answers into the system and monitors the overall operation of EU Pilot. When asked by the responsible Department, the central Contact Point can also play a more substantial role.

A second Contact Point is located in the Permanent Representation in Brussels. This Contact Point transmits and draws attention to EU Pilot files within the Permanent Representation, is involved in organising meetings with the Commission to discuss specific EU Pilot files and can (if the Ministries in The Hague so desire), like the central Contact Point, be involved in the preparation of an answer.

Spain

The Contact Point belongs to the Ministry of Foreign Affairs and Cooperation. The treatment of EU Pilot files follows the same system as for infringement cases. The Ministry of Foreign Affairs and Cooperation identifies which administration is responsible, and it is the administration that will prepare the answer and send it to the Ministry which ensures the coordination function.

Slovakia

The EU Pilot Contact Point is the Department of Law Approximation at the Government Office of the Slovak Republic. The Department examines the subject matter of each case opened against the Slovak Republic. On receiving a case, the Department contacts the relevant Slovak authorities and asks for their statements and comments on the case, coordinates the drawing-up of the response and uploads its final version into the EU Pilot

database. Information on the EU Pilot cases is also sent to the Slovak Permanent Representation to the EU, Slovak Agent before the Courts of the EU and the Slovak Ministry of Foreign Affairs. The Slovak SOLVIT Centre is established at the Department of Law Approximation as well.

Slovenia

The Contact Point belongs to the Government Office for Development and European Affairs. The Contact Point identifies the relevant Ministries and contacts the Contact Point in each Ministry. Meetings are held to find solutions and it is the Government Office for Development and European Affairs that checks the answer and uploads it into the system.

Sweden

A central contact point has been appointed within the Legal Secretariat of the Ministry for Foreign Affairs, which receives the enquiries via an e-mail address. There are currently four case handlers together with the head of the EU litigation section dealing with pilot cases within the Legal Secretariat of the Ministry for Foreign Affairs. When an enquiry arrives, the contact persons analyse it and identify the responsible Ministry within the Swedish Government Offices which is in charge of the question concerned, i.e. if the enquiry concerns taxation it will be transferred to the Ministry of Finance, or if it concerns environment, the enquiry will be passed on to the Ministry of the Environment.

The responsible Ministry will then more thoroughly analyse the legal problem/-s of the enquiry, contact relevant authorities and prepare a draft reply. The draft reply is then prepared collectively with the Legal Secretariat of the Ministry for Foreign Affairs, the EU Department at the Prime Minister's Office and with any other Ministries concerned. Once the collective preparation is terminated the responsible Ministry will send the reply and necessary attachments by means of the Pilot database. The Ministry of Foreign Affairs will also receive a copy of these documents.

As displayed above, Sweden has chosen a decentralized way to organise and manage the EU Pilot project.

United Kingdom

The Contact Point belongs to the EU Section of the Cabinet Office, which coordinates the work on the EU Pilot and infringement cases. It fulfils a general role monitoring problems of application of EU Law. The files are sent to the lead Departments. Policy and legal experts draft the response and send it to the Cabinet Office who ensures the coordination function.

