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from: Secretary-General of the European Commission,
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to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
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EUROPEAN COMMISSION

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REPORT FROM THE COMMISSION

Second Evaluation Report on EU Pilot

{SEC(2011) 1626 final}

1. INTRODUCTION

In 2007, the European Commission adopted a Communication on "A Europe of Results – Applying Community law"¹. In this Communication the Commission suggested the initiation of a project, based on a partnership approach between the Commission and the Member States to ensure the correct application of EU law, to provide more rapid answers to citizens and businesses and solutions to problems, and to tighten up the handling and management of existing procedures.

In April 2008, the EU Pilot project was designed for this purpose and started operating with 15 volunteer Member States. In March 2010 the Commission adopted the first EU Pilot Evaluation Report². In the latter Report the Commission noted that the system had started to produce positive results, although there were also many aspects which could be developed further in order to improve the functioning of the system, increase understanding between the Commission and participating Member States and speed up the processing of files and improve the results achieved³.

In 2010 and 2011 the Commission continued to implement, complete and fine-tune the project. The following major developments have occurred with regard to the application of the EU Pilot project since the adoption of the first Evaluation Report in March 2010:

- Following the overall positive evaluation of EU Pilot in the first Evaluation Report, the remaining 12 Member States were invited by the Commission to join the project. Subsequently, ten further Member States joined EU Pilot⁴.
- Since March 2010, a benchmark of ten weeks has been applied to provide a general reference for the Commission assessment of Member States' responses on the same basis as for Member States.
- Since March 2010, the scope of EU Pilot has been expanded and, as a general rule, the system is used in all cases (subject to limited exceptions) concerning the correct application and implementation of EU law or the conformity of the national law with EU law at an early stage before any possible recourse to an infringement procedure under Article 258 TFEU.
- The Commission has improved the IT system, on which the EU Pilot project is based, to ensure the efficient functioning of the system and to make it more user friendly.

¹ COM(2007)502, cf. section 2.2. "Improving working methods".

² COM(2010)70 final.

³ Cf. section 4 "General Conclusions".

⁴ The 25 Member States are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Finland, Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, Spain and the United Kingdom. Malta is making necessary internal arrangements and should start using the system soon; negotiations are still on going with Luxembourg.

In its first Evaluation Report the Commission committed to deliver a further evaluation in 2011. This document contains the second evaluation report of the EU Pilot project. In order to have a comprehensive overview of the system, this report covers the period from the start-up of the project in April 2008 until September 2011. It concentrates on the main findings which enable the efficiency of the system to be assessed. It builds on figures and volumes of files, looks at the policy areas at stake and compliance with the relevant benchmarks, and also takes into account available data on the quality of files. Supporting statistical details are contained in the Commission staff working paper accompanying this report.

2. WORKING METHOD

EU Pilot is the main tool for the Commission to communicate with the participating Member States on issues raising a question concerning the correct application of EU law or the conformity of the law in a Member State with EU law at an early stage (i.e. before an infringement procedure is launched under Article 258 TFEU).

Wherever there might be recourse to the infringement proceeding, as a general rule EU Pilot is used before the first step in such a proceeding under Article 258 TFEU is taken by the Commission. This replaces the previous regular practice whereby the Commission sent administrative letters for this purpose. However, where urgency or another overriding interest requires the immediate launching of an infringement procedure under Article 258 TFEU, exceptions may be authorised and infringement procedures can be launched without previous contacts through EU Pilot. In such exceptional situations, the Commission can immediately respond to an alleged infringement by a Member State and urge that Member State to act in conformity with EU law. The system manages enquiries and complaints received from citizens and businesses as well as own-initiative cases. These include issues raised with the Commission in the European Parliament Petitions' Committee or via a letter from a Member of the European Parliament.

The database is built in English. However, several Member States have maintained their right to correspond in their official language. The need for translations is met by the Commission as necessary.

