

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,  
SEC(2008) 2854

**COMMISSION STAFF WORKING DOCUMENT**

*accompanying the*

**25th ANNUAL REPORT  
ON MONITORING THE APPLICATION OF COMMUNITY LAW  
(2007)**

**SITUATION IN THE DIFFERENT SECTORS**

{COM(2008) 777}  
{SEC(2008) 2855}

## TABLE OF CONTENTS

1	ENTERPRISE AND INDUSTRY .....	16
1.1	General introduction.....	16
1.2	Automotive Industry .....	17
1.2.1	Current position.....	17
1.2.2	Changes underway .....	18
1.2.3	Evaluation .....	18
1.3	Chemicals.....	19
1.3.1	Dangerous substances and preparations.....	19
1.3.2	Fertilizers and detergents .....	20
1.3.3	Drug precursors.....	20
1.3.4	Good laboratory practice.....	20
1.3.5	Evaluation for chemicals sector .....	20
1.4	Pharmaceuticals.....	21
1.4.1	Current position.....	21
1.4.2	Changes underway .....	23
1.4.3	Evaluation .....	23
1.5	The Transparency Directive.....	24
1.6	Medical devices.....	24
1.6.1	Current position.....	24
1.6.2	Changes underway .....	24
1.6.3	Evaluation .....	25
1.7	Cosmetics .....	25
1.7.1	Current position.....	25
1.7.2	Changes underway .....	26
1.7.3	Evaluation .....	26
1.8	Mechanical, electrical and telecommunications equipment.....	26
1.8.1	Current position.....	26
1.8.2	Changes underway .....	27
1.8.3	Evaluation .....	27

1.9	Gas appliances, pressure equipment and legal metrology .....	28
1.9.1	Gas appliances.....	28
1.9.1.1	Current position.....	28
1.9.1.2	Changes underway .....	28
1.9.1.3	Evaluation .....	28
1.9.2	Pressure equipment .....	28
1.9.2.1	Current position.....	28
1.9.2.2	Changes underway .....	29
1.9.2.3	Evaluation .....	29
1.9.3	Legal metrology .....	29
1.9.3.1	Current position.....	29
1.9.3.2	Changes underway .....	30
1.9.3.3	Evaluation .....	30
1.10	Construction products .....	31
1.10.1	Current position.....	31
1.10.2	Changes underway .....	31
1.10.3	Evaluation .....	32
1.11	Textiles/clothing, footwear and wood.....	32
1.11.1	Textiles and clothing.....	32
1.11.1.1	Current position.....	32
1.11.1.2	Changes underway .....	33
1.11.1.3	Evaluation .....	33
1.11.2	Footwear.....	33
1.11.3	Wood.....	33
1.12	Cultural goods .....	34
1.13	Late payment.....	34
1.14	Product liability .....	35
1.15	Non-harmonised area .....	35
1.15.1	Current position.....	35
1.15.2	Changes underway .....	37

1.15.3	Evaluation .....	38
1.16	Preventive rules of Directive 98/34/EC .....	38
1.16.1	Current position.....	38
1.16.2	Changes underway .....	39
1.16.3	Evaluation .....	39
2	COMPETITION.....	39
2.1	Overall introduction .....	39
2.1.1	Measures in force: .....	39
2.1.2	Work done in 2007 .....	40
2.2	Financial Transparency Directive .....	40
2.3	Non-compliance with Commission decisions on the recovery of State aid.....	41
2.4	Electronic communications .....	41
2.4.1	Current position.....	41
2.5	Financial services .....	42
2.6	Energy sector.....	43
2.7	Overall evaluation .....	43
3	EMPLOYMENT, SOCIAL AFFAIRS AND EQUAL OPPORTUNITIES .....	44
3.1	Free movement of workers and coordination of social security schemes.....	44
3.1.1	Current position.....	44
3.1.1.1	Existing measures in force .....	44
3.1.1.2	Report of work done in 2007 .....	44
3.1.2	Changes underway .....	45
3.1.3	Evaluation .....	47
3.2	Labour Law .....	49
3.2.1	Current position.....	49
3.2.1.1	Existing measures in force .....	49
3.2.1.2	Report of work done in 2007 .....	49
3.2.2	Changes underway .....	51
3.2.3	Evaluation .....	54
3.3	Health and safety at work.....	55

3.3.1	Current position.....	55
3.3.1.1	Existing measures in force .....	55
3.3.1.2	Report of work done in 2007 .....	55
3.3.2	Changes underway .....	57
3.3.3	Evaluation .....	58
3.4	Anti-discrimination and gender equality.....	59
3.4.1	Current position.....	59
3.4.1.1	Existing measures in force .....	59
3.4.1.2	Report of work done in 2007 .....	59
3.4.2	Changes underway .....	61
3.4.3	Evaluation .....	63
4	AGRICULTURE AND RURAL DEVELOPMENT.....	63
4.1	Current position.....	63
4.1.1	Report of work done in 2007 .....	65
4.1.1.1	Actions under Article 226 and 228 EC .....	65
4.1.1.2	Petitions.....	66
4.1.1.3	Implementation of the Commission communication on better monitoring of the application of Community law COM(2002)725 .....	66
4.1.1.4	Technical standards notifications (Directive 98/34/EC) .....	66
4.1.1.5	Comitology.....	67
4.1.1.6	Assessment of rural development programs .....	67
4.1.1.7	EU 10 and EU 2 enlargement follow-up.....	67
4.1.1.8	Conformity clearance .....	68
4.1.1.9	Simplification.....	69
4.1.2	Changes Underway .....	70
4.1.2.1	Recently adopted measures due to enter into force.....	70
4.1.2.2	New measures due to be adopted.....	71
4.1.2.3	Prioritisation.....	72
4.1.3	Evaluation .....	73
5	ENERGY AND TRANSPORT.....	73
5.1	Current position.....	73

5.1.1	Existing measures in force .....	73
5.1.2	Report of work done in 2007 .....	74
5.1.2.1	Articles 226-228 EC / 141-143 Euratom. "Infringement procedures" .....	74
5.1.2.2	National implementing measures.....	74
5.1.2.3	Complaints .....	75
5.1.2.4	Cooperation with Member States.....	76
5.1.2.5	Petitions.....	76
5.1.2.6	Parliamentary questions .....	76
5.1.2.7	Follow-up of enlargement.....	76
5.1.2.8	Reporting activities .....	77
5.1.2.9	Report of work done in 2007, by sector.....	77
5.1.3	Changes Underway .....	91
5.1.3.1	Recently adopted measures due to enter into force which may require additional work.....	91
5.1.3.2	New measures due to be adopted which may require specific implementation / transposition work.....	91
5.1.3.3	Volume of enquiries, complaints, infringements work and petitions, and prioritization among them .....	91
5.1.4	Evaluation .....	92
5.1.4.1	Energy .....	92
5.1.4.2	Transport.....	96
5.1.5	Overall conclusion .....	100
6	ENVIRONMENT .....	102
6.1.	General overview .....	102
6.2.	Analysis by sector .....	104
6.2.1	Nature Conservation.....	104
6.2.1.1	Current position.....	104
6.2.1.2	Changes underway .....	107
6.2.1.3	Evaluation of the current position in terms of implementation.....	108
6.2.1.4.	Further challenges in implementing Nature Protection legislation.....	108
6.2.1.5	Prioritisation of Commission's legal enforcement work .....	109

6.2.2	Waste Management.....	110
6.2.2.1	Current position.....	110
6.2.2.2	Changes underway .....	112
6.2.2.3.	Evaluation of the current position in terms of implementation.....	113
6.2.2.4.	Further challenges in implementing Waste Management legislation .....	113
6.2.2.5.	Prioritisation of Commission’s legal enforcement work .....	114
6.2.3	Environmental Impact Assessment and Strategic Environmental Assessment .....	114
6.2.3.1	Current position.....	114
6.2.3.2	Changes underway .....	115
6.2.3.3.	Evaluation of the current position in terms of implementation.....	116
6.2.3.4	Further challenges in implementing Environmental Impact Assessment legislation .....	117
6.2.3.5.	Prioritisation of Commission’s legal enforcement work .....	117
6.2.4	Protecting Water Resources .....	118
6.2.4.1	Current position.....	118
6.2.4.2	Changes underway .....	120
6.2.4.3	Evaluation of the current position in terms of implementation.....	121
6.2.4.4	Further challenges in implementing European water legislation.....	121
6.2.4.5	Prioritisation of Commission’s legal enforcement work .....	122
6.2.5	Air quality .....	122
6.2.5.1	Current position.....	122
6.2.5.2	Changes underway .....	123
6.2.5.3	Evaluation of the current position in terms of implementation.....	124
6.2.5.4	Further challenges in implementing Air Quality legislation.....	125
6.2.5.5	Prioritisation of Commission’s legal enforcement work .....	125
6.2.6	Climate change.....	126
6.2.6.1	Current position.....	126
6.2.6.2	Changes underway .....	128
6.2.6.3	Evaluation of the current position in terms of implementation.....	129
6.2.6.4.	Further challenges in implementing Climate Change legislation .....	129
6.2.6.5	Prioritisation of Commission’s legal enforcement work .....	130



6.2.7	Industrial Installations .....	130
6.2.7.1	Current position.....	130
6.2.7.2	Changes underway .....	132
6.2.7.3	Evaluation of the current position in terms of implementation.....	133
6.2.7.4.	Further challenges in implementing industrial installations legislation.....	133
6.2.7.5.	Prioritisation of Commission’s legal enforcement work .....	134
6.2.8	Chemicals, Pesticides, Biocides and Biotechnology.....	134
6.2.8.1	Current position.....	134
6.2.8.2	Changes underway .....	135
6.2.8.3	Evaluation of the current position in terms of implementation.....	136
6.2.8.4	Further challenges in implementing legislation relating to the Chemicals and Biocides sector .....	137
6.2.8.5.	Prioritisation of Commission's legal enforcement work .....	137
6.2.9	Governance and Environmental Liability .....	138
6.2.9.1	Current position.....	138
6.2.9.2	Changes underway .....	139
6.2.9.3	Evaluation of the current position in terms of implementation.....	139
6.2.9.4.	Further challenges in implementing legislation .....	139
6.2.9.5	Prioritisation of Commission's legal enforcement work .....	139
6.3.1	Implementation of Communication 2002 on Better Monitoring the Application of Community Law.....	139
6.3.1.1	Existing networks promoting better implementation of EU environmental law .....	140
6.3.1.2	Better Regulation .....	141
6.3.1.3.	Petitions and Complaints.....	142
6.3.1.4.	Implementation sessions with the European Parliament.....	142
6.3.1.5	Role of Non-Governmental Organisations.....	142
6.3.1.6	Conformity checking.....	143
6.4	General evaluation .....	143
7	INFORMATION SOCIETY AND MEDIA .....	146
7.1	Electronic communications .....	146
7.1.1	Current position.....	146

7.1.1.1	Existing measures in force .....	146
7.1.1.2	Report of work done in 2007 .....	147
7.1.2	Changes underway .....	150
7.1.2.1	Recently adopted measures .....	150
7.1.2.2	New measures due to be adopted .....	150
7.1.2.3	Volume of enquiries and priorities.....	151
7.1.3	Evaluation .....	151
7.2	The Audiovisual and Media .....	151
7.2.1	Current position.....	151
7.2.1.1	Existing measures in force .....	151
7.2.1.2	Report of work done in 2007 .....	152
7.2.2	Changes Underway .....	152
7.2.2.1	Recently adopted measures .....	152
7.2.2.2	New measures due to be adopted .....	152
7.2.2.3	Volume of enquiries and priorities.....	153
7.2.3	Evaluation .....	153
7.3	Public Sector Information .....	153
7.3.1	Current Position .....	153
7.3.1.1	Existing measures in force .....	153
7.3.1.2	Report of work done in 2007 .....	154
7.3.2	Changes underway .....	154
7.3.3	Evaluation .....	155
7.4	Electronic Signatures .....	156
7.4.1	Current Position .....	156
7.4.1.1	Existing measures in force .....	156
7.4.1.2	Report of work done in 2007 .....	156
7.4.2	Changes underway .....	156
7.4.3	Evaluation .....	156
8	FISHERIES AND MARITIME AFFAIRS.....	157
8.1	Current position.....	157

8.1.1	Existing measures in force .....	157
8.1.2	Report of work done in 2007 .....	157
8.2	Changes underway .....	158
8.3	Evaluation .....	160
9	INTERNAL MARKET AND SERVICES .....	160
9.1	General overview .....	160
9.1.1	Existing measures in force .....	160
9.1.2	DG internal market and services approach for 2008-2009 .....	167
9.2	Analysis by sector .....	169
<b>9.2.1</b>	<b>Freedom to provide services and freedom of establishment (other than Financial Services)</b> .....	<b>169</b>
9.2.1.1	Current position.....	169
9.2.1.2	Changes underway (2008-2009) .....	172
9.2.1.3	Evaluation .....	173
<b>9.2.2</b>	<b>Financial Services</b> .....	<b>173</b>
9.2.2.1	Current position.....	173
9.2.2.2	Changes underway (2008-2009) .....	177
9.2.2.3	Evaluation .....	180
<b>9.2.3</b>	<b>Free movement of capital (Articles 56 et seq. EC)</b> .....	<b>182</b>
9.2.3.1	Current position.....	182
9.2.3.2	Changes underway (2008-2009) .....	183
<b>9.2.4</b>	<b>Public procurement</b> .....	<b>183</b>
9.2.4.1	Current position.....	183
9.2.4.2	Changes underway (2008-2009) .....	185
9.2.4.3	Evaluation .....	186
<b>9.2.5</b>	<b>Regulated professions (qualifications)</b> .....	<b>186</b>
9.2.5.1	Current position.....	186
9.2.5.2	Changes underway (2008-2009) .....	187
9.2.5.3	Evaluation .....	188
<b>9.2.6</b>	<b>The business environment</b> .....	<b>188</b>
9.2.6.1	Current position.....	188

9.2.6.2	Changes underway (2008-2009) .....	189
10	REGIONAL POLICY .....	190
10.1	Current position.....	190
10.1.1	Existing measures in force .....	190
10.1.2	Work in 2007.....	190
10.2	Changes underway .....	191
10.2.1	Recently adopted measures due to enter into force which may require additional work: .....	191
10.2.2	New measures due to be adopted which may require specific implementation / transposition work:.....	191
10.2.3	Volume of enquiries, complaints, infringements work and petitions, and prioritization among them:.....	191
10.3	Evaluation .....	191
11	TAXATION AND CUSTOMS UNION.....	191
11.1	Customs.....	191
11.1.1	Current position.....	191
11.1.1.1	Existing measures in force (situation on 31/12/2007).....	191
11.1.1.2	Work in 2007.....	192
11.1.2	Changes underway .....	193
11.1.3	Evaluation .....	195
11.2	Indirect taxation .....	195
11.2.1	Current position.....	195
11.2.1.1	Work in 2007.....	195
11.2.2	Changes underway .....	197
11.2.3	Evaluation .....	198
11.3	Direct taxation.....	199
11.3.1	Current position.....	199
11.3.1.1	Existing measures in force (situation on 31/12/2007).....	199
11.3.1.2	Work in 2007.....	199
11.3.2	Changes underway .....	200
11.3.3	Evaluation .....	201

12	EDUCATION AND CULTURE .....	202
12.1	Education.....	202
12.2	Sport .....	203
13	HEALTH AND CONSUMER PROTECTION.....	203
13.1	Introduction.....	203
13.2	Public Health.....	203
13.2.1	Current position.....	203
13.2.1.1	Work Done in 2007 .....	203
13.3	Consumer Affairs .....	206
13.3.1	Current position.....	206
13.3.1.1	Work done in 2007 .....	206
13.4	Food & Feed Safety .....	211
13.4.1	Current position.....	211
13.4.1.1	Work done in 2007 .....	211
13.5	General Evaluation.....	222
14	JUSTICE FREEDOM AND SECURITY .....	222
14.1	Fundamental rights.....	222
14.1.1	Work in 2007.....	222
14.2	Citizenship.....	223
14.2.1	Work in 2007.....	223
14.2.2	Changes underway .....	223
14.2.3	Evaluation .....	223
14.3	Data Protection.....	224
14.3.1	Work in 2007.....	224
14.3.2	Changes underway .....	224
14.3.3	Evaluation .....	224
14.4	Asylum and immigration.....	225
14.4.1	Work in 2007.....	225
14.4.2	Changes underway .....	226
14.4.3	Evaluation .....	226

14.5	Borders and visas .....	227
14.5.1	Work in 2007.....	227
14.5.2	Changes underway .....	227
14.5.3	Evaluation .....	228
14.6	Judicial cooperation in civil matters .....	228
14.6.1	Work in 2007.....	228
14.6.2	Changes underway .....	228
14.6.3	Evaluation .....	229
14.7	Free movement of persons .....	231
14.7.1	Work in 2007.....	231
14.7.2	Changes underway .....	232
14.7.3	Evaluation .....	233
14.8	Security .....	233
14.8.1	Work in 2007: .....	233
14.8.2	Changes underway .....	233
14.8.3	Evaluation .....	234
15	TRADE .....	234
16	ENLARGEMENT.....	234
16.1	Current position.....	234
16.1.1	Existing measures in force .....	234
16.1.2	Report of work done in 2007 .....	235
16.1.3	Changes underway .....	235
16.2	Evaluation .....	235
17	EUROSTAT .....	236
17.1	Current position.....	236
17.1.1	Report of work done in 2007 .....	236
18	PERSONNEL AND ADMINISTRATION.....	237
18.1	Current position.....	237
18.1.1	Existing measures in force .....	237
18.1.2	Report of work done in 2007 .....	237

18.2	Changes underway .....	237
19	BUDGET.....	238
19.1	Current position.....	238
19.1.1	Existing measures in force .....	238
19.1.2	Report of work done in 2007 .....	238
19.2	Changes underway .....	239
19.3	Evaluation .....	240

Annex I 241

List of measures in force and other relevant instruments referred to in the text of the document  
..... 241

1.	EMPLOYMENT, SOCIAL AFFAIRS AND EQUAL OPPORTUNITIES .....	241
1.1	Free movement of workers and coordination of social security schemes.....	241
1.2	Labour Law .....	241
1.2.1	Working conditions.....	241
1.2.2	Information and consultation of workers .....	242
1.2.3	Protection of workers .....	243
1.2.4	Implementation and application reports.....	244
1.3	Health and safety at work.....	244
1.4	Anti-discrimination and gender equality.....	248
1.4.1	Gender equality .....	248
1.4.2	Anti-discrimination .....	249
2	ENERGY and TRANSPORT .....	249
2.1	List of measures in force .....	249
2.2	Legal basis for controlling the application of the Community acquis on energy and transport.....	250
2.3	List of communication aiming at reporting on tasks related to the implementation of community law in energy and transport.....	252
2.4	Recently adopted measures due to enter into force which may require additional work.....	254
2.5	New measures due to be adopted which may require specific implementation / transposition work.....	259
3	TAXATION AND CUSTOMS UNION.....	261

3.1	Customs.....	261
3.2	Indirect taxation .....	262
3.3	Direct taxation.....	264
4	HEALTH AND CONSUMER PROTECTION.....	265
4.1	Food Safety .....	265
4.2	Public Health.....	273
4.3	Consumers.....	274
5	JUSTICE, FREEDOM AND SECURITY.....	275
5.1	Fundamental rights.....	275
5.2	Citizenship.....	275
5.3	Data Protection.....	275
5.4	Asylum and immigration.....	276
5.5	Borders and visas .....	277
5.6	Judicial cooperation in civil matters .....	279
5.7	Free movement of persons .....	281
5.8	Security .....	281



# 1 ENTERPRISE AND INDUSTRY

## 1.1 General introduction

The Directorate General for Enterprise and Industry (DG ENTR) is responsible for Articles 28 to 30 of the EC Treaty on the free movement of goods in the non-harmonised area and a large quantity of subordinate harmonising Community legislation which is listed in. “The acquis of the European Union under the management of DG Enterprise and Industry”. This publication, known as the “Pink Book”, is on the internet at-

[http://europa.eu.staging.entr.cec.eu.int/enterprise/newapproach/pdf/pink\\_book\\_2007.pdf](http://europa.eu.staging.entr.cec.eu.int/enterprise/newapproach/pdf/pink_book_2007.pdf)

Generally speaking, the Community acquis for products 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. However, very significant changes are underway in these areas: automotive (recast of framework for type approvals), chemicals (REACH), pharmaceuticals (package dealing with future strategy, pharmacovigilance, information for patients and counterfeit medicines), medical devices (recast of framework) and late payments (revision in the context of the Small Business Act).