2. EVALUATION OF FILES BY MEMBER STATES AND COMMISSION SERVICES

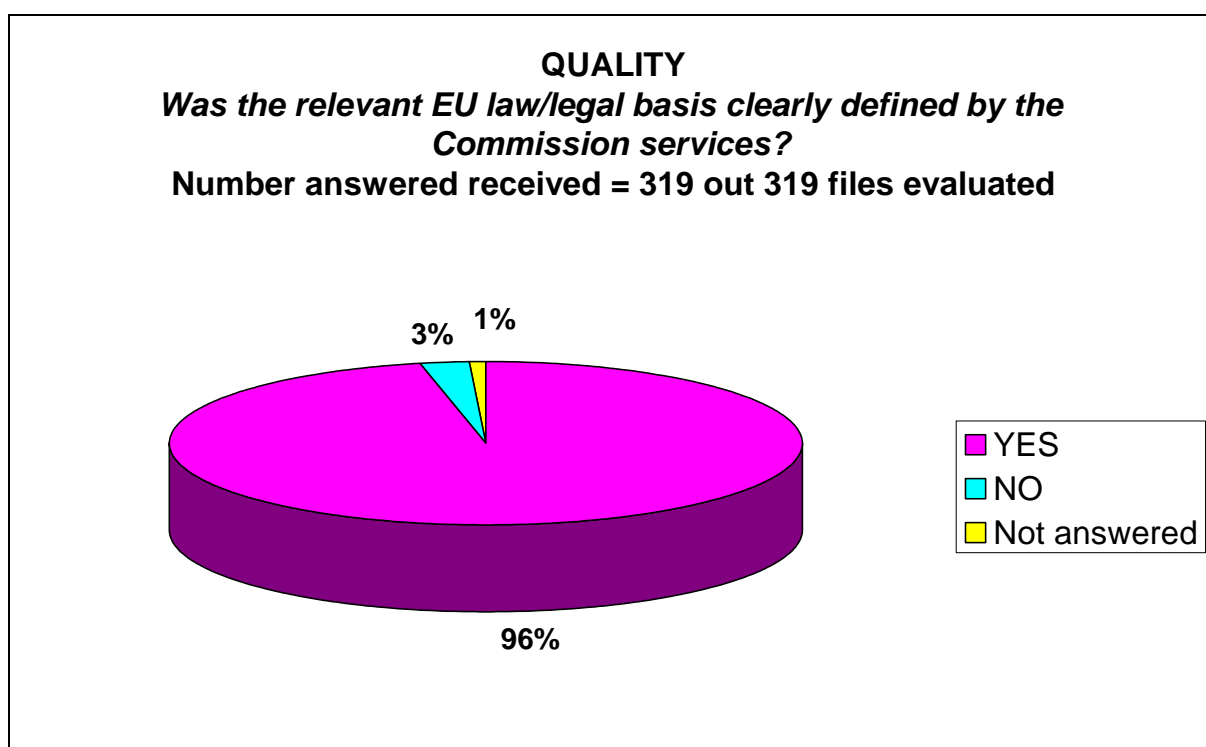
In February 2011, the Secretariat General of the Commission conducted an evaluation of files closed between 01.3.2010 and 01.02.2011 with the participating Member State authorities and the Commission services.

Member States and Commission services replied to the same series of questions on each file. The questionnaire focused on the quality and cooperation/support criteria.

NB: No reply received from UK.

2.1. Evaluation by the Member States

2.1.1. Quality of files – Assessment by the Member States

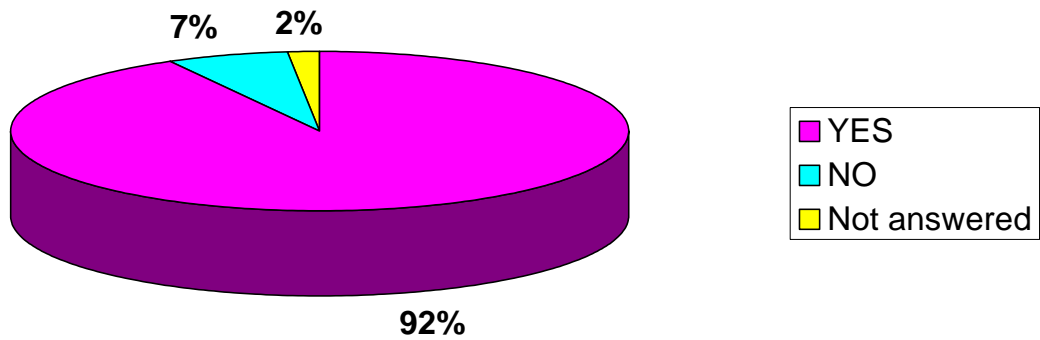


The Member State authorities were asked to assess the quality of the files submitted to them by the Commission services. The results are positive as, according to the Member State authorities, 96% of the files submitted to them were well prepared with a clear identification of the issues at stake.

QUALITY

Were the Commission services' requests of information clear?