Individual files, including a description and questions about a particular issue, are then submitted to the Member State concerned via the EU Pilot application, giving ten weeks for the national authorities to reply to the questions raised as exhaustively as possible and propose a solution to the identified problems that is compatible with EU law. The Member States may likewise justify the need for an extension of the ten week period, thereby indicating to the Commission that they need more time to work on their response. It is decided on a case-by-case basis whether or not to accept the request for an extension of the general timeframe.

In exceptional cases a timeframe shorter than ten weeks may be set. The reasons for a shorter timeframe are explained to the Member State.

Within a further ten weeks benchmark, the replies received from the Member State, if required, after being translated, are examined and an assessment of the Member State's response is uploaded into the EU Pilot database. If no solution compatible with EU law is found, an infringement proceeding under Article 258 TFEU may be launched. In the event of a complaint, a response will also be prepared to inform the complainant of the outcome of the

enquiry into her/his complaint. If needed, the Member State authorities may be asked to provide additional information.

Observance of these benchmarks by both parties might be a challenge but it is essential to ensuring that the first key step in the management of such files (that is either the sending of a letter of formal notice under Article 258 TFEU or the closing of the file) can be taken within the maximum period of 12 months from the date of registration of a complaint in the registry system (CHAP) or the creation of an own-initiative case in EU Pilot. Therefore, respecting the ten-week benchmark is one aspect of assessing the performance of both the Member States and the Commission.

Requests of access to documents on EU Pilot files are governed by Parliament and Council Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents⁵, as implemented by the Commission Decision of 5 December 2001 amending its Rules of Procedure⁶.

3. EVALUATION

This evaluation is divided into two periods of time: the appraisal of closed files covers the period March 2010-February 2011, and the overall statistical data on the functioning of the system covers the period from the start-up of the project in April 2008 until September 2011.

Particularly, the evaluation covers:

- An appraisal of the EU Pilot files closed between March 2010 and February 2011 conducted by the Member States and the Commission on the basis of the quality and cooperation/support criteria;
- The volume of files treated in EU Pilot. This evaluation also looks at trends in the various Member States, taking into account the fact that not all of them joined EU Pilot at the same time;
- The origin of the files and the policy fields concerned by the files submitted in the system;
- The average length of time taken by the Member States and the Commission to process the files and compliance with the general ten week benchmarks;
- And, finally, the "success" rate of the project, which means how many responses provided by the Member States were considered acceptable with no need to launch the formal infringement proceeding under Article 258 TFEU. The objective of EU Pilot is to achieve speedier results and to find solutions compatible with EU law for citizens and business through better cooperation between the Member States and the Commission without the need to launch infringement procedures under Article 258 TFEU.

⁵ OJ L 145, 31.05.2001, p.43.

⁶ OJ L 345, 29.12.2001, p.94.

The details of these topics are included in the Commission staff working paper accompanying this report.

With regard to the assessment of closed files for the period between March 2010 and February 2011, the Commission and the participating Member States replied to a series of questions based on three main criteria: **quality, cooperation and support**. The results of this appraisal show that when dealing with a file, Member States are broadly satisfied with the quality of the EU Pilot files submitted by the Commission, particularly concerning the clarity of the questions raised and the identification of the issues at stake. Finally, both Commission and Member States are highly satisfied with the level of cooperation and support underlying the project.

In terms of the **volume** of files, during the period April 2008 – September 2011 a total of 2,121 files were submitted to EU Pilot. Of these, 1,410 files completed⁷ the process in EU Pilot. However, the volume is not spread equally among the Member States. Apart from the fact that the more populated Member States receive more files in EU Pilot as a result of the larger number of citizens, businesses and civil society interests, there is another element that comes into play. There is a difference in the number of files between those Member States which have used the system since the beginning in 2008, and the others which joined the system during 2010 or 2011. Out of 2,121 files: 15.5% of files were submitted to Italy and Spain, 8% to United Kingdom, 7.7% for Germany and 6.5% for Portugal.

Member States refused to process only 2% of all submitted files in EU Pilot, the main reason being insufficient information transmitted by a complainant.

The issues concerned in the files submitted via EU Pilot are broadly in line with the existing situation of the volume of questions and problems arising in the different sectors of EU law: Some 33% of files concerned environmental issues, 15% internal market, 10.5% taxation, 8% mobility and transport and 6% health and consumer protection.