ENTR's considerable share of the Community acquis 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, details of any significant changes underway or planned and a general evaluation of the effectiveness of regulatory framework in the domain concerned. Information is also provided about infringement proceedings pursued in each product domain.

Systematic assessment of the conformity of national implementing measures with EU rules is done in some sectors (e.g. chemicals, textiles and clothing) but not in all. In some areas where it is not done routinely, the framework legislation is destined to undergo a changeover from directives to regulations which, by virtue of their applicability, require a greatly reduced effort to verify conformity. Difficulties in obtaining translations of national texts submitted is one reason why systematic checking is not done. In other sectors, the precise and detailed nature of the legislation (particularly updates due to technical progress) lead Member States to transpose by reference or by ‘copy and paste’ – in these circumstances to devote resources to conformity checking would be wasteful.

Non-communication cases and article 228 EC cases are dealt with as quickly as possible, given their automatic priority status under the September Communication. In accordance with the other criteria set out in the September Communication, in 2008/9 DG ENTR will give priority status 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 28-30 EC raising horizontal questions about the functioning of the market.

### *Harmonised area*

Breaches of key provisions or strategic objectives of directives, in particular, new legislation is adopted solely in response to a clear need to correct/enhance market performance by regulatory action; its enforcement should be commensurate with the risk of failing to achieve the desired effect.

## **1.2 Automotive Industry**

### *1.2.1 Current position*

The vehicles covered by ENTR harmonized legislation are motor vehicles and their trailers; two and three-wheel motor vehicles and (wheeled) agricultural or forestry tractors. This legislation is designed to protect environmental and safety objectives while reducing the regulatory burden on industry and deals with a multitude of detailed technical specifications for different vehicle systems and components which are frequently modified to adapt them to technical progress.

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

- Directive 70/156/EEC on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers (which is to be replaced by the new framework Directive 2007/46/EC adopted in 2007<sup>1</sup>);
- 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.

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. These acts have generally been adopted as Directives. More recently, a change in regulatory approach has been introduced which results in the adoption of a main act in the form of a Regulation laying down fundamental provisions with the technical specifications and administrative provisions for the type-approval contained in implementing measures adopted following comitology procedures (a "split-level" approach).

In relation to this sector, 54 infringement proceedings were launched during 2007. The vast majority of these (51) were based on the non-communication of national measures transposing EC Directives (which generally contained technical updates of the *acquis*). 48 proceedings were closed after national implementation measures were communicated by the Member States concerned.

Three other complaints were registered, two of which were closed as there was no breach of Community law. The third complaint is still under examination.

---

<sup>1</sup> Directive 2007/46/EC of the European Parliament and of the Council establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (2007 OJ L 263, 9.10.2007, p.1).

### 1.2.2 *Changes underway*

Although a well understood legal framework exists, the *acquis* relating to the automotive sector is in constant evolution. In this regard, the direction of policy-making in the motor vehicle sector has been discussed by a High Level Group that brought together the main stakeholders (Member States, industry, NGOs and MEPs) and the recommendations were set out in the CARS 21 Communication published in February 2007.<sup>2</sup> In line with the objectives of CARS 21, and with a view towards completion of the internal market for the automotive sector, a recast Framework Directive (2007/46/EC) for the type approval of motor vehicles was adopted. Member States have to transpose this Directive before 29 April 2009. From this date on the current Framework Directive 70/156/EEC will be repealed.

Further legislative activity is taking place with a view to improving safety levels and environmental performance while safeguarding the functioning of the internal market within a more simplified and internationalized regulatory environment. A significant development in 2007 was the adoption of a Regulation on light duty vehicle emissions (Euro 5 and 6) and on access to vehicle repair and maintenance information.<sup>3</sup>

During the first semester of 2008, a first reading agreement has been reached on the proposed Regulations on pedestrian protection<sup>4</sup> and on type-approval of hydrogen powered vehicles<sup>5</sup> (political agreement). The legislative process for the adoption of the Regulation on emissions from heavy-duty vehicles (Euro VI) and on access to vehicle repair and maintenance information<sup>6</sup> is ongoing. In addition, a proposal for a Regulation concerning the type-approval requirements for the general safety of motor vehicles was published.<sup>7</sup>

A mid-term review to take stock and monitor progress made on the CARS 21 Communication is planned for 2008. For 2009 two new Framework Regulations recasting the type-approval legislation in relation to two and three-wheeled vehicles and tractors are planned.

### 1.2.3 *Evaluation*

The *acquis* in the automotive sector is subject to frequent change in the light of technical developments. The frequent adaptation of technical legislation in this sector makes the use of correlation tables when transposing Directives particularly helpful. However, the close cooperation between the Commission and Member States in the preparation of these measures means that significant problems regarding conformity or bad-application are a relatively rare occurrence. Indeed, in many cases, the technical nature of the legislation means that Member States frequently resort to transposing the technical amendments by reference to the Community acts. This approach has been taken into account when preparing the new legislation in form of Regulations instead of Directives.

---

<sup>2</sup> Communication from the Commission to the European Parliament and to the Council, "A Competitive Automotive Regulatory Framework for the 21<sup>st</sup> Century", COM (2007) final, 7 February 2007.

<sup>3</sup> Regulation (EC) No. 715/2007 of the European Parliament and the Council on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and 6) and on access to vehicle repair and maintenance information (2007 OJ L 171, 29.6.2007, p.1).

<sup>4</sup> COM (2007) 560 final, 3.10.2007.

<sup>5</sup> COM (2007) 593 final, 10.10.2007.

<sup>6</sup> COM (2007) 851 final, 21.12.2007.

<sup>7</sup> COM (2008) 316 final, 23.5.2008.

Few complaints occur in this sector. In many instances, formal proceedings are not opened as the facts do not demonstrate non-conformity or bad application by the Member States of the harmonized legislation in this sector. Instead, infringement proceedings are much more likely to be based on the non-communication of measures fully transposing the Directive. The number of these proceedings is likely to become less important in the future since preference will be given to Regulations. This strategy should increase overall efficiency in this area by lowering the overall number of infringement cases based on non- or late communication by Member States of transposition measures. Nevertheless, the volume of legislation in this sector and the constant development of new technologies (and the corresponding adaption of legislation) mean that problems can always arise. In addition, it cannot be excluded that Member States might take measures, which risk compromising the harmonized approach contained in the Community acts. In order to ensure the desired level of implementation of Community legislation, close cooperation between the Commission and Member State authorities should continue.

### **1.3 Chemicals**

#### *1.3.1 Dangerous substances and preparations*

##### Current position

Directive 76/769/EEC was amended by Directives 2005/59/EC, 2005/69/EC, 2005/90/EC, 2006/139/EC which had to be transposed by the end of 2006 or in 2007. In addition Directive 2006/8/EC modifying Directive 1999/45/EC had to be transposed on 1 March 2007.

Regulation (EC) No 1907/2006 (REACH) will replace Directive 76/769/EEC on 1 June 2009. Until then, amendments to Directive 76/769/EEC will be enacted as Decisions instead of Directives which will reduce the number of texts to be transposed by Member States. However, checking the correct implementation of REACH by Member States will be a priority.

Approximately 30 infringement procedures for non-communication of national measures were opened, a few of which were still open at the end of 2007. A number of cases were opened against Romania for non-communication of measures transposing Directive 76/769/EEC, as amended. These cases were closed after receipt of the national measures. A complaint filed in 2005 about the implementation in the Netherlands of Directive 2001/90/EC on creosote treated wood will be closed in 2008 as it transpires that NL benefits from a specific derogation.

At present, the transposition by Member States of the Directive 76/769/EEC as amended is generally good. The volume of enquiries, mostly relating to recent amendments of the directive, has always been high but manageable. A FAQ feature appears on the Commission's internet site providing answers to many potential enquirers. It is difficult to predict accurately whether the situation will continue to be manageable when REACH replaces the Directive, as new restrictions will continue to be introduced, but the level of enquiries is not expected to increase radically.

### *1.3.2 Fertilizers and detergents*

Over the past 2 years the unit has made the correct implementation of Regulations one of its priorities. In relation to the Fertilisers Regulation and the Detergents Regulation good results have been achieved with only one infringement procedure still open.

### *1.3.3 Drug precursors*

After the Fertilisers Regulation and the Detergents Regulation, the main effort focused on the implementation by the Member States of Regulation (EC) No 273/2004 on drug precursors which came into force in 2005. Important work still needs to be done.

Member States were reminded of their obligations to communicate the national measures necessary to ensure the smooth operation of the Regulation (mainly on sanctions). Analysis of Member States' reactions showed that the Regulation was correctly implemented in 12 Member States. The situation in 7 Member States will become clearer by mid-2008. Infringements proceedings were opened against the remaining 8 Member States which had failed to adopt implementing measures imposing sanctions for contravention of the Regulation. Some had also failed to repeal national legislation transposing directives which have been replaced by the Regulation. It is expected that the majority of cases will be resolved before the end of 2008. However, in some cases it will be 2009 before the Regulation is operating properly, where the Member States have not begun the legislative process to repeal otiose or conflicting national law and adopt implementing measures.

### *1.3.4 Good laboratory practice*

Infringement proceedings against Latvia and Lithuania for incorrect implementation of Directives 2004/10/EC and Directive 2004/9/EC on Good Laboratory Practice (GLP) were closed when those countries showed progress in setting up authorities to verify GLP. A case against Spain was also closed after the nomination of an authority.

The Directives on GLP are now implemented in all Member States with the exception of Luxembourg. Infringement proceedings against Luxembourg have been lodged before the Court of Justice (case C-2008/095).

### *1.3.5 Evaluation for chemicals sector*

In keeping with the Commission's policy of preventing infringement proceedings by offering upstream assistance to Member States, discussions between the Commission and the Member States have already begun on the transposition of Directive 2007/23/EC on pyrotechnic articles which is due to be completed by 4 January 2010.

For most of the legislation in the chemicals sector, lists of frequently asked questions are published on the Commission's internet site in order to provide all operators with access to questions posed in the past and the replies provided.

Generally, the number of complaints remains low. It is difficult to forecast the number of complaints in the future but it is not expected to increase greatly.

One petition was received concerning the ceramic fibres used in car catalysis (ref 2006/90).

Conformity assessment in the chemicals sector is done systematically making use of a framework contract under which consultants analyse the transposition of certain directives by the Member States.

## 1.4 Pharmaceuticals

### 1.4.1 Current position

In the pharmaceutical sector, the main measures monitored by the Commission are:

Regulation (EC) No 726/2004, laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (EMA).

Directive 2001/83/EC 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; and, for orphan medicinal products, Regulation (EC) No 141/2000 on orphan medicinal products, complemented by Commission Regulation (EC) No 847/2000.

Directive 2001/82/EC on the Community code relating to veterinary medicinal products. Regulation (EEC) 2377/90 on maximum residue limits of veterinary medicinal products in foodstuffs of animal origin.

The Commission brought actions before the Court of Justice against the Czech Republic, Spain, France, Ireland and the Netherlands for *non-communication* of measures implementing Directive 2004/24/EC amending, as regards herbal medicinal products, Directive 2001/83/EC. The cases against Ireland and the Netherlands were withdrawn from the court as complete implementation measures were communicated. In the cases against the Czech Republic, Spain and France, the Court of Justice ruled that the Member States had failed to fulfil their obligations under the Directive. Afterwards, Spain communicated complete and final implementation measures, and consequently this case was closed by the Commission.

In relation to Directive 2004/27/EC amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, the Commission brought actions before the Court of Justice against the Czech Republic, Spain, Ireland and the Netherlands for *non-communication* of national measures. The cases against Ireland, Spain and the Netherlands were withdrawn from the court as complete implementation measures were communicated. In the case against the Czech Republic, the Court of Justice ruled that the Member State had failed to fulfil its obligations under the Directive.

In relation to Directive 2004/28/EC, amending Directive 2001/82/EC on the Community code relating to veterinary medicinal products, the Commission brought actions before the Court of Justice against the Czech Republic, France and Portugal for *non-communication* of transposition measures. As the Czech Republic communicated national transposition measures on Directive 2004/28/EC, the Commission decided to withdraw this case from the

court. In the cases against France and Portugal, the Court of Justice ruled that the Member States had failed to fulfil their obligations under that Directive.

In relation to Directive 2005/28/EC laying down principles and detailed guidelines for good clinical practice as regards investigational medicinal products for human use, as well as the requirements for authorisation of the manufacturing or importation of such products, the Commission brought actions before the Court of Justice against the Czech Republic and Italy for *non-communication* of transposition measures. The case against Italy was withdrawn from the Court as complete implementation measures were communicated. In the case against the Czech Republic, the Court of Justice ruled that the Member State had failed to fulfil its obligations under the Directive.

In 2007, the Commission continued to use **preventive techniques** to ensure the correct application and coherent implementation of the pharmaceutical acquis.

The following working parties deal with the general interpretation of European pharmaceutical legislation, in preparation for its transposition and implementation by the Member States:

- the Pharmaceutical Committee which met in May and December 2007,
- the Veterinary Pharmaceutical Committee which met in March 2007, and
- the “Notice to applicants” group, which met three times in 2007 and examined different chapters of the guidelines interpreting requirements for applications for marketing authorisation.

Furthermore, the Commission continued to work intensively with Member States in the course of 2007 to ensure coherent implementation of the Community rules on clinical trials as set out in Directive 2001/20/EC, complemented by Commission Directives 2003/94/EC and 2005/28/EC. Co-operation was mainly channelled into the *‘Ad hoc group for the development of implementing guidelines for Directive 2001/20/EC relating to good clinical practice in the conduct of clinical trials on medicinal products for human use.’*

This ‘Ad hoc group’ is composed of representatives of the Member States’ Competent Authorities and the European Medicines Agency and is chaired by the Commission (DG Enterprise and Industry). The task of the group is to develop the common implementing guidance necessary for uniform implementation of the legislation in the Member States. In this area a joint conference of the European Commission and the European Medicines Agency (EMA) was held on 3 October 2007 to discuss the current legislation on clinical trials for medicinal products and its implementation in the European Union.

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

In the area of the pharmaceutical legislation, the Commission dealt with three **petitions**<sup>8</sup>.

#### *1.4.2 Changes underway*

Following the adoption of Regulation (EC) No 1394/2007 on advanced therapies, the Commission will have to enact a number of implementation measures. One of these is a revision of Part IV of Annex I to Directive 2001/83/EC, following a public consultation.

A number of measures under the so-called “pharmaceutical package” will be adopted in 2008-

- a Commission Communication on the future of the EU single market on pharmaceuticals, setting out vision, strategy and concrete action items to be planned for future years;
- legislative proposals on pharmacovigilance, involving amendments to Regulation (EC) No 726/2004 and Directive 2001/83/EC;
- legislative proposals on information to patients involving amendments of Directive 2001/83/EC and
- a legislative proposal on counterfeit medicines involving amendments of Directive 2001/83/EC.

In addition, the Commission “Variations Regulations” (EC) No 1084/2003 and 1085/2003 (comitology) will be modernised and a legislative proposal adopted to change the legal bases for these Regulations to Directives 2001/83/EC and 2001/82/EC. All of these measures require further implementation and/or transposition work in future.

#### *1.4.3 Evaluation*

The high volume of new legislation in the pharmaceutical sector highlights the importance of dealing with non-communication cases as a priority. In addition, flagrant cases of non-conformity and incorrect application are also dealt with as a matter of priority. For example, in the past, Member States have, after accession, allowed medicinal products to stay on their national markets even though they did not comply with the pharmaceutical acquis.

The pharmaceutical sector is highly dynamic and subject to frequent change. New legislative projects are planned for the years ahead which will continue to require close collaboration with Member States to ensure the correct application of Community law. The working groups,

---

<sup>8</sup> (1) A call for the exemption of a particular class of medicines for food-producing animals from the requirement of a veterinary prescription coming from an association. The Commission informed the petitioner that his request fell into the competence of the Member State concerned.  
(2) An objection to the excessively small print used for instructions enclosed with medicines raised by an individual. The Commission informed the petitioner that his concerns were already addressed by an existing Commission guideline.  
(3) Concerns about the marketing authorisation of a medicinal product for the treatment of children expressed by an association. The Commission informed the petitioner that it had issued a decision which provided that the Member States should amend their national marketing authorisations on the basis of the scientific conclusions set out by the European Medicines Agency (EMA).



expert meetings and committees described above will continue to provide a useful tool to ensure coherent implementation of the Community rules.

## **1.5 The Transparency Directive**

In 2007, DG Enterprise and Industry continued to verify the implementation of Directive 89/105/EEC on the transparency of pharmaceutical pricing and reimbursement procedures in the Member States. In the investigation of complaints, emphasis was put on direct bilateral discussions with national authorities; this cooperative approach enabled the resolution of several cases and better alignment with the procedural requirements of Directive 89/105/EEC. The Transparency Committee convened on two occasions (in March and November 2007) to discuss the application and interpretation of the directive with all Member States.

Given the complexity of national health insurance systems and their rapid evolution, it is expected that further monitoring will be necessary in 2008-2009 to ensure the transparency of pricing and reimbursement procedures in the Member States. The Commission will give priority to infringement proceedings in cases where national measures could lead to significant barriers to trade in medicinal products.

## **1.6 Medical devices**

### *1.6.1 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. These directives have been subject to several subsequent modifications, the latest of which took place in 2007 (Directive 2007/47/EC amending, among others, Directive 90/385/EEC and Directive 93/42/EEC).