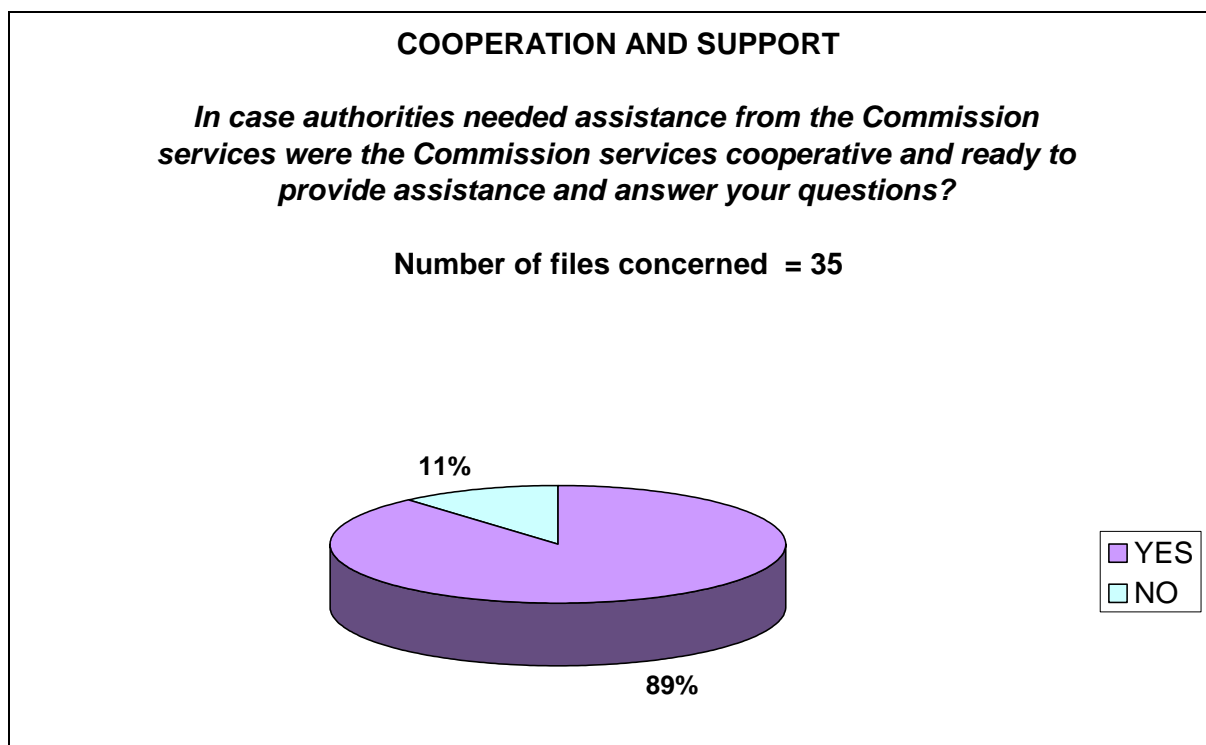
Number answered received = 319 out 319 files evaluated



When a file is submitted to a Member State, the lead service of the Commission has to put clear questions to the national administration. Member State authorities are satisfied with 92% of the files.

The quality of preparation of the files is a key element. Not only does it help the Member States' Contact Point to know to which authority the file should be allocated, but it enables the responsible authority to provide a constructive answer. The clearer the description and the documents attached to the file, the quicker and more effectively the Member State will be able to provide a constructive answer to the Commission.

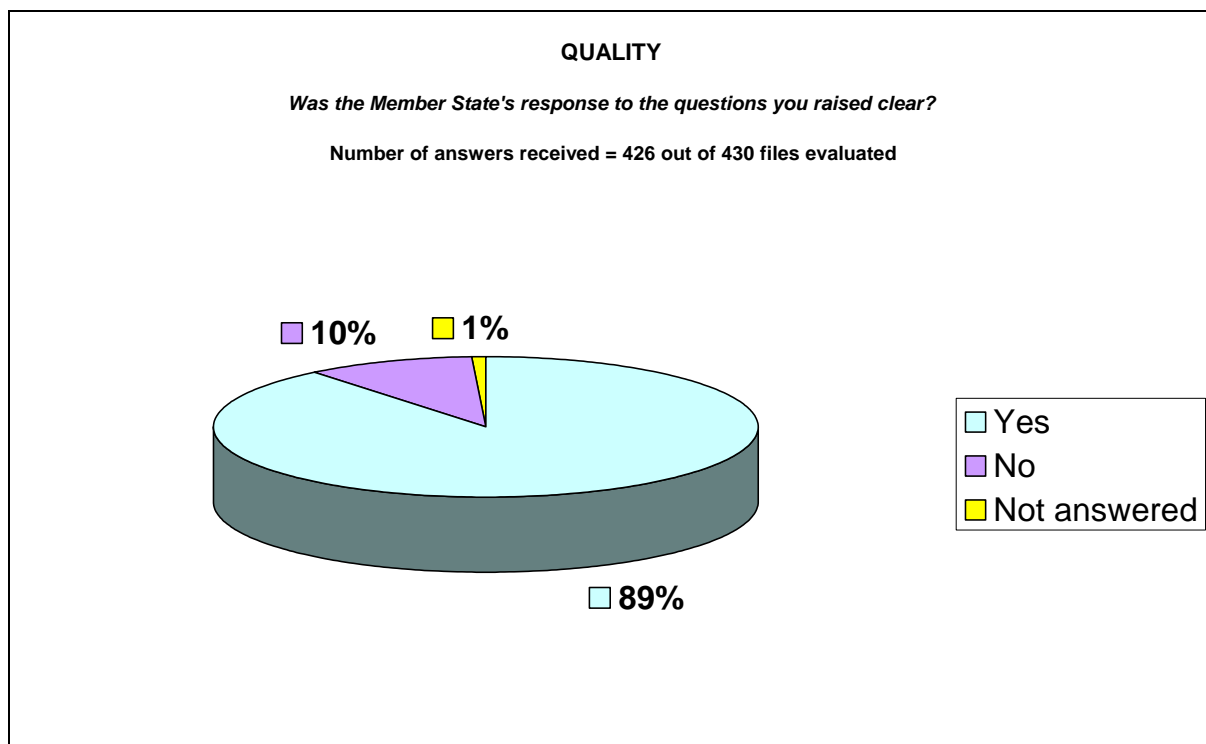
2.1.2. Cooperation and support - Assessment by the Member States