With regard to **origin**, 49% of these 2,121 files originated from complaints, while 7% were enquiries by citizens or businesses, and around a further 44% were files created by the Commission on its own initiative.

The time taken by the Member States and by the Commission to process EU Pilot files is measured against the ten-week benchmark. From the start of EU Pilot in 2008, the **average time** taken by Member States for proposing responses to files is 67 days, which is in line with the ten week (70 days) benchmark. Since March 2010⁸, 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 exceeds the general benchmark. It is to be noted that cases which exceed the benchmark are, for the most part, those where Commission services require additional information from national authorities, especially in the case of more complex files and those where translations are needed.

⁷ "Completed" means that responses to the files have been provided by Member States and assessed by the Commission as compatible or not with EU law.

⁸ This date corresponds to the introduction of a general ten week benchmark for Commission to assess the replies provided by the Member States within the system.

As regards the "*success rate*" concerning the 1,410 files having completed their process in the system, nearly 80% (1,107 files) of the responses provided by the Member States were assessed as acceptable, enabling the file to be closed without the need to launch an infringement procedure under Article 258 TFEU. The remaining 20% of the files (303) in which no acceptable solution in line with EU law could be found went on to the infringement phase, which has already been launched or is being prepared by the Commission following the processing of the file in EU Pilot. The success rate for the first evaluation report on EU Pilot was 85%. The increasing number of EU Pilot files due to the new participating Member States might be one of the reasons for this slight decrease. Further, since the adoption of the first report, EU Pilot has to be used in all cases where additional factual or legal information is required for a full understanding of an issue at stake concerning the correct application, implementation of EU law or the conformity of the national law with EU law, whereas previously recourse to EU Pilot was optional before launching an infringement procedure under Article 258 TFEU.

Since 2010, the Commission observes a reduction in the volume of new infringement proceedings⁹ for the first 15 volunteer EU Pilot Member States. For the remaining 12 Member States, which joined EU Pilot after March 2010, a decrease is also observed, although to a lesser extent. 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 the case of complaints, providing more rapid results for citizens and businesses.

4. CONCLUSIONS

In line with the commitments made by the Commission in its first Evaluation Report on EU Pilot:

- EU Pilot has been extended and is now being fully used by 25 Member States. Its application has been broadened, fine-tuned and strengthened.
- The project has made and continues to make a positive contribution to cooperation between the Commission and participating Member States in answering enquiries and resolving the problems of citizens, business and civil society interests more speedily. Around 80% of the responses provided by the Member States had been assessed as acceptable (in line with EU law) allowing the file to be closed without the need to launch an infringement procedure under Article 258 TFEU.
- Thanks to more systematic recourse to EU Pilot, the participating Member States have gained a centralised overview of the overall management of issues related to the application of EU law.
- The working methods and quality of files in EU Pilot have been improved thanks to the cooperation between the Commission and the Member States, which are committed to continuing their efforts to maintain the good performance.

⁹ Non-communication cases are not concerned by this statistics as they are excluded from the scope of EU Pilot.

- The Member States and in particular the Commission shall continue to aim to achieve the standard ten-week benchmark set by the Commission for the processing of files.
- In close cooperation with the Member States, the IT system and the scope of the project have been further developed and clarified in order to improve the functioning of EU Pilot.
- There is still room for further improvement in cooperation and functioning, particularly with regard to compliance with agreed benchmarks and the quality of both the questions submitted by Commission and the replies provided by Member States.

The Commission considers that EU Pilot is no longer a project in its early and experimental phase, but a well-established working method that delivers results for the Commission, the participating Member States and citizens. The general approach pursued by the Commission is to endeavour to solve problems quickly by using EU Pilot and, where necessary, to launch and vigorously pursue infringement proceedings. The Commission is exploring the possibility of extending EU Pilot as an instrument for problem-solving and prevention to all Member States, and continues to pursue its contacts with those Member States not yet using EU Pilot.

Aspects of the functioning of EU Pilot will be covered in the future annual reports of the Commission on monitoring the application of EU law.