Transposition of directives regulating medical devices does not create major problems. Cooperation with Member States in this context is satisfactory. In 2007, 13 infringement cases were opened for non-communication of transposition measures for Commission Directive 2005/50/EC on the reclassification of hip, knee and shoulder joint replacements in the framework of Council Directive 93/42/EEC. Of these, 10 have been closed in 2008, whereas the other 3 are still open. 8 infringement proceedings were also opened against Bulgaria in 2007 for non-communication of the whole *acquis* in the medical devices field. Those cases were also closed in 2008 when the missing texts were communicated. 4 additional infringement cases were opened in 2007 for non-conformity with, and incorrect application of, the medical devices directives. Those cases are still open.

Conformity checking is carried out systematically. In 2007, Bulgarian and Romanian compliance with the medical devices *acquis* was thoroughly checked.

### *1.6.2 Changes underway*

Directive 2007/47/EC amending Directive 90/385/EEC and Directive 93/42/EEC, which was adopted in 2007, must be implemented by the Member States by 21 December 2008. Thus, in 2009, communication and conformity of national measures transposing that Directive will be

checked. Correlation tables are extremely helpful in the performance of that task, in particular if the relevant provisions of the Directive(s) are transposed by amendments of different legal acts of the Member States.

Looking to the future, the Commission intends to recast the entire regulatory framework for medical devices (Directives 90/385/EEC, 93/42/EEC and 98/79/EC). The main objective of the recast is to produce a simpler and more easily-understandable regulatory environment which better ensures the efficient functioning of the internal market whilst guaranteeing a high level of safety for patients and users. The aim is to create a transparent system enabling citizens to be confident of the safety of medical devices. A public consultation is being carried out until 2 July, which will be followed by an impact assessment. A legislative proposal is expected in early 2009.

### *1.6.3 Evaluation*

The present regime in the medical devices sector has produced very good results and is 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.

The sector has not experienced problems with the new ‘partnership approach’ with the Member States and complaints are dealt with without difficulty.

Accordingly, the initiative to recast the *acquis* does not derive from any obvious malfunctioning but rather from a desire to simplify it in accordance with better regulation principles and to further improve safety standards and market performance.

## **1.7 Cosmetics**

### *1.7.1 Current position*

The Cosmetics “acquis” consists mainly of Council Directive 76/768/EEC, modified to take into consideration technical adaptations.

In 2007, 6 directives adapting the Cosmetics Directive to technical progress were adopted by the Commission, two of which had transposition deadlines in 2007 and 4 in 2008. After adoption of each Commission Directive, the Commission sent a letter to each Member State reminding them of these deadlines and offering help with transposition. Although it is standard practice to include an obligation on the Member States to provide correlation tables, this is not necessary for these directives because of the nature of their content (technical changes to annexes) and the fact that, when transposing, Member States simply copy out that content.

A basic communication check is performed for each national transposition measure transmitted (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). This basic check can be done without asking translation of the texts communicated. The Commission launched 24 infringement proceedings *for non communication* of national transposition measures relating to Commission directives 2006/65, 2006/78, 2007/0001 and 2007/0017 on the adaptation to the technical progress of Council

Directive 76/768/CEE on cosmetic products. 16 of these proceedings were closed within the same year.

There were four meetings of the Standing Committee on Cosmetics Products. The agenda always included a point on the transposition of directives and the current state of play.

### *1.7.2 Changes underway*

The same type of legislative work is envisaged for 2008 and 2009. At the beginning of 2008, 2 directives were adopted by the Commission with transposition deadlines in 2008. This will mean checking the communication of at least 162 transposition texts in 2008. Although the straightforward content of these directives means that this *can* be done with the human resources currently available, the situation is set to improve in future with the proposal made by the Commission in February 2008 for a recast of the Cosmetics Directive in the form of a Regulation. All future technical adaptations would then be effected by regulation which would lead to resources savings in this area by removing the need for the communication check and lowering the number of consequent infringement cases based on non-communication of national transposition measures.

### *1.7.3 Evaluation*

The *acquis* in this area will never be static due to its very nature – there is a constant need for technical adaptations and updates. The precise and detailed subject matter lends itself to management by regulation rather than directive as it affords Member States little or no scope for interpretation or divergence. The recast of the principal legislation in the area in the form of a regulation will improve the efficiency with which the internal market for cosmetics is run.

## **1.8 Mechanical, electrical and telecommunications equipment**

### *1.8.1 Current position*

The Commission withdrew its proceedings against Ireland and Greece in relation to Directive 2004/26/EC amending Directive 97/68/EC relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery and to Directive 2002/88/EC amending directive 97/68/EC on the approximation of the laws of the Member States relating to measures against the same type of emission.

The Commission decided to close the procedure against Greece following communication of the national transposing measures in relation to Directive 2005/88/EC amending Directive 2000/14/CE and, for the same reason, the procedure against Italy in relation to Directive 2004/108/EC

The Commission closed a complaint against Portugal, on the grounds that there was no infringement of directive 2003/44/EC amending Directive 94/25/EC

In relation to Directive 2004/26/EC amending 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, following communication of the national transposition measures, the Commission withdrew its proceedings against Ireland and Greece.

In relation to Directive 2002/88/EC amending 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, following communication of the national transposition measures, the Commission withdrew its proceedings against Ireland and Greece.

In relation to Directive 2003/44/EC amending Directive 94/25/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft the Commission closed a complaint against Portugal, on the grounds that there was no infringement of the directive.

In relation to Directive 2005/88/EC amending Directive 2000/14/EC on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors, following communication of the national transposing measures by Greece, the Commission decided to close the procedure.

In relation to Directive 2004/108/EC on the approximation of the laws of the Member States relating to electromagnetic compatibility and repealing Directive 89/336/EEC, following communication of the national transposing measures by Italy, the Commission decided to close the procedure.

The only priority infringement case in the sector is a non-communication case launched at the beginning of 2008 against Luxembourg in relation to Directive 2004/108/EC. There are isolated complaints of incorrect application of national rules implementing various directives in the sector but nothing to indicate that any particular directive requires attention.

### *1.8.2 Changes underway*

Some directives may need to be revised following adoption of the Goods Package, in particular the Regulation setting out requirements for accreditation and market surveillance and the Decision on a common framework for the marketing of products.

A proposal to amend the Machinery Directive (Directive 2006/42/EC) is expected to be adopted in the 3<sup>rd</sup> quarter of 2008. The aim is to introduce environmental protection requirements for new machinery for pesticide application. On the expiry of the deadline for transposing Directive 2006/42/EC on machinery, and amending Directive 95/16/EC (29 June 2008), some non-communication cases may arise.

In the last quarter of 2009, Directive 2005/88/EC on noise should become a “New Approach” directive. This will simplify the operation of the directive, revise its conformity assessment procedures and improve market surveillance.

### *1.8.3 Evaluation*

Conformity assessment is not done systematically but only in the event of a complaint, in which case an assessment is done for any Member State cited. This approach is based on the lack of scope for Member States to depart from the detailed and precise text of the directives (which are often transposed by reference or by the ‘copy and paste’ method).

The *acquis* in this area is relatively long-standing and well established, without much recent change or expected development. The number of problems arising is limited. The situation is stable, manageable and acceptable.

## **1.9 Gas appliances, pressure equipment and legal metrology**

### 1.9.1 Gas appliances

#### *1.9.1.1 Current position*

The gas appliances sector is covered by Directive 90/396/EEC on appliances burning gaseous fuels, one of the early New Approach Directives. It has the dual purpose of ensuring the free movement of gas appliances through technical harmonisation with regard to hazards due to gas and of guaranteeing a high level of protection of the public interest objectives referred to in Article 95(3) of the EC Treaty. It includes the definition of mandatory essential requirements and the setting up of mandatory conformity assessment procedures. The Directive has been operational and functioning well for more than fifteen years. However, experience of its implementation, together with technical advances and innovation, have led to an examination of the need for revision.

Member States frequently notify safeguard clauses for appliances that they consider non-compliant with the Directive. There are also often borderline issues with regard to aspects not harmonised but still under national regulations, such as different gases and their properties and the compatibility/suitability of the appliance with technical characteristics at the place of installation.

A petition to the European Parliament (978/2005) for alleged failure by Germany to comply with Directive 90/396/EEC was closed, as there were no elements demonstrating an infringement of EC law by the German authorities.

#### *1.9.1.2 Changes underway*

No changes are envisaged in the short term.

#### *1.9.1.3 Evaluation*

Implementation has been satisfactory and the situation is stable.

### 1.9.2 Pressure equipment

#### *1.9.2.1 Current position*

Pressure equipment, gas appliances and metrology are technically complex sectors. The pressure sector deals with protection of health and safety in relation to risk of pressure and covers equipment from simple pressure cookers to the largest chemical installations. Directives 87/404/EEC on simple pressure vessels and 97/23/EC on pressure equipment, cover the design, manufacture and conformity assessment of such equipment. Directive 75/324/EEC, adapted to technical progress by Directive 2008/47/EC of

8 April 2008<sup>9</sup>, covers safety and labelling requirements for aerosol dispensers. There are four directives on pressure vessels (framework directive 76/767/EEC and specific Directives 84/525/EEC, 84/526/EEC and 84/527/EEC on gas cylinders).

One infringement procedure against Sweden was closed, following modification of the Swedish provisions on refrigerating equipment. A letter of formal notice was sent to Spain for obstacles to the free movement of solar panels and one reasoned opinion was sent to Greece, for incorrect implementation of Directive 97/23/EC.

#### *1.9.2.2 Changes underway*

The four Directives on pressure vessels are scheduled for repeal in 2008, as this equipment now falls under Directive 1999/36/EC on transportable pressure equipment (administered by Directorate-General for Energy and Transport).

#### *1.9.2.3 Evaluation*

Implementation has been satisfactory and the situation is stable.

### 1.9.3 Legal metrology

#### *1.9.3.1 Current position*

Legal metrology covers a wide field, including units of measurement and the metrological requirements that pre-packed products and measuring instruments must satisfy before being 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 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.

The sector of measuring instruments functions smoothly and the first year of application of Directive 2004/22/EC on measuring instruments (applicable as from 30 October 2006) did not reveal any major problems. Proceedings for non or partial communication against Germany, Greece, Italy, Luxembourg, Austria, Poland and Portugal were closed following communication of the national measures.

With regard to pre-packed products, the main pieces of Community legislation are Directives 75/106/EEC on pre-packaged liquids, 76/211/EEC relating to the making-up by weight or by volume of certain pre-packaged products and 80/232/EEC on the ranges of nominal quantities and nominal capacities for certain pre-packaged products.

Units of measurement are harmonised at Community level by Directive 80/181/EEC on units of measurement. Directive 80/181/EEC creates a harmonized regulatory framework throughout the European Union in order to eliminate trade barriers between Member States.

---

<sup>9</sup> 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).

In the light of a proposal to modify Directive 80/181/EEC (see below), the Commission decided to close four complaints against the United Kingdom, in the absence of a general practice of incorrect application of the Directive by the authorities of the United Kingdom and in the absence of obstacles to the application of the EC Treaty principles, including the free movement of goods.

### *1.9.3.2 Changes underway*

Commission Directive 2007/13/EC of 7 March 2007<sup>10</sup> modified Annex II of Directive 71/316/EEC to include the drawings of the distinguishing letters of some Member States used for the EC initial verification mark affixed on a measuring instrument and indicating that the latter conforms to the EC requirements. These drawings were not provided for in the Acts of Accession of Austria, Finland and Sweden, nor in the 2003 Act of Accession. Member States must transpose this Directive by 10 March 2008.

Directive 2007/45/EC of the Council and the European Parliament of 5 September 2007, laying down rules on nominal quantities for pre-packed products, repealing Council Directives 75/106/EEC and 80/232/EEC and amending Council Directive 76/211/EEC<sup>11</sup>, intends to liberalise nominal quantities of pre-packaged products within European Union, in the line of the Court of Justice jurisprudence, with the exemption of wine and spirits, for which the nominal quantities will continue to be defined at Community level. The Directive will become applicable as from 11 April 2009.

On 10 September 2007, the Commission presented a proposal for a Directive of the European Parliament and of the Council amending Directive 80/181/EEC<sup>12</sup>, to allow the use of supplementary indications to legal units of measurement on a permanent basis, to adapt the Directive to technical progress and to allow United Kingdom and Ireland, in line with the principle of subsidiarity, to continue the use of the mile for road signs/speed indications, of the pint for milk in returnable bottles and for beer and cider on draught and of the troy ounce for transactions in precious metals, as the maintenance of these local and limited exemptions does not lead to barriers to the free circulation of products.

In 2008, priority will be given to the timely transposition of Directives 2007/45, 2007/13/EC and 2008/47/EC and to the correct implementation of the Directives, which might result in new own initiative infringement cases.

### *1.9.3.3 Evaluation*

Implementation has been satisfactory and the situation is stable.

---

<sup>10</sup> 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).

<sup>11</sup> OJ L 247, 21.9.2007, p.17.

<sup>12</sup> Proposal for a Directive of the European Parliament and of the Council amending Council Directive 80/181/EEC on the approximation of the laws of the Member States relating to units of measurement (COM (2007)510 final).

## **1.10 Construction products**

### *1.10.1 Current position*

Directive 89/106/EEC on construction products (the CPD) has not been amended recently, which has allowed for the steady development of its implementation within the Member States. Non-communication and conformity assessment issues are therefore not relevant. Harmonisation through European standards, referred to in the Official Journal, has proceeded continuously and conditions for businesses operating in this sector, either as manufacturers or users of construction products, have thus experienced stable progress during 2007. However, certain fundamental problems with the implementation of the CPD remain unsolved, resulting in different transpositions in the Member States which disrupts the market.

Due to the complexity of cases and heavy workload, progress with infringement procedures has been difficult. Four cases were closed during 2007 leaving 11 active cases. Preparations are underway to close several of those cases.

The standing committee established by the CPD has developed into the foremost channel of communication on construction matters both among the Member States and between them and the Commission.

### *1.10.2 Changes underway*

The revision of the CPD was included in the Commission Legislative and Work Programme 2007 as a proposal for a Regulation (“the CPR”) with adoption by the Commission scheduled for late 2007. In the event, adoption took place on 23 May 2008 (COM(2008) 311 final). This allows for a first reading in the European Parliament before the 2009 elections with adoption during 2009. The new EC legislation replacing the CPD could enter into force at the earliest in mid-2011.

Infringement procedures (both current and future) should be viewed against this legislative backdrop. As one of the main reasons for the revision of the CPD was the confusion caused by different national implementing rules, in particular as regards the use of CE marking, there was a double incentive to clarify this matter - in the contexts of both the CPR and an ongoing infringement procedure against the UK.

The main objectives of the CPR proposal - simplification, clarification and increased credibility - should all be seen as responses to problems identified with the implementation of the CPD. These experiences also led to the choice of a regulation to replace the current directive, as the likely effectiveness of the Regulation in achieving Internal Market objectives in the sector would be much higher.

On the other hand, the CPR will not come into force within the coming two years (2008/2009). In the meantime efforts must be made to deal with complaints more swiftly. Some will be fed into the Pilot Project, where the Member States involved are participating in this exercise. Contacts with all Member States will be intensified, with a view to succeeding in the legislative process, which should also provide an opportunity for more informal attempts to convince Member States about adjustments needed in their current practices.



### *1.10.3 Evaluation*

When assessing the future impact of our action towards ensuring more efficient implementation of the CPD, during the years 2008 and 2009, human resources will most probably be devoted more and more to the CPR legislative process,. Since the new legislation will not be in place during this period, we will continue to be confronted with legal uncertainties emanating from the current CPD and the consequent variations in interpretations by the Member States. However, subject to these constraints, the intention is to significantly reduce the number of ongoing infringement cases and to deal with new cases considerably more speedily. Closer contacts with Member States will undoubtedly be of assistance in meeting these objectives.

## **1.11 Textiles/clothing, footwear and wood**

In 2007 no complaints were lodged in relation to the legislation governing the placing of textiles/clothing, footwear or wood on the European market.

### 1.11.1 Textiles and clothing

#### *1.11.1.1 Current position*

Textiles and clothing are regulated by Directive 96/74/EC on textile labelling which has been adapted to technical progress four times by Commission Directives 97/37/EC, 2004/34/EC, 2006/3/EC and 2007/3/EC. Directives 96/73/EC (adapted to technical progress by two Commission Directives 2006/2/EC and 2007/4/EC) and 73/44/EEC specify testing methods for sampling and analysis of fibre mixtures in order to determine the conformity of the information supplied on a label in accordance with Directive 96/74/EC. Due to the technical nature of the textiles directives, the Committee for directives relating to textile names and labelling (composed of experts from Member States and other interested parties) assists the Commission in their adaptation to technical progress. A proposal to recast Directive 96/74/EC in the form of a regulation was adopted by the Commission on 11 January 2008 [COM(2007) 870 final]. Directive 96/73/EC was also adapted to the new rules of comitology under the general alignment exercise [COM(2007) 741 final].

The acquis in textiles/clothing sector is not considered problematic (although national mandatory labelling requirements going beyond the scope of the labelling Directive (size, care instructions etc.) may create trade barriers prohibited under Article 28 EC which have given rise to several cases in recent years). There are two infringement cases open for non-communication in relation to the basic textiles Directive and several in relation to transposition of technical amendments of the basic textiles Directive. In some minor cases of incomplete compliance, the Member States concerned were contacted informally to bring about a realignment of national implementing rules. This informal cooperation with Member States has proved effective in the resolution of problems.

Conformity assessment is done and focuses on recent technical amendments and on a few remaining problems in some new Member States. Correlation tables, when provided, are very useful, particularly for the testing methods Directives, due to volume of text involved. In terms of preventive work, following the adoption of technical amendments in 2007, Member States were reminded of the deadlines for transposition (2 February 2008).

In relation to amending Directives 2006/2/EC and 2006/3/EC, for which the implementation deadlines were 6 and 9 January 2007 respectively, 19 infringement proceedings for non-communication were launched in April 2007. By the end of the year, 13 cases were closed and the 6 remaining cases were closed at the beginning of 2008.

#### *1.11.1.2 Changes underway*

In recent years, the number of requests for new fibre names has increased significantly, requiring frequent amendments to adapt EU legislation to technical progress and the activation of national procedures in Member States to provide for their transposition. Due to the lengthy and costly process of technical adaptation of the textiles Directives (which introduce new fibre names and testing methods in the form of Commission Directives) it is proposed that they be revised and replaced by a regulation which would simplify this process and provide a single directly applicable legal instrument. The initiative (included in the Commission Legislative and Work Programme for 2008) is being discussed in the Committee for Directives relating to textile names and labelling. An external consultant is conducting a study which will form the basis of the impact assessment report. It is foreseen that a draft proposal for a new regulation will be adopted by the Commission in late 2008.

#### *1.11.1.3 Evaluation*

Regulation of the textiles and clothing sectors is considered effective. Conformity assessment will continue. Priority will be given to following up infringement cases launched at the beginning of 2008 for non-communication.

Substantial legislative work will be devoted to preparing the impact assessment report for, and drafting, the proposed regulation replacing the textiles Directives. This would simplify the management of the frequent adaptations to technical progress required in the sector and lead to a more user-friendly regulatory framework for economic operators.