EU Pilot is based on the "partnership approach" which the Commission pursues with Member States in the application of EU law. The EU Pilot project provides for closer cooperation between the Commission and Member State to resolve issues which are particularly relevant for citizens and businesses. It is therefore essential, for the sake of the efficiency of the system, that the Commission services are cooperative and ready to provide assistance to the national authorities of the Member States. The results of the evaluation show that out of the 35 files where the Member State authorities requested the assistance and support of the Commission services, the Member State authorities received assistance and support in 89% of these files.

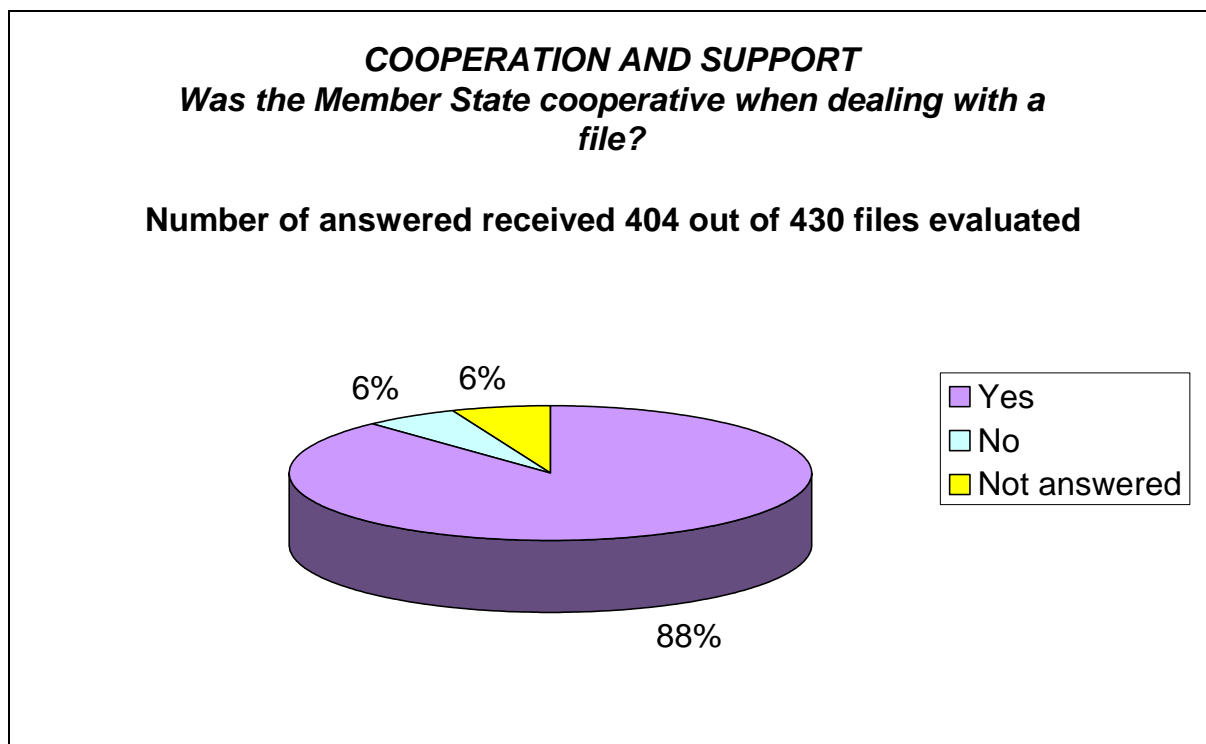
2.2. Evaluation by the Commission services

2.2.1. Quality of files – Assessment by the Commission' services



Another important key element in the treatment of an EU Pilot file is the quality of the answers provided by the Member State authorities. It can be observed that in 89% of the files, the Commission services are satisfied with the quality of the responses proposed by the national authorities. An answer which is as complete as possible helps the competent service of the Commission to evaluate whether or not the response resolves the issue and is in compliance with EU law, and whether the launch by the Commission of an infringement procedure under Article 258 TFEU should be envisaged.