#### 1.11.2 Footwear

In the footwear area, Directive 94/11/EC on the labelling of materials used in consumer footwear does not pose any significant implementation problems. Regulation of the footwear sector is considered effective. Unlike the clothing and textile area, it is not necessary to amend this legislation often in the light of technical developments. There is no committee work in this area. As a follow-up to the screening of the new Member States on accession (to ascertain whether promises made had been kept) conformity assessments were carried out on the national implementing measures of five new Member States (Cyprus, Hungary, Lithuania, Latvia and Slovakia) where screening had shown that they contained minor discrepancies. Modifications to fully align national implementing measures were proposed and it was not necessary to launch infringement proceedings in 2007.

#### 1.11.3 Wood

In the wood sector, Council Directive 68/89/EEC on the approximation of the laws of the Member States concerning the classification of wood in the rough was repealed by Decision No 714/2007/EC of the European Parliament and of the Council of 20 June 2007.

### 1.12 Cultural goods

At the beginning of 2007, the Commission launched infringement procedures against Romania for *non-communication* of national measures relating to directives 93/7/EEC, 1996/100/EC and 2001/38/EC on the return of cultural objects unlawfully removed from the territory of a Member State.

In order to improve the application of Directives on cultural goods, the Commission updated and published in the Official Journal the list of national central authorities dealing with the Directives in the 27 Member States<sup>13</sup>. During 2007, the Commission continued to prepare for the codification of the Directives. The Commission also examined the consultant's report prepared in the context of a study on the traceability of cultural goods in the 12 new Member States. This study and the study of 2004 are available on the Internet at -

[http://ec.europa.eu/enterprise/regulation/goods/dir937\\_fr.htm](http://ec.europa.eu/enterprise/regulation/goods/dir937_fr.htm)

The *acquis* in this area is stable and produces little in the way of correspondence or complaints. The codified directive should be adopted in 2008 with a view to its coming into force during the course of 2009.

### 1.13 Late payment

Late payment impedes the development, competitiveness and profitability of SMEs and even endangers their survival, so tackling the problem is a priority for the European Commission as part of the commitment to making the European Union an attractive place to do business. This is why Directive 2000/35/EC on combating late payment in commercial transactions was adopted.

Bulgaria transposed the Directive by accession. The Commission launched infringement proceedings *for non communication* against Romania, which were closed in 2007.

During 2007, the Commission continued to deal with complaints including one on the *non-conformity* of national law in Spain. After sending a reasoned opinion, the Commission closed the proceedings because there was insufficient evidence of delays in ordinary civil court procedures to establish a breach of the Directive. Other proceedings *for non-conformity* against Spain (case C-380/06) remained before the Court of Justice.

Complaints denouncing *incorrect application* were closed after examination of the facts with the Member States concerned. In one of these complaints, the Commission concluded that the complaint derived from bad translation of a single provision of the Hungarian version of the Directive. This problem was solved through inter-institutional co-operation.

In two other cases (C-306/06, Deutsche Telekom and C-265/07, Caffaro) the Court of Justice has been asked to give preliminary rulings. A parliamentary question relating to the implementation of the Directive in Italy was presented during 2007.

An external evaluation in 2007 showed that, although attitudes to late payments have changed, the Directive has actually had little impact on delays. In particular, SMEs appear

---

<sup>13</sup> O.J. C 136, 20 June 2007

reluctant to invoke the Directive. Furthermore, the overall lack of clarity of the Directive and certain ambiguous and contradictory definitions allow major companies to impose their own interpretation of its provisions on SMEs.

Thus, the effectiveness of this part of the *acquis* is hindered by a lack of awareness of its very existence or of enthusiasm to invoke it and by its inadequate drafting. Therefore, plans for the revision of the Directive will be made in the context of the Small Business Act to be adopted during 2008. New legislation will probably appear in 2009.

#### **1.14 Product liability**

Romania and Bulgaria had transposed this legislation by the time of their accession. In the case of Bulgaria, national legislation incompatible with the €300 threshold was removed soon afterwards.

In 2007 the Court of Justice effectively put an end to the long standing debate on the harmonizing effects of Directive 85/374/EEC on product liability with its judgment on the Danish transposition of this legislation. In case C-327/05, *Commission v Denmark*, the Court held that the Directive had been incorrectly transposed into national law. The Danish authorities have already made the necessary amendments to their national law.

The *acquis* in this area is now stable. During 2008, the management of Directive 85/374/EEC will focus on contacts with informal working groups (comprising stakeholders and national experts) that will monitor its operation.

#### **1.15 Non-harmonised area**

##### *1.15.1 Current position*

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 Community legislation. The Commission monitors the right application of these rules and opens infringement procedures against Member States when necessary.

In 2007 the Commission continued to deal with complaints and infringement cases in various non-harmonised fields covered by Article 28-30 EC. The main areas are: parallel imports of medicinal and plant protection products, registration of vehicles, construction products and food supplements. Independent of sectors, today's restrictions on the free movement of goods often relate to additional or more stringent requirements for products imposed in one Member States compared to another. Moreover, market access for imported products can be hampered by complicated and time-consuming administrative procedures.

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

In 2007 several infringement cases were closed following agreement between the Commission and the Member State concerned on solutions to the problems. Germany, for instance, facilitated the use of foreign temporary and professional plates for vehicles in Germany. An infringement case on the German mandatory deposit system for one-way

beverage packaging was closed following improvements to the accessibility and transparency of the system. Italy amended its legislation on parallel imports for plant protection products, following criticism of the previous regulatory environment.

However, in other cases it was not possible to reach agreement and several cases were referred to the European Court of Justice:

Against the Netherlands for requiring prior authorisation for the seeding in Dutch waters of mussels and oysters originating from other Member States<sup>14</sup>;

Against Luxembourg for obstacles to the registration of second-hand cars originating from other Member States, in particular the requirement to produce a recent (less than a month old) extract from the trade registry of the seller<sup>15</sup>;

Against Germany for restricting *de facto* the right to supply medicines to hospitals to pharmacies established in close proximities<sup>16</sup>;

Against Greece for banning certain types of window films for cars<sup>17</sup>.

In some judgements the Court of Justice confirmed the position taken by the Commission and thereby further clarified the scope of Articles 28 to 30 of the EC Treaty:

In case C-254/05, the Court decided that Belgian legislation requiring that automatic fire detection systems, lawfully manufactured or marketed in another Member State, conform with a Belgian standard and be subject to further approval by a national certification body (involving long and expensive tests or duplicating tests already performed in other member States) was contrary to Article 28 EC.<sup>18</sup>

In case C-297/05, the Court held that Dutch measures requiring the general condition of vehicles over three years old and previously registered in other Member States to be verified prior to registration in the Netherlands violated articles 28 to 30 EC.<sup>19</sup>

In case C-186/05, the Court found that Swedish legislation prohibiting private individuals from importing alcoholic beverages via independent intermediaries or professional transporters amounted to a quantitative restriction on imports within the meaning of Article 28 EC. Such a measure is not justified under Article 30 EC on grounds of the protection of the health and life of humans as it is unsuitable for attaining the objective of limiting alcohol consumption generally and not proportionate to attaining the objective of protecting young persons against the harmful effects of such consumption.<sup>20</sup>

---

<sup>14</sup> Case C-249/07, Commission v Netherlands, pending.

<sup>15</sup> Case C-286/07, Commission v Luxembourg, pending.

<sup>16</sup> Case C-141/07, Commission v Germany, pending.

<sup>17</sup> Case C-541/07, Commission v Greece, pending.

<sup>18</sup> Judgement of 7 June 2007, Case C-254//05, Commission v Belgium.

<sup>19</sup> Judgement of 20 September 2007, Case C-297/05, Commission v Netherlands.

<sup>20</sup> Judgement of 4 October 2007, C-186/05, Commission v Sweden.

In case C-319/05, the Court clarified the borderline between food supplements and medicinal products, holding that Germany had contravened Article 28 EC by classifying a garlic preparation in capsule form as a medicine and not a food supplement.<sup>21</sup>

The Commission also reminded certain Member States of their obligation to comply with the Court's jurisprudence. Among others, Belgium and Greece were reminded to comply, respectively, with judgments C-254/05 (approval procedure for fire extinguishers) and C-65/05 (total ban on the installation and operation of all electrical, electromechanical and electronic games). A case against Portugal was referred to the Court a second time (C-457/07) as the measures taken by Portugal to comply with the judgement and guarantee easy access of construction products manufactured in other Member States were considered unsatisfactory.

The Commission continued to find pro-active solutions outside or in parallel with the infringement procedure under Article 226 EC by using the SOLVIT problem-solving network, the preventive mechanism of Directive 98/34/EC (whereby Member States are obliged to notify the Commission of new national technical rules at the draft stage) and 'package meetings' organised with Member States to discuss a active complaints and infringement cases as well as various horizontal issues.

There are two ongoing infringements subject to a petition.

#### *1.15.2 Changes underway*

In a move to strengthen the Internal Market the Community legislator, on 14 February 2007, the Commission adopted a proposal<sup>22</sup> to strengthen the so-called "principle of mutual recognition" in the non-harmonised area of goods. This proposal is one of the deliverables of the Internal Market Strategy for 2003-2006<sup>23</sup>. Its main objective is to define the rights and obligations of both national authorities and enterprises wishing to sell in one Member State products lawfully marketed in another, when the competent authorities of the Member State of destination intend to restrict the product in accordance with national technical rules. In particular, the proposal concentrates on the burden of proof by setting out the procedural requirements for denying mutual recognition.

Moreover, the proposal aims to reduce the risk for enterprises that their products will not be allowed access to the market of the Member State of destination and to enhance regular dialogue between competent authorities by establishing one or more "Product Contact Points" in each Member State. Their main task will be to provide information on technical rules on products to enterprises and to the competent authorities of other Member States and to supply the contact details of the latter. That will allow public authorities to identify their colleagues in other Member States so that they can easily obtain information from, and start a dialogue with, the competent authorities in other Member States.

During the co-decision process, the positions of the three institutions converged towards a common understanding on all points in a first reading agreement. The Council will adopt the

---

<sup>21</sup> Judgement of 15 November 2007, C-319/05, Commission v Germany.

<sup>22</sup> Proposal for a Regulation of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC, COM(2007)36.

<sup>23</sup> COM(2003)238.

proposal on 23 June 2008 and its signature is scheduled for the plenary session of the Parliament in July. The regulation will enter into force in spring 2009.

### *1.15.3 Evaluation*

As Articles 28-30 EC apply only to the non-harmonised area, their scope depends on the development of secondary Community legislation. The more harmonisation, the less scope for their application. Yet, Article 28 EC remains an essential legal instrument in the evaluation of cross-border obstacles to trade.

A further slight decrease in the number of open infringement cases was observed in 2007. The proposal on mutual recognition should create an environment which facilitates the free flow of goods throughout the EU and a consequence is expected to be a reduction in the number of complaints about Member States incorrectly applying recognition procedures so as to deny access to their markets.

## **1.16 Preventive rules of Directive 98/34/EC**

### *1.16.1 Current position*

In 2007, 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 2007, fruitful collaboration between the Member States and the Commission took place on several levels. Firstly, two meetings of the Committee on “Standards and Technical Regulations” took place 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 Lithuania, Poland, Cyprus and Romania and Turkey on the operation of the notification procedure. The seminars were attended by representatives of national authorities and industry. In addition, the contact points of other EU Member States (Latvia, Lithuania, Slovenia and the Netherlands) attended the Cyprus seminar and the seminar in Poland was attended by the German and the Czech Republic contact points.

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 procedures. 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.

Thirdly, the Commission services responsible for the Directive participated in a package meeting in Austria to discuss ongoing infringement cases.

As to the future, the figures for the first quarter 2008 indicate that in 2008, too, a high number of notifications will be received and acted upon.

### *1.16.2 Changes underway*

There were 9 new complaints in 2007, all of them concerning failures to notify national transposition measures under Directive 98/34/EC and should become priority cases in 2008.

### *1.16.3 Evaluation*

The steady high number of notifications (752) and reactions from the Commission (223) and the Member States (228) 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 improves 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 Overall introduction**

The situation in Directorate-General for Competition (DG COMP) (DG COMP) is characterized by a fairly stable *acquis*. The control of compliance with the Treaty provisions of Articles 81 – 89 EC generates work predominantly vis-à-vis private undertakings (antitrust, mergers) or with regard to State aid cases that are dealt with in a separate procedure not covered by the annual report.

The majority of State infringement cases (apart from State aid) is concerned with the breach of Treaty provisions such as Article 86(1) EC in conjunction with Articles 81/82 EC or Articles 3(g), 10 and 81/82 EC.

#### *2.1.1 Measures in force:*

The control of the transposition of Directives is currently focused on

- the Financial Transparency Directive in the field of State aid (80/723/EEC as subsequently amended) and its latest amendment (2005/81/EC); 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 under Article 228 EC for failure of Member States to comply with decisions requiring the recovery of incompatible State aid, which represent but one component of the



significant overall work related to recovery<sup>24</sup>, are another noteworthy element of the infringement portfolio of DG COMP.

Work on these State infringement cases generates a fairly constant number of roughly 50 pending infringement procedures at any given time.

### *2.1.2 Work done in 2007*

In 2007, the priority in competition policy in relation to the State conduct was addressing key issues to improve competition in the liberalized network industries and in financial services, in particular non-discriminatory access to infrastructure, and full and proper transposition of legislation. Cases of non-compliance with Commission recovery decisions as well as secondary legislation in the field of State aid were another principal concern. The main infringement cases dealt with specifically concerned continued monitoring of the transposition of the financial transparency Directive (2005/81/EC) and the Directive on competition in the markets for electronic communications (2002/77/EC) both of which are based on Article 86 EC. The Commission handled several complaints relating to Article 86 EC in conjunction either with Article 82 EC, notably in the energy sector, or with internal market rules (Articles 43 and 49 EC) in relation to financial services. As regards other individual cases, the Commission dealt with complaints relating to Article 31 EC and investigated infringements of Article 21 of the Merger Regulation concerning the energy sector.

## **2.2 Financial Transparency Directive**

On 23 March 2007, the Commission sent a reasoned opinion to Slovenia which identified a number of substantial inconsistencies with Directive 80/723/EEC as amended. On 21 March 2007, the Commission decided to refer Spain to the European Court of Justice for its failure to take the measures necessary in order to implement Commission Directive 2000/52/EC. Both cases could, however, be closed after these Member States had taken the necessary measures to completely and correctly implement the directives in question.

On 7 November 2007, letters of formal notice were sent to seven Member States for either their failure to notify to the Commission, within the required deadline, the national transposition measures of Commission Directive 2005/81/EC (Belgium, Denmark, Italy, Luxembourg, UK) or for their non-conform transposition measures (Slovakia, Latvia). Member States had to provide a reply to the Commission's concerns by 7 January 2008. The replies submitted by Member States are currently being analysed.

While all late transposition is a problem, the indications received from Member States confirm that the completion of their work can generally be expected in the near future and no serious problems are likely to result. The issues of non-conformity so far identified do not

---

<sup>24</sup> The decisions adopted by the Commission in 2007 required the recovery of €189 million, the total amount of recovered illegal and incompatible aid standing at €8.2 billion at the end of 2007. Where a Member State does not comply with a decision requiring recovery the Commission may refer the matter to the ECJ direct in derogation from Article 226 EC pursuant to Article 88(2) EC. This document only covers proceedings under Article 228 EC that are initiated where a Member State still fails to recover incompatible State aid although the ECJ has already found that this failure constitutes an infringement.

give cause for serious concern and the current outlook for the correct and full application of the directive is good.

### **2.3 Non-compliance with Commission decisions on the recovery of State aid**

On 19 July 2007, the Commission sent a letter of formal notice under Article 228(2) EC to Italy for failing to comply with a judgment of the ECJ<sup>25</sup> condemning Italy for non-execution of the Commission's recovery decision regarding employment aid. The key issue in this case is the effectiveness of recovery procedures under Italian law since although Italy has issued payment orders to the beneficiaries concerned these national procedures have still not led to successful recovery. The Commission is currently analyzing the reply of the Italian authorities and intends to take a decision as to whether to send a reasoned opinion<sup>26</sup>.

On 11 July 2007, the Commission issued a letter of formal notice to Spain in relation to non-compliance with the judgment of 14 December 2006<sup>27</sup> in which the ECJ had confirmed that Spain had failed to fulfil its obligations under six Commission recovery decisions all concerning tax regimes in the Basque regions.

The issue of effective recovery by Member States of illegal State aids is central to the overall effectiveness of the EU State aid policy and so the outcome of these proceedings is key to the effective application of Community law in the Member States concerned. These are therefore priority cases to which the Commission will continue to pay close attention and report on progress.

### **2.4 Electronic communications**

#### *2.4.1 Current position*

The Commission has dealt with several cases in the context of monitoring the transposition of EU Directives in this area, i.e. the Regulatory Framework for Electronic Communications of 2002<sup>28</sup> and in particular the "Competition Directive" (2002/77/EC)<sup>29</sup>.

In the area of digital broadcasting, the Commission sent a reasoned opinion to Italy on 18 July 2007 for failure of compliance with the regulatory framework for electronic communications due to the fact that Italian legislation regulating the switchover from analogue to digital terrestrial TV places unjustified restrictions on the provision of broadcasting transmission services and attributes unjustified advantages to incumbent analogue operators, thereby creating the risk of reinforcing their market power in the provision of digital TV broadcasting transmission services. The reasoned opinion in this case based on the complaint of an Italian

---

<sup>25</sup> Judgment in case C-99/02 of 1 April 2004.

<sup>26</sup> In fact, a reasoned opinion was sent on 1 February 2008.

<sup>27</sup> Joined cases C-485/03 to C-490/03).

<sup>28</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services ("Framework Directive"), Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services ("Authorisation Directive") and Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 ("Universal Service Directive").

<sup>29</sup> Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communication networks and services.

consumer association (*Altroconsumo*) triggered a number of further enquiries and a complaint relating more generally to the Italian system for awarding analogue TV frequencies.

On 21 March 2007, the Commission decided to refer a case against Greece under Article 228 EC to the European Court of Justice for failure to comply with a judgment of 14 April 2005 relating to the incomplete transposition of Directive 2002/77/EC with regard to the liberalization of broadcasting services. Shortly thereafter Greece informed the Commission of the adoption of a new law (Law on Media Concentration) which ended the infringement by providing an authorization procedure for the provision of broadcasting services<sup>30</sup>.

On 23 March 2007, the Commission addressed a reasoned opinion to the Czech Republic for having limited the powers of the Czech competition authority to apply Articles 81 and 82 EC to anti-competitive conduct in the electronic communications sector in breach of Article 10 EC in conjunction with Articles 5 and 35 of Regulation 1/2003. After the contested provision of the Czech Competition Act was repealed the case could be closed in June 2007.

These are important examples of the kinds of issue normally arising out of the Commission monitoring of respect for competition rules of the kind the Commission would expect to have to continue to manage, which, while they need to be pursued to a satisfactory conclusion, do not present problems of a volume or nature as to give rise to wider or more systematic concerns. They illustrate, however, that continued Commission monitoring remains necessary beyond the transposition process of directives and that this may produce increasing workload.