2.2.2. Cooperation and support – Assessment by the Commission' services



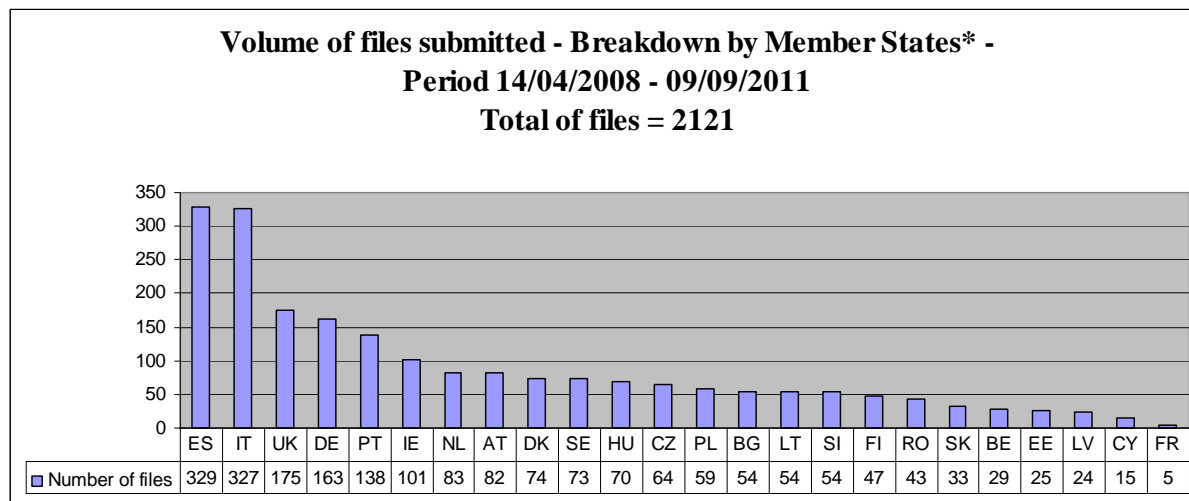
As mentioned above, the EU Pilot working method is based on the partnership and cooperation approach between the Commission and the Member States. The results of the evaluation show that, in most cases (88%), the Commission services are satisfied with the cooperation shown by the Member States when processing files in the system.

3. STATISTICAL DATA ON THE FUNCTIONING OF EU PILOT

The statistics below cover the period from 14 April 2008 to 09 September 2011. This period of three and a half years provides an exhaustive overview of the functioning of the system since its launch.

3.1. Volumes of files

3.1.1. Volume of files – Breakdown by Member States

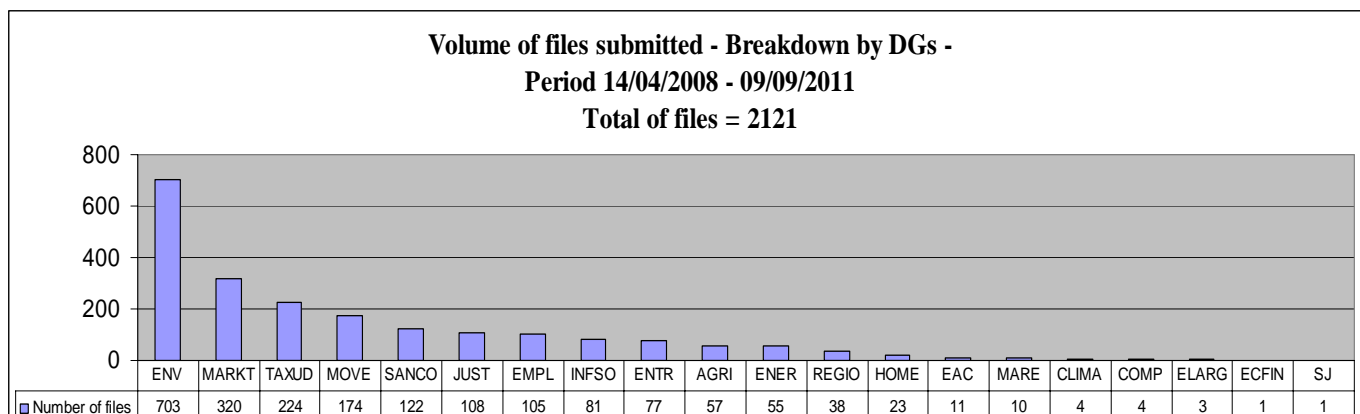


* Entry date in the EU Pilot operational database:

- **14.04.2008:** Austria, Czech Republic, Denmark, Germany, Finland, Hungary, Ireland, Italy, Lithuania, The Netherlands, Portugal, Slovenia, Sweden, Spain and the United Kingdom
- **14.09.2010:** Estonia and Slovakia
- **14.10.2010:** Bulgaria
- **03.01.2011:** Belgium, Latvia, Poland and Romania
- **07.03.2011:** Cyprus
- **05.09.2011:** France and Greece

Those Member States who have a larger population normally receive more files in EU Pilot, because of a higher number of citizens, businesses and civil society interests. Moreover, there is a difference between the volume of files between those Member States which use the system since the start in 2008 and the others which joined the system in the course of 2010 or 2011. Out of 2121 files: 15.5% of files were submitted to Italy and Spain, 8% to United Kingdom, 7.7% for Germany and 6.5% for Portugal.

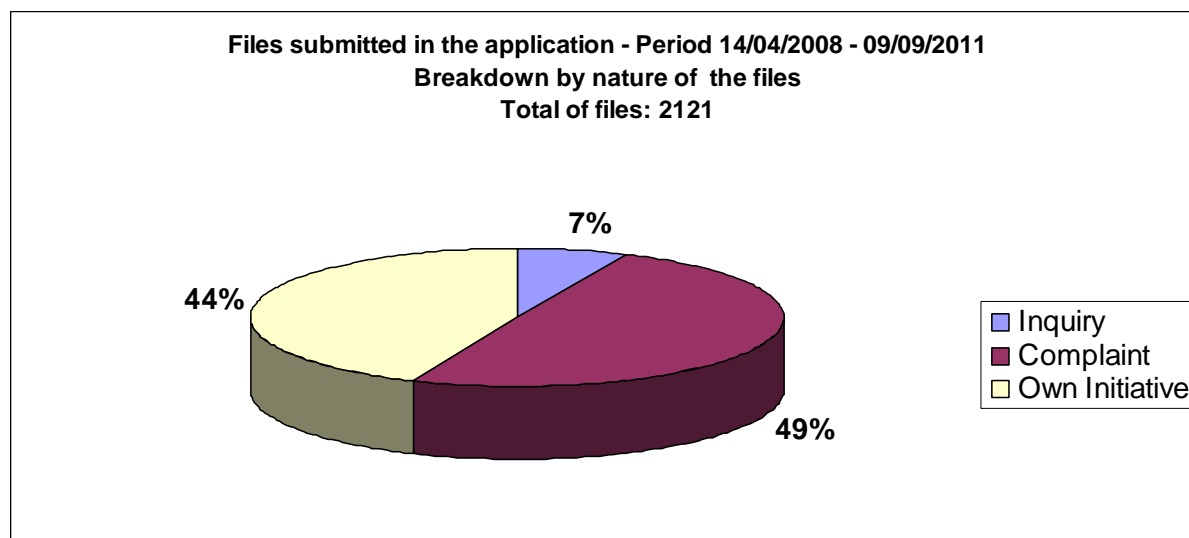
3.1.2. Volume of files – Breakdown by Commission' services



The statistics show that the subject-matter of the files confirms the existing experience of the volume of questions and problems arising in the different fields of EU law: 33% of files concerned environmental issues, 15% internal market, 10,5% taxation, 8% mobility and transport and 6% health and consumer protection.