In the electronic communications sector the Commission has provided replies to 46 parliamentary questions and petitions. With regard to digital broadcasting the *Altroconsumo* case has raised particular external interest, including that of the European Parliament, and has given rise to a number of enquiries. Future enquiries and complaints related to this case will be dealt with as a matter of priority.

## 2.5 Financial services

On 11 May 2007, the Commission adopted a decision on the basis of Article 86(3) EC finding that the exclusive rights for the distribution of certain savings book products ("*livret A*" and "*livret bleu*") 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 that wish to enter into and develop the market for liquid savings in France. The decision requires France to amend its legislation governing these rights within nine months. The Commission acknowledged the general interest tasks associated with these savings books (financing of social housing, universal accessibility of banking services) but considered the exclusive distribution rights for certain banks as not being necessary to achieve the general interest objectives.

---

<sup>30</sup> The case could therefore be closed in January 2008.

## 2.6 Energy sector

On 7 March 2007, the Commission addressed a reasoned opinion to Spain for failure to comply with two decisions adopted by the Commission in 2006 finding that Spain had breached Article 21 of the Merger Regulation by subjecting, without prior communication to and approval of the Commission, E.ON's acquisition of Endesa to a number of conditions incompatible with Community law and requiring Spain to withdraw these conditions without delay. In the light of the refusal by Spain to withdraw these decisions within the short deadline set in the reasoned opinion the Commission decided on 28 March 2007 to refer the case to the ECJ<sup>31</sup>.

In the course of 2007 the Commission continued its investigation in a case concerning the Greek lignite and electricity markets, following up on a supplementary letter of formal notice sent at the end of 2006. The competition issue of the case is whether Greece has infringed Article 86(1) EC in conjunction with Article 82 EC by maintaining a number of measures giving the State-owned electricity incumbent Public Power Corporation (PPC) quasi-exclusive exploitation rights for lignite, the cheapest available fuel in Greece and thereby enabling PPC to protect and reinforce its dominant position in the electricity market despite liberalization of the electricity generation and supply market. It is intended to adopt a decision in this case early in 2008<sup>32</sup>.

Both cases illustrate the central importance of ensuring that in this priority policy area for the EU the liberalization of energy markets really transforms into fair competition on a level Europe-wide playing field and into tangible benefits for consumers.

## 2.7 Overall evaluation

Against the background of the relatively stable *acquis*<sup>33</sup> and the relatively constant number of pending infringement cases not signalling any particular problem in the monitoring of compliance that would require urgent attention there is no reason to modify the priorities of Directorate-General for Competition with regard to State infringements. As set out above, infringement proceedings concerning the Financial Transparency Directive and the electronic communications sector have had considerable impact in terms of bringing about Member States' measures to bring their legislation into line with the *acquis*.

Accordingly, the Annual Management Plan for 2008 envisages infringement action, just as for the preceding year, mainly in relation to the liberalized network industries and financial services. The monitoring of the transposition of the Financial Transparency Directive will be in the focus of our attention in 2008 and onwards. Decisions on the basis of Article 86(3) EC and the pursuit of infringement procedures under Article 226 EC can be expected principally in the context of liberalized network industries, specifically in the electronic communications and energy sectors.

---

<sup>31</sup> In its judgment handed down on 6 March 2008 (C-196/07) the ECJ confirmed the infringement.

<sup>32</sup> On 5 March 2008, the European Commission has adopted a Decision finding that Greece has infringed Article 86 of the EC Treaty in combination with Article 82 by maintaining rights giving the state-owned electricity incumbent Public Power Corporation (PPC) quasi-exclusive access to lignite thus protecting PPC's dominant position in the electricity market. With this Decision, the Commission calls on Greece to propose and adopt remedies to ensure sufficient access to lignite by competitors of PPC.

<sup>33</sup> See point 2.1 above.

### 3 EMPLOYMENT, SOCIAL AFFAIRS AND EQUAL OPPORTUNITIES

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

##### 3.1.1 Current position

###### 3.1.1.1 Existing measures in force

For a list of the measures in force in that sector please refer to Annex I paragraph 1

###### 3.1.1.2 Report of work done in 2007

In the field of **social security**, a number of infringements deal with benefits for disabled persons : in 2004, the Commission started infringement procedures against Finland, the UK and Sweden as it takes the view that these benefits have been unjustifiably qualified as "special non-contributory benefits" by the co-legislators in the framework of Regulation (EC) No 647/2005<sup>34</sup> and that these benefits are normal security benefits and therefore are exportable. These infringement procedures are still on-going. The Commission also lodged an annulment procedure based on Article 230 of the EC Treaty concerning Regulation (EC) No 647/2008 against the Council and the European Parliament (case C-299/05). In its judgement of 18 October 2007, the Court of justice stated that the benefits concerned must be qualified as "social security benefits" and not as "special non-contributory benefits" as done by the co-legislator and annulled Regulation (EC) No 647/2005 regarding these benefits.

As regards **free movement of workers**, half of the ongoing procedures, due to an incorrect application of Articles 39 and 42 of the EC Treaty, concern issues linked to the public sector.

Following the judgement of the Court of Justice of 18 July 2006 in case C-119/04<sup>35</sup>, regarding the recognition of acquired rights of former "lettori" in several Italian universities, the Commission has received firm assurances from the Italian authorities that the national legislation governing employment conditions for former "lettori" in Italian universities is effectively applied. As a result, the Commission closed the infringement procedure against Italy in June 2007.

In relation to the issue of the recognition of previous professional experience acquired in one Member State for the purpose of access to the public sector as well as for determining the professional advantages in another Member State, considerable progress was achieved; following judgments of the Court of Justice<sup>36</sup>, the Commission closed two cases against Italy and Spain as the national rules had been correctly amended. Several other cases on this topic were closed.

---

<sup>34</sup> Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations (EEC) No 1408/71 on the application of social security schemes to employed persons, to self employed persons and to members of their families moving within the Community and (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, OJ L 117, 4.5.2005

<sup>35</sup> Rec. 2006, p. I-6885. In its judgment, the Court ruled that, even if Italy failed to fulfil its obligations under Article 228 of the Treaty by adopting the legislation at a very late stage of the procedure, the legislation itself was an appropriate solution for re-establishing the careers of the former lettori.

<sup>36</sup> Case C-278/03, *Commission v. Italy* ECR [2005] I-03747 and case C-205/04, *Commission v. Spain* ECR [2006] I-00031

Several other cases in relation to employment in the public sector (e.g. nationality condition; other aspects of access to posts) were closed after the national rules had been correctly amended.

Moreover, the Commission carried out a systematic review of the legislation of all Member States following two preliminary judgments of the ECJ<sup>37</sup> 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, 13 were still ongoing in 2007; the Commission decided to refer 4 cases to the Court of Justice (Czech Republic, France<sup>38</sup>, Italy and Spain) and 6 cases were closed after the national rules had been correctly amended.

Furthermore, the Commission ensures a follow-up of preliminary rulings in cases *Gattoussi*<sup>39</sup> and *Burbaud*<sup>40</sup>.

Lastly, in the follow-up to two judgments of the Court of Justice<sup>41</sup> concerning the car registration tax in Denmark and in Finland imposed on company cars used by frontier workers resident in these two respective countries and working in another Member State, the infringements were closed<sup>42</sup> after the national rules had been correctly amended.

Other open procedures concern cases of direct or indirect discrimination of migrant workers (e.g. in relation to access to posts and to working conditions) and the issue of the application of free movement rules to sports activities.

## Petitions

There are 25 open petitions before the Petition Committee. 21 are related to social security issues and the finalisation of the contributions often requires correspondence with the petitioner and/or national authorities.

### 3.1.2 Changes underway

A Regulation implementing Regulation (EC) No 883/2004 on the coordination of social security systems should be adopted in 2009. It is a priority for the Commission to finalise the work needed for the entry into application of that implementing Regulation given that the new simplified and modernised Regulation 883/2004 will apply on its date of entry into force.

This proposal primarily aims at defining the procedures for the implementation of the coordination rules laid down in Regulation 883/04. However, it is not a proposal for an "implementing" Regulation in the strict sense of the term, as the proposal contains several provisions of substance. This is due to the fact that when negotiating Regulation 883/2004, several points were postponed to find a solution in the implementing Regulation.

---

<sup>37</sup> Case C-405/01 Colegio de Oficiales de la Marina Mercante Española ECR. [2003] I-10391 and C-47/02 Anker and others, ECR [2003] I-10447

<sup>38</sup> The ECJ already rendered its judgment on 11 March 2008, case C-89/07.

<sup>39</sup> Case C-97/05 Gattoussi, ECR [2006] I-11917

<sup>40</sup> Case C- 285/01 Burbaud, ECR [2003] I-8219

<sup>41</sup> Case C-464/02 Commission v Denmark, ECR [2005] I-7929; Case C-232/03 Commission v Finland, ECR [2006] I-27

<sup>42</sup> The case against Denmark was actually closed in the end of 2006.

The Commission presented three other proposals for a Regulation in the framework of Regulation 883/04:

- (1) a proposal determining the content of Annex XI of Regulation 883/04 (COM (2006)7)
- (2) a proposal modifying Regulation 883/2004 and its annexes (COM (2007)376)
- (3) a proposal aiming at extending the provisions of Regulation 883/04 and its implementing Regulation to third country nationals who are not yet covered by these provisions solely on the ground of their nationality (COM(2007) 439).

The new set of coordination rules will considerably modify the social security coordination system by modernising the system (extending the material scope to new branches of social security and by adapting the provision to new patterns of mobility) and by simplifying the procedures (electronic European Health Insurance Card).

It will reduce the administrative burden by introducing a system of electronic exchange of data between social security institutions of the Member States. The European citizens will directly benefit from this as the electronic exchange of data between social security institutions will speed up decision-making process for the actual calculation and payment of benefits to citizens who move around Europe.

The objective is that the new system of coordination enters into application as from 1 January 2010. In order to realise this objective, the implementing Regulation has to be adopted formally by the two co-legislators at the latest in June 2009. The EP will adopt during its 2008 July session its first reading of the proposals for an implementing Regulation, Annex XI and for modifying Regulation 883/2004. The Council Working Party will under the French Presidency finalise its examination of the proposals by discussing the remaining open issues.

In 2008, the work devoted by the Commission to the preparation for the entry into application of Regulation 883/04 will involve:

- the organisation of the electronic exchange of data. The implementation Regulation requires that the transmission of data between institutions be carried out by electronic means under a common secure network. A funding of 3 million Euros was obtained from the IDABC (**I**nteroperable **D**elivery of European e**G**overnment Services to public **A**ministrations, **B**usiness and **C**itizens) Community programme. The Commission launched an open call for tender on 10 June for the EESSI (**E**lectronic **E**xchange of **S**ocial **S**ecurity **I**nformation) project. It is envisaged that this procedure will be concluded during 2008 with the Commission entering into a two year contract with the successful bidder for the development and implementation of the EESSI system.

The EESSI system is an ambitious and unique 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.

- the coordination of the necessary actions of the Administrative Commission on Social Security for Migrant Workers. The entry into force of the new coordination rules also requires the adaptation of several interpretative decisions adopted by the Administrative Commission on Social Security of Migrant workers or the adoption of new interpretive decisions. The service coordinates this task, which involves making an inventory of the existing decisions and drafting proposals.

### 3.1.3 Evaluation

In 2007, the service received for both sectors (free movement and social security coordination) an impressive number of letters and petitions of European citizens (around 4000), approximately balanced between both sectors. Globally, the volume of incoming queries and complaints is relatively stable.

#### *Social Security*

A majority of the letters from citizens in this field concerns a request for information on social security rights when moving within the EU, (e.g. determination of legislation applicable, sickness benefits, pension rights and family benefits).

Other letters concern complaints of citizens alleging that national social security institution infringed their rights under community law (e.g. when calculating the amount of their pension or when refusing the reimbursement of health care or other benefits).

In 2005, the Commission has put in place a system of filtering this letters in cooperation with the representatives of the Member States in the Administrative Commission. According to this procedure, the Commission forwards the letter of the citizens to the representative for further examination when it appears that it concerns an individual case rather than a general wrong application of Community law and subsequently informs the citizen that his/her letter has been forwarded to the national authorities concerned. The national authorities then inform the citizen and the Commission about the outcome of their investigation. This has led to a considerable reduction of the registered complaints. Therefore, in 2007, only 9 letters of citizens were registered as infringement procedures, which is a very small part of the total amount of letters received.

As regards infringement procedures, there are currently (June 2008) 20 ongoing infringement procedures in the field of social security.

As Regulation 1408/71 only coordinates the national social security schemes of the Member States, changes in national law can affect considerably and in an unexpected way the workload of the social security coordination sector, e.g. following the introduction of a new sickness insurance legislation in the Netherlands, hundreds of letters and petitions were received from Dutch pensioners who took the view that this legislation was contrary to Community law, in particular Article 39 and Regulation 1408/71.

#### *Free movement of workers*

In the area of **free movement of workers**, citizens mostly ask about their right as migrant workers, access to posts, administrative formalities linked to the right of residence, family reunification rules, working conditions and access to social advantages. Some of these queries have a purely informative purpose while others are complaint against discrimination or



obstacles that the citizens have to face when moving around the EU. A number of encountered problems are due to national rules which are not in conformity with Community law and others are the result of incorrect application of national rules.

In the past, the majority of the complaints concerned the issues linked to the public sector in particular recruitment procedures or the lack of recognition of previous professional experience for the purpose of access to posts or determining working conditions. Due to the Commission's focus on these problems<sup>43</sup>, it seems that currently the complaints related to these issues are less frequent.

The issues, which, on the contrary, gained recently importance both as information requests and complaints, are the following:

- discrimination of migrant worker seafarers;
- application of transitional measures for citizens of the "new" Member States;
- languages requirements for access to posts,
- difficulties with residence formalities due to late or incorrect transposition of the Directive 2004/38/EC;
- access to study grants for workers family members;
- nationality discrimination of professional sportsmen/sportswoman.

A big part of the correspondence exchange with the citizens is related to the ongoing infringement procedures aiming at informing the complainants about the progress and outcome of the cases. An increased interest can be also noted in access to documents linked to infringement procedures and in particular to the exchange of correspondence with the Member States.

According to the latest figures (June 2008) there are 23 ongoing infringement procedures, which is much less than in the previous years. An enormous progress was actually made in 2007 in order to bring to a successful end many files initiated in the past – in total 22 files were closed throughout the year. It enables the team to work now more efficiently and in a focused manner on the remaining procedures. The objective is to be able to deal with the infringement procedures within 3-4 years on the average. However, it is not always possible due to the complexity of the file or lengthy reforms at the national level. There are still 3 procedures from 2002 and 3 files from 2003 pending.

The law in this field has been stable - the main principles being established by the Treaty of Rome and the secondary legislation adopted in 1968. The Directive 2004/38/EC introduced some changes in the rules concerning the right of residence especially by simplifying significantly the residence formalities. The legal framework seems to achieve its objectives as it is very generous for the citizens and directly applicable (directly applicable provisions of the Treaty and of Regulation 1612/68). However, the difficulty to control the application of law in this field is related to the fact that the principle of non-discrimination is very broad and potentially concerns many different areas of life of the migrant worker. Therefore, the work is dependent on the nature of the new complaints received - the infringement procedures are mainly initiated on the basis of the complaints and rather rarely on the initiative of the Commission.

---

<sup>43</sup> Infringement procedures in relation to the issue on recognition of professional experience against all EU-15 Member States concerned have led to vast reforms of applicable rules.

Nevertheless, the experience of horizontal exercises already described (captains' files and recognition of previous professional experience) proved to be very successful. Member States are eager to recognise more easily the necessity to change their legislation if the procedures have been initiated against all States where the given problem exists. Therefore, in future it is envisaged to identify such problems of a general nature and to launch systematic reviews of the legislations of Member States in the given field. It would however require redirecting some of the other queries and complaints through different channels in order to be able to focus on effective management of the horizontal procedures. The free movement sector is working on setting up a similar system of cooperation with the national experts as the one introduced in the field of social security. Moreover, citizens' requests could be dealt with by Europe Direct, SOLVIT or in the framework of a closer and more informal cooperation with the Member States via EU pilot.

### *Priorities*

The monitoring work presented above cannot be strictly planned as it depends largely on the amount and type of complaints sent to the Commission as well as on the willingness of cooperation of the Member States concerned (changing wrong practices) and the speed of adoption of new national legislation.

However, in order to set priorities, the importance of the file both from the point of view of its political impact and negative consequences that the violation has for the complainant is taken into account. The problems which seem to be spread in several Member States are also given priority.

## **3.2 Labour Law**

### *3.2.1 Current position*

#### *3.2.1.1 Existing measures in force*

At present, in the area of labour law, the deadline for transposition has expired for all directives in force, with the exception of one, i.e. Directive 2005/47/EC on working conditions of mobile workers engaged in interoperable cross-border services in the railway sector, for which the transposition deadline will expire by 27 July 2008.

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 work, transfer of undertakings, employer insolvency, protection of young people at work, and working time.

For a list of the measures in force in that sector please refer to Annex I paragraph 1.2

#### *3.2.1.2 Report of work done in 2007*

The overall number of outstanding infringement procedures for non communication and non conformity has decreased by 10 % since the beginning of 2007. The total number of outstanding infringements is currently 77 (including those related to the consequences of the

SIMAP-Jaeger Judgments<sup>44</sup>). The decrease is mainly due to the closing of a number of non-communication cases.

With regard to the *non communication cases*, the infringement proceedings against Member States which had *failed to notify* the national measures transposing Directives 2000/34/EC, amending Council Directive 93/104/EC, concerning certain aspects of the organisation of working time to cover sectors and activities excluded from that Directive and 2002/14/EC, establishing a general framework for informing and consulting employees in the European Community, continued. With regard to Directive 2000/34/EC, the proceedings against France, continued under Article 228 EC following the judgment from the Court of Justice<sup>45</sup> could be closed following adoption of the necessary measures. As far as Directive 2002/14/EC is concerned, the proceedings for lack of notification of the necessary transposition measures by Greece<sup>46</sup>, Spain<sup>47</sup>, Italy<sup>48</sup> and Luxemburg<sup>49</sup>, were closed following adoption of the necessary transposition measures. The case against Belgium continues under Article 228 EC following the judgment from the Court of Justice<sup>50</sup>. However, the necessary legislation having been adopted recently, this case should be closed in the near future.

As regards Directive 2002/74/EC, due for transposition by 8 October 2005, infringement proceedings were initiated against Member States that had *failed to notify* the national transposition measures within the time limit. The cases against Spain<sup>51</sup> and Luxemburg<sup>52</sup> were referred to the Court of Justice, but were closed following adoption of the necessary transposition measures. The case against France continues under Article 228 of the EC Treaty following the judgment from the Court of Justice<sup>53</sup>

Regarding Directive 2003/72/CE due for transposition by 18 August 2006, the cases against Belgium<sup>54</sup>, Greece<sup>55</sup> and Luxembourg<sup>56</sup> were referred to the Court of Justice.

With respect to Directive 2006/109/EC (adaptation Directive 94/45/EC on the establishment of European Works Council following accession of Bulgaria and Romania), due for transposition by 1 January 2007, infringement proceedings for non communication were launched against 13 Member States that had failed to take the necessary transposition measures within the required time limit. Most of these cases could however be closed (or are about to be closed) following the adoption of the necessary national measures.

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, in the case against Luxembourg for incorrect transposition of Directive 96/71/EC ('posting of

---

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

<sup>45</sup> Judgment 17.11.2005, case C-73/05

<sup>46</sup> Pending case C-381/06

<sup>47</sup> Pending case C-317/06

<sup>48</sup> Judgment of 1.03.2007, case C-327/06

<sup>49</sup> Pending case C-321/06

<sup>50</sup> Judgment 29.3.2007, C-320/06

<sup>51</sup> Judgment 29.11.2007, C-6/07

<sup>52</sup> Pending case C-10/07

<sup>53</sup> Judgment 27.9.2007, C-9/07

<sup>54</sup> Pending case C-092/08

<sup>55</sup> Pending case C-082/08

<sup>56</sup> Pending case C-070/08

workers') referred to the Court of Justice<sup>57</sup>, the Court recently rendered its judgment and considered that the Luxembourg transposition measures concerned did not constitute or could not rely on the 'public policy provisions' exception laid down in Article 3 paragraph 10 of the Directive. The case against France for incorrect and insufficient transposition of Directive 80/987/EEC, and in particular Article 8, continues. Furthermore, regarding the incorrect transposition of Directive 93/104/EC ('working time'), the proceeding against United Kingdom<sup>58</sup> under Article 228 of the EC Treaty was closed following the notification of national measures correctly transposing the Directive.

It would, however, be misleading to reduce the monitoring activities to the number of outstanding infringement procedures.

As regards the *working time Directive*, the Commission carried out an in-depth analysis of compliance in all Member States with the *acquis*, as resulting from the SIMAP-Jaeger case law<sup>59</sup> re the qualification of on call time as working time. Such analysis led in 2007 to pre-226 letters being sent to nearly all Member States. At the same time, during 2007, national reports were obtained from Member States and social partners on application of the Directive in each Member States. The results of services' analysis will be given in a Commission's forthcoming Report.

Moreover, as regards the *posting of workers Directive*, an extensive monitoring exercise was carried out in 2006 and 2007 about application measures, including controls and administrative cooperation, the outcome of which was presented in the Commission's Communication of 13 June 2007 'Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers'<sup>60</sup> and a attached Staff Working Document<sup>61</sup>. Furthermore, on 3 April 2008, the Commission adopted a Recommendation on enhanced administrative cooperation in the context of posting of workers in the framework of the provision of services<sup>62</sup> as a first, concrete follow-up of the measures indicated in the June Communication. The Recommendation calls on national governments to take urgent action to remedy shortcomings in the implementation, application and enforcement of the legislation pertaining to posting of workers through better cooperation between national administrations and improving access to information.

### *Petitions*

There are 30 pending petitions before the Petitions Committee.

### *3.2.2 Changes underway*

(1) Recently adopted measures which may require additional work

(a) *Stock staking studies on transposition, implementation and application reports*

---

<sup>57</sup> Judgment 19.6.2008, case C-319/06, Commission vs Luxembourg.

<sup>58</sup> Judgment of 7.9.2006, case C-484/04

<sup>59</sup> Judgment of 3.10.2000 in case C-303/98 and judgment of 9.09.2003 in case C-151/02

<sup>60</sup> COM (2007) 304 final

<sup>61</sup> SEC (2007) 747

<sup>62</sup> OJ 2008 C85/1, 4.4.2008; see also corrigendum OJ C89/18 of 10.4.2008

At the end of 2005, 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 the Member States of all 21 labour law directives. The final output of this major exercise consists in a series of reports, please find the list of these reports in Annex I paragraph 1.2.4.

The contents of these reports have in the meantime started to be used in recently published implementation reports. That is the case of a Communication on the review of the application of Directive 2002/14/EC (information and consultation of workers) in the EU<sup>63</sup>, and an accompanying Staff Working Document<sup>64</sup>. Thus, 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. As indicated in the implementation report, the Commission intends to examine such issues more closely in co-operation with the national authorities of the Member States concerned.<sup>65</sup>

Also, the implementation of Article 8 and related provisions of Directive 80/987/EC ('employer's insolvency') was examined in a Staff Working Document<sup>66</sup>. Most Member States having in place specific measures aimed at meeting the requirements of Article 8 of Directive 80/987/EEC, the results of the examination and analysis revealed nevertheless that, in certain cases, issues can be raised as regards the extent to which some of these measures are sufficient to protect the interests of employees and retired persons in the event of insolvency of the employer. Further investigation is therefore needed in order to address 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.

It was announced that the Commission departments concerned intend to pursue this investigation by means of bilateral contacts with Member States, combined with a specific study to be conducted in cooperation with the main stakeholders. The Social Protection Committee, in particular, will also have to be involved in such a study. Following the publication of a Staff Working Document in 2006<sup>67</sup> concerning the implementation of Directive 99/71 on fixed-term work by EU-15 countries, a new report this time concentrating on the EU10 countries is being prepared for adoption in 2008.

---

<sup>63</sup> COM (2008) 146 final, 17.3.2008

<sup>64</sup> SEC (2008) 334

<sup>65</sup> In addition, in its conclusions the Commission indicates 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. The Commission 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.

<sup>66</sup> SEC (2008) 475 of 11 April 2008.

<sup>67</sup> SEC (2006) 1074, 11.8.2006.

(b) *monitoring exercise developments in Member States in the context of posting of workers*

In its Communication of 13 June 2007 'Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers'<sup>68</sup> the Commission announced its intention to launch, if necessary, infringement proceedings:

- to ensure effective compliance with the fundamental freedoms of the EC-Treaty, as interpreted by the ECJ, by those Member States which impose administrative requirements and control measures considered incompatible with prevailing Community law, as well as
- to ensure the conformity with Community law, as interpreted by the ECJ notably in the judgment "Vander Elst", with respect to those Member States which still require work permits and other conditions to posted third country nationals who are legally staying and are legally employed in another Member State.

The responsible services of the Commission are finalising the inventory of issues to be tackled and the Member States concerned. This may lead to the opening of infringement proceedings on the basis of Article 49 of the EC Treaty.

(c) *Transposition directive 2005/47 ('working time rail')*

Furthermore, Directive 2005/47/EC ('working conditions of mobile workers engaged in interoperable cross-border services in the railway sector') was due to be transposed by 27 July 2008. Sectoral Social Partners are currently discussing possible amendments to this Directive, which will most likely have implications on the transposition rate of a number of Member States. The number of infringement procedures for non communication may thus increase considerably.

(d) *European network of legal experts in the field of labour law*

The recently created European Network of Labour Law experts produces 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 allows the Commission services to identify problems encountered in the national legislation, its application and administrative practice, and to act in a preventive manner.

(2) *New measures due to be adopted which may require specific implementation/ transposition work*

New implementation reports currently under preparation are expected to be adopted in 2008. Such reports may identify situations in Member States deserving further legal examination: Commission Reports on the implementation of Directive 2001/86/EC (European Company), of Directive 94/33 (Young People at Work) and of Directive 91/383/EC (Health and Safety of atypical workers).

---

<sup>68</sup> COM (2008) 304 final

Furthermore, the Commission services' overall report on the implementation of Directive 2003/88 (working time) is being finalised. The extensive draft completed has been sent to the Member States for their observations of fact (end of June 2008). The final report (which adoption is foreseen for second semester 2008) will then be transmitted to Council and European Parliament.

- (3) Volume of enquiries, infringements work and petitions and prioritization among them

A distinction must be made between two categories of activities:

- The activity of control, focused on the treatment of non-communication and non-conformity cases raised by complaints or other means of information. This is expected to decline, as a result of the closing of "old cases" and the clear reduction of legislative activity in this area since 2003.
- The activity of control based on horizontal treatment of politically sensitive issues (the cases of working time –see above under 2.2) and the monitoring exercise in the context of posting of workers launched in 2006<sup>69</sup>) as well as the outcome of the cross-country studies launched with the aim of taking stock of transposition after 2004. This is expected to take up an increasing amount of time, in recognition of the complex nature of the issues under consideration, and also of the extreme sensitivity and visibility of such issues.

A prioritization is clearly needed, as the potential for the multiplication of infringement cases as a result of the application of the horizontal approach can be significant. A preventive approach is preferable in order to deal with most issues and the launching of infringements should be reserved for the most serious cases of non-conformity. The two issues referred to above – posting of workers and working time – emerge clearly as candidates for a priority treatment. However, other matters may require some degree of prioritisation. It is the case of failures in the implementation of the Directives on information and consultation of workers on fixed-term work (where a large number of complaints and petitions continue to be received) and on transfers of undertakings, especially but not exclusively in those Member States having joined the EU after 2004.

### 3.2.3 *Evaluation*

As a result of the shift towards the new forms of control activity based on the horizontal approach and of the new legal monitoring tasks so far not directly leading to infringements (posting of workers, working time) the overall workload has increased steadily. Also the workload for legal experts has increased as a consequence of the very significant increase in the number of replies to European Parliament and citizens' questions, which has followed the growing public and media attention given to labour law cases. In a situation characterised by a very heavy workload for the service concerned, combined with considerable fluctuations in

---

<sup>69</sup> See Communication 'Guidance on the posting of workers in the framework of the provision of services, COM (2006) 159, 4 April 2006, and the accompanying services report SEC (2006) 439, as well as Communication 'Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers', COM (2007) 304, 13 June 2007, and the accompanying services report SEC (2007) 747.

available resources, in 2007, priority has been given to the close monitoring of so called article 228 proceedings and infringement procedures for the non transposition of Directives.

On the basis of the stock taking studies regarding the transposition and application of labour law directives in the Member States as well as the implementation reports elaborated, the Commission is currently elaborating *a comprehensive overall 'state of play'* summarising all outstanding issues which merit further examination and investigation. This will possibly lead to the launching of infringement procedures on a horizontal basis for at least some Directives. Furthermore, in a number of situations administrative contacts will have to be taken with national authorities in order to clarify factual issues further before being able to launch proceedings officially.

It is expected that the launching of these new procedures will risk increasing the workload considerably. A further prioritization may be necessary.

### **3.3 Health and safety at work**

#### *3.3.1 Current position*

##### *3.3.1.1 Existing measures in force*

Health and safety at work is a very 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.

For a list of the measures in force in that sector please refer to Annex I paragraph 1.3

##### *3.3.1.2 Report of work done in 2007*

It should be highlighted that the overall number of outstanding infringement proceedings for non communication and non conformity has decreased, mainly due to the closing of a number of non-communication files.

– Non-communication infringement cases:

The infringement proceeding launched against Austria for failure to transpose Directive 2001/45/EC on Safety and health at work, work equipment, was closed following the judgement of the Court of Justice in the Commission's favour and the communication of the necessary transposition measures by Austria. The infringement proceedings against Luxembourg, which had failed to notify the national measures transposing Directives 2002/44/EC on the minimum health and safety requirements regarding the exposure of workers to vibration and 2003/10/EC on the minimum health and safety requirements regarding the exposure of workers to noise was closed further to the adoption of the necessary national measures. Even though the failure by both Austria and Germany to transpose Directive 2002/44/EC was referred to the Court of Justice, the cases were withdrawn after notification of the necessary transposition measures. In the cases against Austria and Germany regarding the non-communication of the transposition measures for Directive 2003/10/EC, a reasoned opinion was sent and the cases was subsequently closed further to the adoption of the necessary national measures. In the context of the follow-up of EU10 and EU2



enlargement, a letter of formal notice was also sent to Romania for failure to communicate national measures transposing Directive 2003/10/EC. This infringement could be closed after notification of the appropriate national measures. The proceedings against Estonia, France, Portugal and United Kingdom for failure to transpose Directive 2003/18/EC on the protection of workers from the risks related to exposure to asbestos at work were also closed further to the sending of a reasoned opinion and to the communication of the measures transposing that Directive into national law. The proceeding against Luxembourg for failure to transpose Directive 2003/18/EC was referred to the Court of justice<sup>70</sup> but the Commission decided to withdraw the case as the necessary national transposition measures were notified. As for Austria's failure to transpose Directive 2003/18/EC, a reasoned opinion was sent and subsequently the decision was taken to refer the case to the Court of Justice.

The Commission sent 8 letters of formal notice for failure to notify in time measures to transpose Directive 2006/15/EC due for transposition on 1<sup>st</sup> September 2007 against Austria, Czech Republic, Germany, Denmark, Hungary, Italy, Luxembourg and United Kingdom.

– Non-conformity infringement cases:

As regards problems of non-conformity of the transposition of the framework directive 89/391/EEC and of its individual directives, many proceedings in progress continued. For example, in the case against United Kingdom concerning the "as far as it is reasonably practicable" clause, the Court of Justice dismissed the action of the Commission<sup>71</sup>. In the case against Austria<sup>72</sup>, a letter of formal notice under Article 228 of the EC Treaty was sent since certain announced measures had not been notified. These measures were subsequently notified and the case was closed. The proceeding against France<sup>73</sup>, concerning the application of the provisions of Directive 89/391/EEC to RATP and SNCF, continued. A letter of formal notice was sent to Poland for non-conformity of the transposition of certain provisions of the above mentioned Directive.

In relation to individual directives, it should be mentioned that, as regards Directive 92/57/EEC, the proceeding initiated against Italy<sup>74</sup>, concerning the incorrect transposition of the obligation to appoint one or more coordinators for safety and health matters for any construction site on which more than one enterprise is present, followed its course before the Court of Justice. Similarly, the proceeding launched against Sweden followed its course. A letter of formal notice was sent to Denmark concerning the incorrect transposition of several provisions of this individual directive.

The monitoring activities performed by the Commission in 2007 have not been limited to the infringements proceedings as the work on the analysis of the national legislation continued as well as technical meetings were held and pre-226 letters were sent to numerous Member States.

– EU10 and EU2 enlargement follow-on:

---

<sup>70</sup> Case C-325/07

<sup>71</sup> Case C-127/05, judgment of 14 June 2007

<sup>72</sup> C-428/04

<sup>73</sup> Pending Case C-226/06

<sup>74</sup> Pending case C-504/06

During 2007, works continued as regards the follow-up of the EU10 and EU2 enlargements. The monitoring of the communication of the national measures transposing the health and safety at work directives as well as the preliminary analysis of the contents of Directives 89/391/EC, 89/654/EC and 89/655/EC in some Member States resulted in bilateral technical meetings or the sending of several administrative letters to Hungary, Czech Republic and Romania requesting further information on some transposition issues. This analysis also resulted, in some cases, in the launching of infringement proceedings either for non-communication or non-conformity.

## **Petitions**

There are 6 open petitions before the Petitions Committee. The number is supposed to remain stable. In the area of health and safety at work, the petitions concern in general individual cases of application of EU directives that should be treated at national level.

### *3.3.2 Changes underway*

(1) Recently adopted measures due to enter into force which may require additional work

Directive 2006/25/EC on optical radiation is due for transposition on 27 April 2010. A letter was sent to Member States recalling their obligations as regards its transposition. A meeting with representatives from the Member State authorities responsible for the transposition of the directive will be organised and held during the second semester 2009 with a view to having an exchange of views on the state of play and on any possible difficulties encountered.

(2) New measures due to be adopted which may require specific implementation/transposition work

A Commission Directive establishing a third list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC<sup>75</sup> will probably be adopted during the last quarter of 2008.

The envisaged Commission's proposal to modify Directive 2000/54/EC which aims to improve the protection against needlestick injuries at the healthcare sector, will probably be adopted by the Commission in November 2008.

Control of communication and control of conformity of national measures will therefore have to be carried out.

(3) Volume of enquiries, complaints, complaints, infringements work and petitions, and prioritization among them:

The Resolution of European Parliament of 15 January 2008 on the Health and Safety Strategy 2007-2012<sup>76</sup> expressly requests to the Commission to intensify its works on the monitoring of the transposition of the health and safety at work directives.

---

<sup>75</sup> Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work. OJ L 131, 5.5.1998, p. 11

<sup>76</sup> Resolution 2007/2146

The analysis of the conformity of all the health and safety at work directives should 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.

However, as the analysis 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, mines engineers, etc.), a prioritisation was essential.

Priority was given to 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 sectors of activity. To continue these works as regards the correct transposition in the 12 new Member States will remain a priority for the Commission, which will launch infringement proceedings when necessary.

The works on the analysis of the conformity of Framework Directive 89/391/EEC are particularly complex and time-consuming due to the high number of pieces of legislation communicated by Member States to the Commission as implementing measures (eg. in some cases more than 70 separate measures). Another main priority for 2008 is given to the analysis of the conformity of 5 individual directives related to the highest risk sectors: construction (directive 92/57/EEC), maritime sector (directives 92/29/EEC and 93/103/EC) and extractive industries (directives 92/91/EEC and 92/104/EEC). In particular, the first results of the on-going analysis of the transposition of Directive 92/57/EEC lead in certain cases to meetings with the national authorities, pre-226 letters and to the opening of a number of infringement proceedings, when necessary. It is in these sectors of activity that occur the major part of occupational accidents in EU. A complete and correct transposition is a pre-condition for an effective application.

These priorities are in line with the main objectives of the Community Strategy 2007-2012 on Health and safety at Work<sup>77</sup> in particular those of reducing occupational accidents and diseases and guaranteeing the proper implementation of EU legislation.

### 3.3.3 *Evaluation*

Accidents at work and work-related ill health 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 scale of the problem is illustrated by the number of accidents at work. According to European Statistics on Accidents at Work (ESAW), about 4 million accidents at work resulting in more than three days off work occurred in EU-15 in 2004. If accidents causing no absence from work or an absence of up to 3 days are added, the estimated total number rises to more than 6 million. In 2004 there were about 4 400 fatal accidents at work.

The implementation of the EU directives in the field of health and safety at work is bearing fruit at European level. Over the period 2000-2004, the rate of fatal accidents at work in the

---

<sup>77</sup> COM(2007) 62

EU-15 has fallen by 17% while the rate of workplace accidents leading to absences of more than three days has fallen by 20%.

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

The difficulties to establish and follow a rigid prioritisation for the monitoring of EU directives should be highlighted in the field of health and safety at work.

On the one hand, Member States adopt continuously new legislation in the field of Directive 89/391/EEC and its individual directives, requesting the Commission to focus on these 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 procedure. Moreover, complaints, petitions, Parliamentary questions or mail from the citizens raise in certain cases non-conformity issues that need to be urgently investigated, requesting an adaptation of the work plan.

The *acquis* in the field of health and safety at work constantly needs to be up-dated or completed with a view to adapting it to new risks or to technical changes. Furthermore, the *acquis* is subject to periodical reviews as regards possibilities for simplification (exercises "Molitor" (1995), "SLIM" (1996), "Best" (1998), "Better Regulation" (2002), "Administrative costs" (on-going), "SBA" (2008), etc). Major efforts of simplification have been deployed in the past in the particular area of health and safety at work (repealing of directives 80/1107, 82/605 and 88/364 by directive 98/24, codification of directives "biological agents", "carcinogens agents" as well as the on-going works on "work equipment" and "asbestos", amendment of Directive 89/391 as regards the practical implementation reports). Moreover, the candidate countries are constantly being monitored and necessary assistance provided regarding the approximation of laws with the EU *acquis* in the area of health and safety at work.