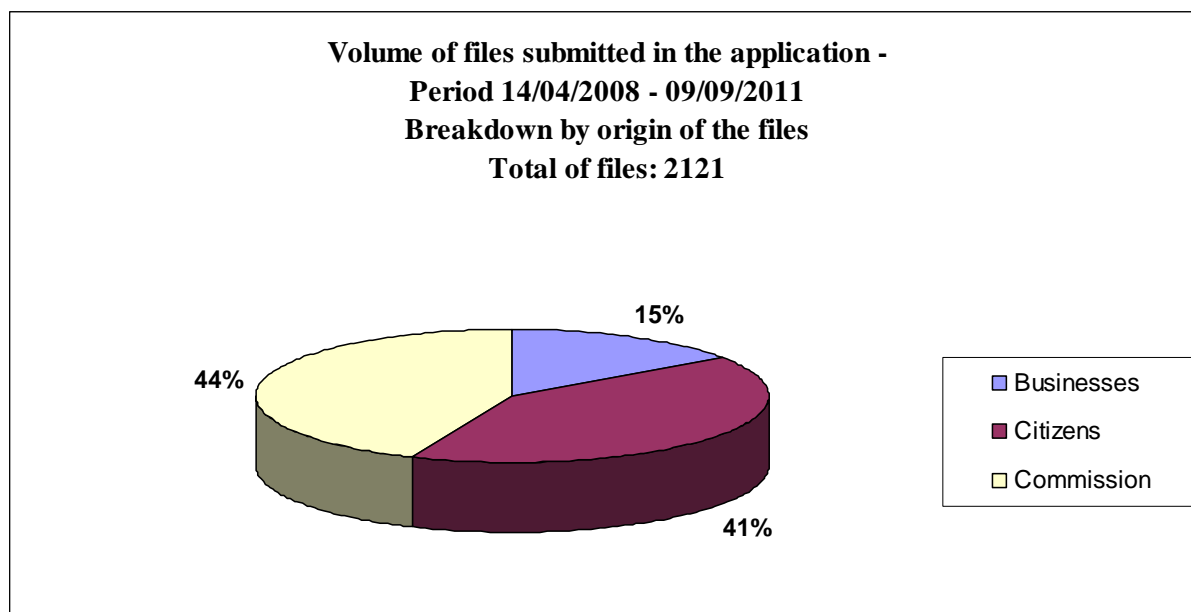
3.2. Origin of files

3.2.1. Origin of the files – Breakdown by nature



It can be observed that in the EU Pilot application, 44% of the files are opened at the own-initiative of the Commission, while 49% of the files are complaints and 7% of the files are requests for information sent by citizens or businesses.

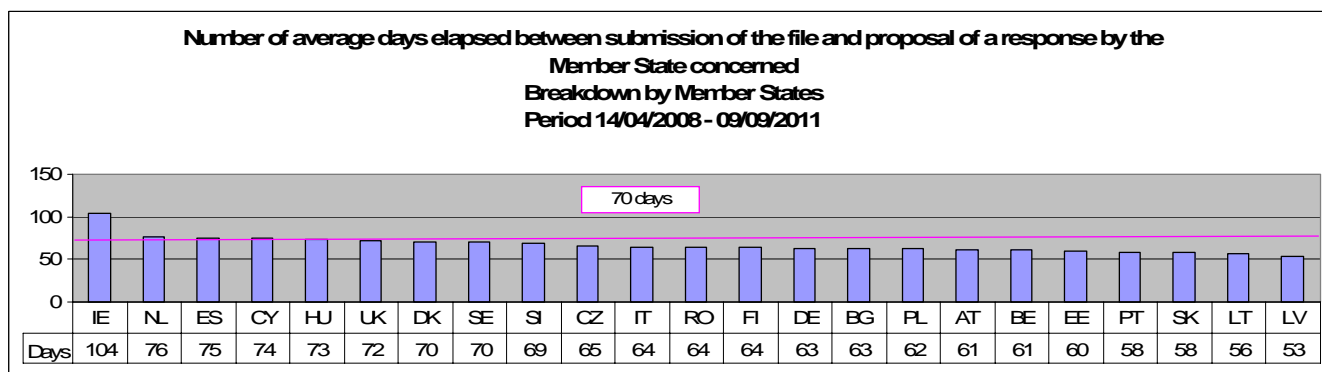
3.2.2. Origin of the files – Breakdown by origin of files



The chart shows that more than half (56%) of total files in EU Pilot originate from citizens (41% of all files) and businesses (15%). 44% of the files are open at the own-initiative of the Commission.

3.3. The standard 10 week benchmark¹

3.3.1. The standard 10 week benchmark for Member States²



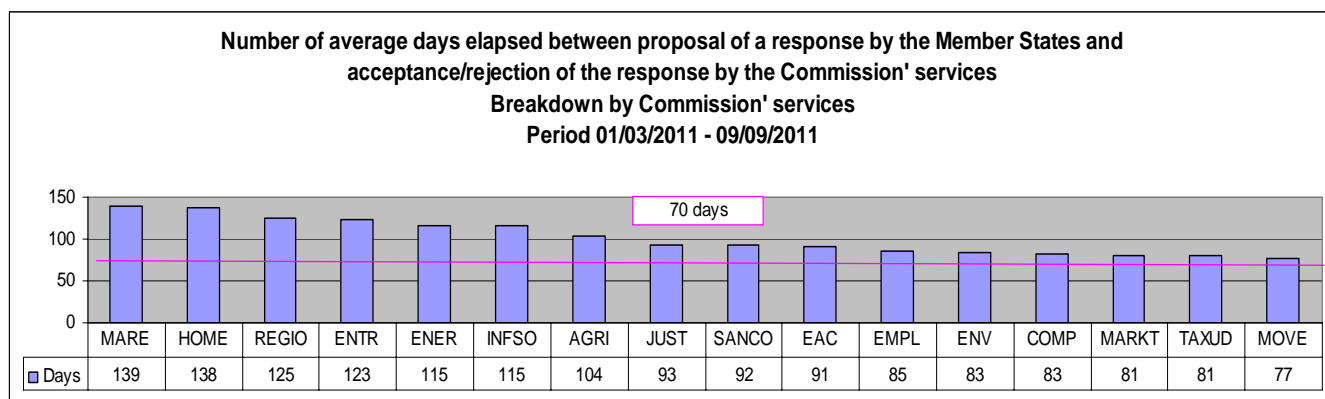
Within **10 weeks**, the Member State should respond to the enquiry or complaint as fully as possible and propose a solution to the problems identified. It can be observed that most of the