### **3.4 Anti-discrimination and gender equality**

#### *3.4.1 Current position*

##### *3.4.1.1 Existing measures in force*

For a list of the measures in force in that sector please refer to Annex I paragraph 1.4

##### *3.4.1.2 Report of work done in 2007*

#### **Anti-discrimination**

All the Member States have now transposed Directives 2000/43/EC and 2000/78/EC based on Article 13 EC. Nevertheless, infringement proceedings remain open for incorrect transposition of these Directives.

Concerning Directive 2000/43/EC, 17 Member States have received a reasoned opinion for incorrect transposition: Belgium, Denmark, France, Greece, Ireland, Italy, Portugal, Sweden, United Kingdom, Latvia, Lithuania, Poland, Estonia, Slovenia, Slovakia, Czech Republic and Finland. A complementary letter of formal notice has been sent to the Netherlands and Malta, while Austria and Germany have received letters of formal notice.

As far as Directive 2000/78/EC is concerned, 10 Member States have been sent reasoned opinions for incorrect transposition of the Directive (Czech Republic, Estonia, Finland, Greece, Hungary, Ireland, Italy, the Netherlands, Sweden and France). Three Member States have received complementary letters of formal notice (Latvia, Lithuania and United Kingdom) and 9 have received letters of formal notice: Denmark, Poland, Portugal, Slovakia, Spain, Malta, Belgium, Austria and Germany.

In this field dealing with fundamental rights, the Commission departments made a detailed monitoring of national laws. This might explain the high number of infringement cases, together with other factors, in particular the novelty of the legislation, the complexity of transposing complex notions (direct and indirect discrimination, reasonable accommodation, etc.).

It is expected that following the first two stages of the infringement proceedings, the dialogue between the Member States and the Commission and the new texts of law adopted by certain Member States will allow the Commission to close a substantive number of cases and reduce the number of remaining grievances.

### **Gender equality**

Nine Member States have been notified letters of formal notice for non-communication of the national measures to transpose Directive 2004/113/EC into domestic law: Cyprus, Czech Republic, Greece, Ireland, Malta, Poland, Portugal, Romania and the United Kingdom. The case against Portugal will be closed in the near future since this Member State has now notified national measures.

As regards Directive 2002/73/EC, one infringement procedure for non communication remains open, against Belgium. Following the judgment of the Court of Justice in case C-340/07, Luxembourg has recently notified its national implementing measures.

22 Member States have received letters of formal notice for incorrect transposition of Directive 2002/73/EC into their domestic law: Austria, Germany, Estonia, Finland, Poland, Lithuania, Czech Republic, Denmark, Ireland, Latvia, Slovakia, Slovenia, United Kingdom, Cyprus, Greece, France, Hungary, Italy, Portugal, Sweden, Malta and the Netherlands.

In this field dealing with fundamental rights, the Commission departments made a detailed monitoring of national laws. This might again explain the high number of infringement cases, together with other factors, in particular the complexity of transposing complex notions.

Also in that case, it is expected that following the first two stages of the infringement proceedings, the dialogue between the Member States and the Commission and the new texts of law adopted by certain Member States will allow the Commission to close a substantive number of cases and reduce the number of remaining grievances.

Finally, five Member States received letters of formal notice for incorrect transposition of Directive 96/34/EC: Malta, Latvia, Hungary, Cyprus and Estonia.

There are no open cases under Article 228 of the EC Treaty. Nevertheless, following the expected judgment in case C-543/07 (Belgium) concerning Directive 2002/73/EC, an infringement procedure under Article 228 of the EC Treaty could be launched in the second half of 2008.

## **Petitions**

There are 28 open petitions before the Petitions Committee.

### *3.4.2 Changes underway*

#### (4) Recently adopted measures which may require additional work

The deadline for transposition of Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, was 21 December 2007. Its Article 16 states that the Commission shall present a report on the practices of Member States concerning insurance. The Commission announced, during the negotiations in Council of this Directive, its intention to set up a working group composed of representatives of Member States and stakeholders. The group should start working at the end of 2008 or beginning of 2009.

Directive 2006/54/EC is due to be transposed by 15 August 2008. The Network of Legal Experts on Gender Equality will be asked to deliver a report on the implementation of this Directive in all Member States.

Since this Directive recasts several existing Directives but does not introduce very significant substantial changes, it is expected that the monitoring will lead to only a small number of infringements.

As far as gender equality is concerned, several legislative initiatives are included in the Commission's Legislative Work Programme for 2008: the review of the current legal framework on reconciliation of work and family or private life (including Directives 92/85/EEC and 96/34/EC), but also the review of Directive 86/613/EEC. At this stage, the content of the "reconciliation package" is not clear since it depends on the decision of European social partners to start formal negotiations on certain parts of the package.

The effectiveness of the existing Community law concerning the principle of equal pay for equal work or work of equal value is being analysed in 2008. If necessary, legislative proposals could be made in 2009, based on this analysis.

#### (5) New measures due to be adopted which may require specific implementation/transposition work

The Commission should present in 2008 a proposal for a new Directive prohibiting discrimination on certain of the grounds listed in Article 13 ECT.

Following the experience with the previous two anti-discrimination Directives (2000/43/EC and 2000/78/EC), the Commission could envisage creating an expert group to manage the

transposition of this Directive by Member states, in order to reduce, as far as possible, the number of infringement proceedings.

Since the new Directive will be built on notions already existing in Directives 2000/43/EC and 2000/78/EC and already transposed into national laws, the number of infringement cases for incorrect transposition of this Directive can be expected to be low.

- (6) Volume of enquiries, infringements work and petitions and prioritization among them

Since all the legal texts implement fundamental rights (gender equality and anti-discrimination), it makes it very difficult to set priorities. On the other hand, the nature of the legislation, as well as its innovative character requires additional care when assessing its conformity.

In the future, close cooperation with National Equality Bodies (which are already in place for gender and race) could allow a quicker handling of some complaints. Furthermore, Equality Bodies which contribute to a better application of Community law in Member States could lead to a reduction of the number of complaints lodged by citizens with the Commission.

The number of cases open is not expected to decrease, since the deadline for implementation of two Directives has just recently expired (Directive 2004/113/EC) or will expire in the coming months (Directive 2006/54/EC). This will certainly lead to non-communication and non-conformity proceedings in the next future.

It is therefore intended to organise the work according to the following order of priority:

- (a) Infringements for non-communication of national measures: The existing cases will be pursued, concerning Directives 2002/73/EC and 2004/113/EC. It is expected that some new cases for non-communication will have to be open during the second semester of 2008 concerning Directive 2006/54/EC.
- (b) Infringements for incorrect transposition of Directive 2002/73/EC: In view of the importance of this Directive, it will be considered a priority among the cases of incorrect transposition. The reasoned opinions will, when needed, be sent during the first semester 2008 and throughout the second semester 2008.
- (c) Infringements for incorrect transposition of Directives 2000/43/EC and 2000/78/EC: The follow-up of the procedures concerning both Directives will be done mainly during the second half 2008 and the first half 2009.
- (d) Infringements for other Directives: Currently, 25% of the infringement cases open do not concern one of the Directives listed in the precedent priorities. Considering the workload a prioritisation on all these cases must be done.

## **Petitions**

The management of petitions remains a priority, since petitions are an extremely valuable source of information concerning the implementation of Community law by Member States.

Currently, 28 petitions remain open. It is expected that the number will remain stable or slightly increase, mainly as a consequence of new legislative proposals which attract media attention.

### *3.4.3 Evaluation*

Most of the legislation on gender equality has been in place for a long time. The most recent Directives amend a previous Directive (2002/73/EC) or recasts different Directives (2006/54/EC). Directive 2004/113/EC is a novelty following the changes introduced by the Amsterdam Treaty, since it applies, for the first time, the principle of equal treatment in access to and provision of goods and services.

The legal framework on gender can be considered stable and performing. This is an area where EU law was clearly the driver for action at national level. In the next future, the legislative initiatives envisaged will essentially update and modernize the existing legal framework, with less substantial changes and therefore less infringement proceedings. On the other hand, it is expected that national Equality Bodies will contribute to a reduction of the number of complaints concerning this area of Community law.

As far as anti-discrimination is concerned, the Commission has adopted a proposal for a new Directive on the 2<sup>nd</sup> July 2008. Once adopted, the Directive will extend the protection outside employment for age, religion, sexual orientation and disability.

Based on previous experience it is likely that this new legal text will require monitoring to ensure its transposition and conformity. The Commission will try to limit the number of infringement proceedings by the setting-up of a group of experts in order to discuss the implementation of the Directive by Member States.

In general, it is expected that national Equity Bodies will contribute to a reduction of the number of complaints concerning this area of Community law.

For the next future, the Commission intend to use extensively ways of problem resolution alternative to infringement proceedings (EU Pilot) but also external expertise (Equality Bodies, Network of Independent Legal Experts). Together with the prioritisation set above, this should allow the management of a workload which is not expected to decrease.

## **4 AGRICULTURE AND RURAL DEVELOPMENT**

### **4.1 Current position**

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 EC 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 2436 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 Community 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 subjected to frequent technical modifications under the comitology procedure, and to 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 where direct income support for farmers is largely decoupled from production and introduced mandatory cross-compliance obligations (see Council Regulation (EC) No 1782/2003<sup>78</sup>). It also established comprehensive common rules for direct support in most sectors.

The policy is now 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 first pillar is 100% financed by the Community budget, whereas the second pillar is co-financed between the Community budget and 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 positions and national strategic plans (see Council Regulation (EC) No 1698/2005<sup>79</sup>).

Since the 2007 financial year the financing of the CAP is regulated by the Regulation N° 1290/2005<sup>80</sup>, 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 under the European Agricultural Fund for Rural Development (EAFRD).

---

<sup>78</sup> 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

<sup>79</sup> 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

<sup>80</sup> Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy

The implementation of the CAP is a joint responsibility between the Commission and the Member States, 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 the final beneficiaries has been delegated to the Member States. The extent of the responsibilities of the Member 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.

To ensure that the European Commission's responsibility for the adoption of secondary legislation is exercised in close consultation with the governments of the Member States, various committees of government representatives have been set up by the Commission and are chaired by a Commission's representative. The Commission has thus developed a long tradition of cooperation with Member States that offers the possibility to discuss and prepare the implementation of common rules and to prevent or solve problems related to their application at an early stage.

Since the Green Paper of 1985, the CAP has been submitted to a continuing and regular process of reform, this policy also contributed significantly to the regulatory simplification process notably in 2007 by the adoption of the single Common Market Organisation regulation (see below).

#### *4.1.1 Report of work done in 2007*

##### *4.1.1.1 Actions under Article 226 and 228 EC*

In the area of agriculture and rural development, monitoring the application of Community law under Article 226 of the EC Treaty 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.

The examination of complaints from citizens and companies and internally detected cases led the Commission gave grounds to intervention to the Member States in 64 cases and justified the use of article 226 EC in the following situation.

After the judgment of the Court of Justice in Case C-147/04<sup>81</sup>, the Commission in 2006 addressed a reasoned opinion to France concerning the prohibition to market shallots grown from seeds under the designation "shallots" although such seed shallots are produced and marketed under that name in other Member States. The French authorities reserved the trade designation "shallot" for vegetables produced by vegetative propagation and products not satisfying these criteria could circulate only under the denomination "onion/shallot". Therefore, instead of dealing with the question of consumer protection by way of neutral and objective labelling as envisaged by the Court, the French authorities maintained a barrier to trade contrary to Article 28 of the EC Treaty. Following consultations with the Commission in 2007, France brought the national legislation into line with Community law and permitted

---

<sup>81</sup> Judgement of 10 January 2006, in Case C-147/04, De Groot en Slot Allium BV and Bejo Zaden BV v Ministre de l'Économie, des Finances et de l'Industrie and Ministre de l'Agriculture, de l'Alimentation, de la Pêche et des Affaires rurales, Rec. 2006, p.I-245.

marketing of seed shallots under the denomination "shallot" followed by the indication "originating from seeds" ("issues de semis").

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 2007 to the application of the milk quota regime. Particular attention was devoted to its application in new Member States, in parallel with a special enquiry in this area conducted by the Court of Auditors.

Furthermore, the Commission also examined the compatibility of certain national rules on the obligatory indication of origin for olive oil in Italy.

Particular attention has been paid to the treatment of instances of non-compliance with the Court judgments. In 2007, this resulted in proceedings against Portugal. The Commission took has action against Portugal for the failure to implement a judgment of the Court where 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 2082/93<sup>82</sup>. The Commission considers 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 judgement correctly in view of the principles of effectiveness and proportionality. For this reason the Commission opened Article 228 infringement proceedings against Portugal in 2007.

#### *4.1.1.2 Petitions.*

In 2007 the Commission received 11 petitions related to agriculture which covered a wide range of issues such as drinking water supply in Romania, reform of the sugar industry in Ireland, protection of the designation of origin for a Tuscan cheese in Italy. Examination of these issues did not reveal violations of Community law by Member States.

#### *4.1.1.3 Implementation of the Commission communication on better monitoring of the application of Community law COM(2002)725*

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

#### *4.1.1.4 Technical standards notifications (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 to give each other and the Commission prior notification of all draft rules containing technical

---

<sup>82</sup> Judgement of 5 October 2006 in case C- 84/04, Commission v. Portuguese Republic, Rec 2006, p.I-9843

standards or rules in order to avoid creating new barriers to trade in the internal market. In this context, in 2007 the Commission examined 121 notifications relating to the agricultural sector. Examination of these draft texts led the Commission to issue five comments and three detailed opinions calling for the notifications to be brought into line with Community law. Furthermore, regarding a notification concerning Spain's draft Decree concerning fruit juices the Commission issued a "blockage" on the draft national measure for a period of twelve months as the Commission intended to legislate on the subject covered by it.

#### *4.1.1.5 Comitology*

The Commission makes use of a wide range of instruments and initiatives aimed at promoting better implementation and at identifying and addressing potential problems as early as possible. In this regard, 256 meetings of 31 management and regulatory committees offered the possibility to discuss the difficulties in the implementation of the rules of the CAP with the representatives of the Member States concerned and to remind them of their duty to comply with Community law. Moreover, in 2007 the Commission was assisted by a number of advisory, permanent and temporary groups of experts (in total 112). These contacts helped to clarify facts and rule out misunderstandings. Moreover, a register of interpretative notes on agricultural law was established by the Commission services (called RIPAC) for a long time and is still in use. The notes are usually drawn up as a result of a written or oral question posed by a Member State. In 2007, two new interpretative notes have been issued: one concerning the sugar sector (on the treatment of quantities of isoglucose) and the other related to the marketing standards for eggs (producer code)."

#### *4.1.1.6 Assessment of rural development programs*

During 2007 the new rural development programs were submitted to the Commission for appraisal. Indeed, on 1st January 2007, rural development policy entered the new 2007-2013 programming period with the establishment of national strategy plans and the national or regional developments programs. The core task for Rural Development in 2007 was thus the evaluation of the national strategy plans and the approval of the 94 programmes for the new period. The approval process accelerated during the year and a total of 54 programmes were formally approved by the Commission in 2007. In addition, 16 programmes received a favourable opinion of the Rural Development Committee at its meeting in December 2007, and for 9 other programmes the main preparatory work was finished by the end of 2007. These 25 programmes will be formally approved by the Commission in early 2008 following the carry-over of commitment appropriations from 2007 to 2008, according to Article 9(2) of the Financial Regulation. Furthermore, within the framework of the Rural Development policy, additional aid provided by Member States in the development programs have also been checked.

#### *4.1.1.7 EU 10 and EU 2 enlargement follow-up.*

Transposition of agricultural directives did not create any major issues in 2007. Bulgaria and Romania communicated all national measures which adequately transpose all agricultural directives into their national law.

Bulgaria and Romania have been audited several times in 2007 in the context of clearance of accounts procedure (see below). In autumn 2007, the Commission started the administrative procedure for the application of the safeguard mechanism laid down in Commission

Regulation (EC) No 1423/2006 in respect of Romania. However, following the final report from an independent body on the situation, the Commission eventually decided to halt the procedure and not to impose any safeguard measures on Romania. The deficiencies found are, however, being followed-up through normal conformity procedures.

#### *4.1.1.8 Conformity clearance*

According to the principle of shared management, Member States are responsible for paying subsidies under the common agricultural policy to the final beneficiaries. The Commission for its part controls, mostly by means of on-the-spot audits, whether the expenditure has been effected by Member States in conformity with Community rules and, where this is not the case, excludes the expenditure concerned from Community financing (financial corrections). This mechanism, called conformity clearance, has over the years proven to be a very effective and efficient mechanism for the Commission to protect the Community's financial interests and to assume its role as guardian of the Treaty.

The conformity clearance shields the Community budget from expenditure which should not be charged to it. In contrast, it is not a mechanism by which irregular payments to final 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 an extrapolation. Where this is not possible, flat-rates are used which take account of the severity of the deficiencies in order to reflect the financial risk for the Community.

Where individual irregular 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 correction in question relates exclusively to deficiencies in the Member State's management and control system, the correction is an important means to improve the functioning of that system 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 2007, the Commission adopted three conformity decisions imposing such financial corrections on Member States:

- Decision 2007/243/EC of 18 April 2007 excluding EUR 285.3 million from Community financing: The main corrections concerned EUR 60.6 million charged to Spain for non-respect of payment deadlines in the nuts payment scheme, EUR 53.7 million charged to Great Britain for non-respect of payment deadlines, EUR 48.5 million charged to Italy for non-respect of payment deadlines, EUR 35.8 million charged to Greece because its land parcel identification system implemented to manage the direct payments schemes was found not to be fully operational to the standard required and the on-the-spot checks were still carried out too late to be fully effective, EUR 26.7 million charged to the Netherlands for an insufficient number of substitution controls in the export refund scheme, EUR 17 million charged to Spain for non-respect of payment deadlines and EUR 8.7 million charged to France for deficiencies in the technical and accounting controls concerning the over thirty months slaughter scheme;

- Decision 2007/647/EC of 3 October 2007 excluding EUR 145.2 million from Community financing: The main corrections were EUR 76.4 million charged to Italy for insufficient quality and quantity of controls in olive oil production sector and EUR 49.7 million charged to France for weaknesses in recognition criteria performed by the producers' organisations;
- Decision 2008/69/EC of 20 December 2007 excluding EUR 256,3 million from Community financing: The main corrections concerned EUR 183.9 million charged to Spain for shortcomings or lack of checks on crop declarations and yields as well as on monitoring the controls of mills in olive oil production sector, EUR 16.6 million charged to Spain for weaknesses in on-the-spot checks (remote sensing and classical field visits) for area aids, EUR 10.5 million charged to Italy for weaknesses in the management and control of the quota system in tobacco production scheme and EUR 9.7 million charged to the United Kingdom for late payments, mainly for the extensification premium.