¹ The files taken into account for the calculation of the benchmark are the files where responses to the files have been provided by Member States and assessed by the Commission.

² Ireland comments that its figures include a small number of legal cases for which responses were delayed due to ongoing national court proceedings and also reassignment of responsibilities between some Ministries following the General Election in 2011.

Member States respect this benchmark. From the start of EU Pilot in 2008 and until 9 September 2011, the average time taken by Member States for proposing a response to the Commission is 67 days, which is in line with the 10 weeks fixed for Member States' responses.

3.3.2. The standard 10 week benchmark for Commission' services



* No data are available for the following Commission services: DG Enlargement, DG Climate Action, DG for Economic and Financial Affairs and the Legal Service.

The credibility of the EU Pilot project depends, *inter alia*, on the speed of the whole process. Member States do their best to provide a response to the Commission within a general benchmark of ten weeks. Citizens and businesses are also awaiting the evaluation of Member State's responses by the Commission. Hence a general benchmark of ten weeks is also set for the assessment by the Commission services of Member State authorities' responses. However, it is important to note that the benchmark for the Commission has only been introduced with the adoption by the Commission of its first evaluation report on EU Pilot [COM(2010)70 final] on 3 March 2010.

Since March 2010, the average time taken by the Commission services to assess the replies proposed by Member States' authorities and to decide on a follow-up of the file is 102 days, which is beyond the general benchmark. The longer time taken by Commission services in evaluating responses is often due to the requests for additional information that have to be sent to the national authorities in more complex files, as well as to translation needs.

3.4. Success of the system

3.4.1. Success rate – Assessment of the responses

Success rate Number of responses provided by Member States assessed by Commission' services - Breakdown by DGs - 14/04/2008 - 09/09/2011				
DGs	Total of responses assessed by the DGs	Opening Infringement file	Accepted/rejected	Percentage of files with no need to open a formal infringement procedure = success rate
ENV	443	57	386	87,1%
SANCO	91	18	73	80,2%
TAXUD	147	55	92	62,6%
ENTR	55	13	42	76,4%
EMPL	73	26	47	64,4%
MARKT	247	62	185	74,9%
AGRI	43	0	43	100,0%
INFSO	47	7	40	85,1%
JUST	61	14	47	77,0%
REGIO	20	0	20	100,0%
ENER	41	4	37	90,2%
EAC	11	2	9	81,8%
HOME	14	4	10	71,4%
MOVE	113	41	72	63,7%
MARE	3	0	3	100,0%
COMP	1	0	1	100,0%
Total	1410	303	1107	78,5%

Nearly 80% of the responses provided by the Member States (1107 files) had been assessed as acceptable, enabling the file to be closed without the need to launch an infringement procedure under Article 258 TFEU. The remaining 20% (303) for which no acceptable solution with EU law could be found went on to the infringement phase, which had already been launched or was being prepared by the Commission following the processing of the file in EU Pilot.

3.4.2. Reduction in the volume of new of infringements³

Launching of an infringement procedure during 2009, 2010 and 2011 Evolution (Reference year = 2009)							
Member States	2009	2010	Evolution from 2009 and 2010: number of files	Evolution from 2009 and 2010: percentages	2011 (01/01/2011-30/09/2011)	Evolution from 2009 and 2011: number of files	Evolution from 2009 and 2011: percentages
Total per year	536	296	-240	-45%	206	-330	-62%

The data in the above table indicate that since 2010 the absolute number of new infringement procedures launched by the Commission (adoption of a letter of formal notice under Article 258 TFEU) is decreasing. This reduction in the number of infringement procedures is even more visible when comparing the data of 2009 with the data of 2011. Although it is not possible to identify all the reasons for this tendency, one explanation is the setting up of EU Pilot, which helps to clarify and solve satisfactorily some issues regarding application of EU law raised by the Commission, thus putting an end to problems without the need for recourse to infringement proceedings and, in case of complaints, providing more rapid results for citizens and businesses.

³

Non-communication cases are not concerned by these statistics as they are excluded from the scope of EU Pilot.