Moreover, in 2007, the Commission continued its conformity work by carrying out 158 on-the-spot audits in the Member States and launching 217 desk audits. In around one third of the on-the-spot checks, the Commission's auditors found deficiencies in Member States' application of the relevant Community rules, of which some were of minor importance while others were more serious. These deficiencies are being followed-up and may, eventually, lead to financial corrections imposed on Member States<sup>83</sup>.

#### 4.1.1.9 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 agricultural sector is concerned, the Communication on Simplification and Better Regulation for the Common Agricultural Policy (COM (2005) 509) led to the creation of the ongoing simplification of the Common Agricultural Policy action plan. The Action Plan is used to identify, plan and monitor the implementation of the simplification projects within the agricultural sector.

On 18 December 2006 the European Commission presented a proposal to the European Parliament for merging the 21 currently functioning agricultural markets into a single CMO that was adopted in October 2007<sup>84</sup>. The single CMO makes legislation more transparent and easily accessible and reduces the administrative burden for Member States and businesses. It should not be interpreted as a way to reform the policy by the back door. The single CMO allowed the repeal of almost 50 Council acts and replaces more than 650 legal provisions in the current regulations with around 200. It must be noticed that, previously, the Commission had for many years screened the 'acquis' to identify obsolete agricultural legislation, a task supported by the two-year programme on "Updating and simplifying the Community *acquis*". For instance, in 2003 and 2004, as part of ongoing simplification activities, around 520 agricultural legal acts were removed from the list of acts in force by formal repeal and recognition of obsolescence.

---

<sup>83</sup> For a more detailed description of the conformity clearance activities see DG AGRI's 2007 Annual Activity Report.

<sup>84</sup> Council Regulation (EC) n°1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products

## 4.1.2 Changes Underway

2007 was an important year for European agriculture, with fundamental reforms in two major sectors—wine and fruit and vegetables as well as the launch of a reflection on how to improve the efficiency of the Common Agricultural Policy in the future.

### 4.1.2.1 Recently adopted measures due to enter into force

In 2007, the CAP reform process continued with the reform of the last major sectors, fruit and vegetables and wine. The objectives of the wine reform (see Proposal for a Council Regulation on reform of the wine sector<sup>85</sup>) are to increase competitiveness while taking social and traditional aspects into account, to establish simple effective rules, balance supply and demand and ensure production respects the environment.

The wine reform provides for a fast restructuring of the wine sector in that it includes a voluntary, three-year grubbing-up scheme to provide uncompetitive producers with a reasonable alternative to solve their social or financial problems and to remove surplus wine from the market. Subsidies for distillation will generally be phased out and the money, allocated in national envelopes, can be used for measures like wine promotion on third country markets, innovation, restructuring and modernisation of vineyards and cellars and for crisis prevention measures. The reform will ensure environmental protection in wine-growing regions, safeguard traditional and well-established quality policies and simplify labelling rules, for the benefit of producers and consumers alike. The planting rights system will be abolished prior to 1 January 2016 with a possibility for a Member State to prolong it with a national or regional scope until 31 December 2018 at the latest. A solution to the irregular plantings problem has also been incorporated. However, the option to increase the natural alcoholic strength using sucrose has been maintained but the enrichment levels have been reduced.

Political agreement has been reached at Council in December 2007: a report on the experience gained with the implementation of the reform is to be prepared by the Commission by the end of 2012 at the latest. The Commission implementing rules are being prepared via the Management Committee procedure; some via a Regulatory Committee procedure notably concerning wine making practices and geographical indications.

The reform, which is budget neutral, should enter into force on 1 August 2008 except for regulatory measures (wine making practices, geographical indications and labelling) which enter into force one year later.

A reformed Common Market Organisation for fruit and vegetables, together with a fresh set of implementing rules, has been in place as from 1 January 2008<sup>86</sup>. This reformed CMO has been integrated into the single CMO in 2008. The aim of the reformed CMO is to improve the competitiveness and market orientation of the fruit and vegetable sector, reduce income

---

<sup>85</sup> COM(2007) 372 final of 4.7.2007

<sup>86</sup> Council Regulation (EC) No 1182/2007 of 26 September 2007 laying down specific rules as regards the fruit and vegetable sector, amending Directives 2001/112/EC and 2001/113/EC and Regulations (EEC) No 827/68, (EC) No 2200/96, (EC) No 2201/96, (EC) No 2826/2000, (EC) No 1782/2003 and (EC) No 318/2006 and repealing Regulation (EC) No 2202/96 and 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

fluctuations resulting from crises, promote consumption – so contributing to improved public health – and enhance environmental safeguards. New measures were set out to encourage growers to join Producer Organisations. POs are offered a wider range of tools for crisis management; the fruit and vegetable sector is integrated into the Single Payment Scheme; a minimum level of environmental spending is required; EU funding for promotion and organic production is increased; and export subsidies for fruit and vegetables are abolished. Major simplification efforts and the principle of shared management which transfers monitoring and competence for the imposition of sanctions for the most part to the Member States should lead to the timely and correct implementation of the measures provided for. Particular attention, however, may be needed for some issues like marketing standards and the entry price system. The reporting obligations provided by the new acquis at the level of Member States and producer organisations should enable detection of possible flaws or weaknesses in implementation.

In its report to the Council on the application of the system of cross compliance establishing common rules for the direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (COM(2007)147final of 29 March 2007<sup>87</sup> , the Commission identified several difficulties in the implementation of the cross compliance rules that needed to be adapted. Following the commitment made in its March 2007 report to improve and simplify the system of cross compliance, the European Commission adopted the regulatory measures presented in the report which are under its own responsibility<sup>88</sup> . Furthermore, the Commission presented to the Council a proposal for a Council Regulation amending Regulation (EC) N°1782/2003, proposing specific improvements in the system of cross compliance that was adopted in February 2008<sup>89</sup> .

#### *4.1.2.2 New measures due to be adopted*

In 2008, the Commission will present legislative proposals in the context of its communication of the so-called 'Health Check' of the CAP which will build on the approach which began with the 2003 reforms, it will improve the way the policy operates based on the experience gained since 2003 and make it fit for the new challenges and opportunities in an EU of 27 Member States in 2007. The reforms have modernised the CAP, but the Health Check represents a perfect opportunity to take the policy review further. It will ask three main questions: how to make the direct aid system more effective and simpler; how to make market support instruments, originally conceived for a Community of Six, relevant in the world we live in now; and how to confront new challenges, from climate change, to bio energy, water management and the protection of biodiversity. The Communication contained such proposals as moving away from entitlements based on historical payments towards a "flatter rate" system, increasing the rate of decoupling in those countries which opted in a number of farm

---

<sup>87</sup> (COM(2007)147final of 29 March 2007

<sup>88</sup> Commission Regulation (EC) n°972/2007 of 20 August 2007, laying down detailed rules for the implementation of cross compliance, modulation and IACS, Commission Regulation (EC) n°1550/2007 of 20 December 2007, laying down detailed rules for the implementation of cross compliance, modulation and IACS. Furthermore, the Commission presented to the Council a proposal of a Council Regulation amending Regulation (EC) n°1782/2003, proposing specific improvements in the system of cross compliance (COM (2007)484 of 29 August 2007

<sup>89</sup> Council Regulation (EC) No 146/2008 of 14 February 2008 amending Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)



sectors to maintain the link between subsidy and production, although coupled support may still play a role in regions where production is small-scale but of particular economic or environmental importance, gradually reducing the support level as overall payments to big farmers increase, fixing minimum surface or aid level requirements to qualify for Community support, reviewing the cross compliance standards which farmers are obliged to respect to receive their support from Brussels. This could mean deleting unnecessary obligations, but also adding new ones to deal with new challenges like improving water management and mitigating climate change.

The Health Check of the CAP, by increasing the degree of decoupling of payments will facilitate the application of Community law by Member States (and farmers). Decoupled payments (mainly payments under the Single Payment Scheme) are simpler and less burdensome for administration and farmers, in particular because they reduce the number of specific eligibility/compliance requirements for coupled aids, by aligning them with the existing rules for the SPS.

At the same time the Health Check will review the implementation of the SPS (which was only introduced in 2003) and proceed with making some adjustments and technical simplification where experience has shown that rules should be simplified. This will also facilitate the application by Member States and farmers of direct payments.

The Commission hopes that the preparatory working contacts between experts, review of problems arising and multilateral and/or bilateral exchange of information should be sufficient at this stage to ensure application of the new measures proposed.

Furthermore, the proper application of the new Community rules will require the adoption of implementing rules by the Commission within the framework of the Comitology procedures. Besides its role in the adoption of implementing rules, the Management Committee for Direct Payments, which meets every month, is a privileged forum for the exchange of information and best practise between Member States and the Commission.

#### *4.1.2.3 Prioritisation*

As already mentioned, in the area of agriculture and rural development, monitoring the application of Community law under Article 226 EC proceeding 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 aforementioned common rules, thus jeopardizing the effectiveness of important mechanisms of the common agricultural policy, particularly regarding the 1st pillar.

For the years 2008 and 2009, 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" <sup>90</sup>.

#### *4.1.3 Evaluation*

Taking into account the volume of Community law currently in force, the *acquis* in the agricultural sector may be considered as globally stable and manageable or subjected 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 given previous experience of the relatively smooth adoption and timely entry into effect of this type of measures.

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. For 2008, the annual work plan provides for 126 on-the-spot checks and around 80 desk audits.

For the *acquis* for which implementation difficulties were identified in 2007, notably cross compliance, the Commission chose to adapt and simplify the legislation without prejudice to the possibility to make use of the infringement and clearance of accounts procedures in the future. Regarding the implementation of the fruit and vegetable reform regulations, the national strategy for operational programmes and the national framework for environmental actions will be subject to expert meetings within the management committee, which will provide guidelines.

In the wine sector, to reduce the risk of inadequate respect of the rules, the new wine CMO incorporates improved monitoring and sanction provisions.

## **5 ENERGY AND TRANSPORT**

### **5.1 Current position**

#### *5.1.1 Existing measures in force*

For the list of the existing measure in force together with the different legal basis to control the application of Community law in the sector of energy and transport please refer to Annex I paragraph 2.1 and 2.2

---

<sup>90</sup> 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.

## 5.1.2 Report of work done in 2007

### 5.1.2.1 Articles 226-228 EC / 141-143 Euratom. "Infringement procedures"

In 2007, DG TREN departments dealt with a total of 611 cases for failure to comply with EU legislation. While the total of cases decreased compared with the situation in 2006 (a total of 714 cases), it is worth noting that, following the tendency started in 2006, the number of non-conformity cases is higher than the number of cases for lack of communication of national transposing measures (67% versus 33%). At the end of 2007, 289 cases were open, 198 in the field of transport and 91 for energy.

Conformity checks carried out in 2005 and 2006, which mainly related to the transposing measures for the core directives on the internal market for gas and electricity, as well as for the maritime sector ("Erika 1 package"), had as a consequence a considerable increase in the number of letters of formal notice and reasoned opinions for non conformity or bad application of Community law. In 2007, while examination of open cases related to the energy internal market and the safety of transports went on, the total number of letters of formal notice and, in particular, of reasoned opinions diminished. Compared with the Commission's overall statistics, DG TREN's rate of "useful decisions" during 2007 was however well over average.

In the field of transports, the Commission services paid special attention to a series of files related to the non-conformity or bad application of Community law: the respect of the use related charges for the use of road infrastructures; the rules on admission to the occupation of road transport and road passenger operator; the application of discriminatory taxes in maritime ports and airports; the freedom to provide services in the maritime transport (maritime cabotage), the respect of the rules on the control of vessels by the port state authorities; the respect of the provisions on port reception facilities for waste resulting from the operation of ships, etc.

In the field of energy, the national implementation measures required for the opening of the gas and electricity markets were closely controlled in a number of Member States whose national mechanisms were in contradiction with the relevant directives. The Commission's services also focussed on other aspects such as the promotion of electricity produced from renewable energy sources; the use of biofuels and other renewable fuels in transport; the energy efficiency, including the assessment of national plans and the energy performance of buildings (minimum standards and certification); the rules on oil stocks, and the security of supply in gas, among other aspects.

### 5.1.2.2 National implementing measures.

Concerning the transposition of Directives, notification of national implementing measures often comes only after the transposition deadline has elapsed. A total of 260 non-communication cases were therefore opened in 2007, of which however 166 could be closed following later communication of the national transposing measures. This quick evolution of cases results from the systematic opening of infringement procedures by empowerment after the transposition deadline has elapsed, which does not take into account the individual situation and precise progress made by Member States.

At the end of 2007, a slight increase of 0.2% could be noted in the transposition rate for Directives on "energy" which reached 97.8%; in the field of "transport" the delays in the transposition of the directives are being solved and the transposition rate is in progress, having reached 97.4%. The objective of 98.5% set by the European Council in 2001 remains to be reached for both fields of activity. Member States need to intensify efforts, in view of the more ambitious target agreed by the European Council in 2007 (99 % to be achieved by 2009).

The assessment of the compliance of the national transposing measures represents a considerable challenge in a Union to 27 Members. Control of conformity varies from one sector to another, and no single approach is followed within DG TREN. The services use all the means at their disposal, and privilege a practical case by case approach, which duly takes into account the interests at stake, the equal treatment of Member States and resources available.

Some examples of alternative or complementary means to check compliance can be found in:

- Railway sector: verification of compliance with the Directives of the "1<sup>st</sup> Railway Package" based on the answers to questionnaires sent to all Member States.
- Maritime sector: analysis of the inspection reports from the European Maritime Safety Agency.
- Conventional sources of energy: assistance from the Energy Regulators Group (EREG) and from the Gas Coordinators Group for identifying possible breaches; organisation of fact finding missions for assessing that the directives are implemented in practice and issuance of interpretative notes, with guidance on individual aspects of the directives, discussed in detail with the national administrations.
- Radiation protection: guidance documents in place on specific aspects of the relevant legislation (e.g. "Guidelines for the Regulatory Control of Consumer Products Containing Radioactive Substances in the European Union, published in 2007") and risk-based analysis usually ensured through reports from external consultants on different national approaches to specific points of the Directives (e.g. "A Review of Consumer Products Containing Radioactive Substances in the European Union, published in 2007). The role of the Group of Scientific Experts provided for in Article 31 of the Euratom Treaty is essential in these activities.

#### *5.1.2.3 Complaints*

During 2007, a total of 38 complaints were registered and dealt with, 14 for energy and 24 for transport. Based on these complaints, DG TREN services proposed the following decisions during the same period:

- Closure of the case (no infringement found): 3 cases (+ 5 cases closed early 2008)
- Opening of infringement procedures (sending of a letter of formal notice): 1 case (+ 6 early 2008)
- Case treatment to follow another open case: 7 cases

– No decision yet: 16 cases still under assessment.

DG TREN moreover holds a special register of correspondence from air passengers. During 2007, a total of 2.253 enquiries were registered and answered concerning the application of Regulation (EC) n° 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. In most of the cases, complainants were instructed about national procedures and referred to their national enforcement body.

#### *5.1.2.4 Cooperation with Member States.*

DG TREN services are in permanent contact with national administrations, either by informal contacts with the competent ministries or through the Permanent Representations, through the work of committees and groups of experts, in the context of preparation and follow up of inspections and in other fora, like the organisation of and participation in workshops and conferences.

The preventive approach initiated in 2006 (Luxembourg) was maintained and three package meetings were organised in Athens, Paris and Rome, where DG TREN services discussed with the relevant national authorities on ongoing infringement cases and status of transposition for Directives due to be transposed in 2007 and 2008. In spite of the slight improvement observed following these meetings, Greece, France and Italy, together with Luxembourg and Spain, remain among those Member States having the largest number of open infringement cases. The Commission's services are still in contact with the French and Italian administrations on some outstanding problems. The organisation of follow-up package meetings is not excluded.

#### *5.1.2.5 Petitions*

During 2007, DG TREN received for assessment a total of 22 new parliamentary petitions, 21 for transport and 1 for energy. It was furthermore associated to the examination of 12 new petitions dealt with by other DGs (9 concerning transport matters and 3 for energy).

No formal infringement procedure was opened based on the information received from the Parliament and later Commission's inquiries.

#### *5.1.2.6 Parliamentary questions*

During 2007, DG TREN prepared the Commission's answer to a total of 650 parliamentary questions, 433 for transport and 218 for energy. It was furthermore associated to preparing the answer to additional 571 questions.

No formal infringement procedure was opened based on the information received from the Parliament and later Commission's inquiries.

#### *5.1.2.7 Follow-up of enlargement*

DG TREN continued to monitor the implementation of the corrective action plan in Bulgaria throughout 2007 following the Commission's safeguard measure adopted in 2006 restricting the benefits of the European Single Sky (Regulation n° 1962/2006, of 21 December 2006, in application of Article 37 of the Act of Accession of Bulgaria to the European Union). In

particular it was able to observe significant improvements in the area of aircraft operations thanks to radical measures taken by the Bulgarian authorities with regard to 5 cargo carriers. Also, with a view to verifying progress after the imposition of the safeguard measures in December 2006, the European Aviation Safety Agency carried out a global standardisation visit in Bulgaria in December 2007. The results of this visit will be assessed in 2008.

Under Article 6(2) of their Act of Accession, Member States that entered the EU in 2004 committed themselves to accede to the Agreement between the Non-Nuclear-Weapon States of the European Atomic Energy Community, the European Atomic Energy Community and the International Atomic Energy Agency in implementation of Article III(1) and (4) of the Treaty on the Non-Proliferation of Nuclear Weapons of 1977 (INFCIRC/193), as supplemented by the Additional Protocol to this agreement. The procedure for the accession of Poland, Malta, Hungary and Lithuania to the said Agreement was finalized within 2007. The procedure for the accession of the Republic of Cyprus was being finalised in the first months of 2008.

By their Acts of Accession to the EU, several new Member States committed themselves to the early closure, for safety reasons, of nuclear power stations. As the Commission repeatedly made clear, this primary law requirement cannot be derogated from. Therefore, DG TREN continued to monitor both compliance with the early closure obligation and the implementation of accompanying programmes.

Having been following the Ignalina and Bohunice Programmes, DG TREN is also responsible (since 1 January 2007) for the implementation and follow-up of the Community assistance of the Kozloduy Programme. In 2007 a total of 113 M€ was committed to the Ignalina Programme, 56.72 M€ to the Bohunice Programme and 74.28 M€ to the Kozloduy Programme. As foreseen in the Protocols of the Treaty of Accession, implementing rules for continued assistance in 2007-2013 were finalised and adopted by the Commission (C(2007)5538).

#### *5.1.2.8 Reporting activities*

During 2007, DG TREN prepared a number of Commission's communications aiming at reporting on tasks related to the implementation of Community law in energy and transport. They are a key element for spreading knowledge of EC law among the stakeholders and for improving the quality of implementation all over Europe, while keeping other institutions up-to-date on the Commission's activities.

For a list of such communications please refer to Annex I paragraph 2.3

#### *5.1.2.9 Report of work done in 2007, by sector*

##### **5.1.2.9.1 Energy**

###### **5.1.2.9.1.1 Security of supply in electricity and natural gas**

In order to monitor the present and future security of gas supply situation and provide a coordination mechanism in case of a possible supply crisis, Directive 2004/67/EC establishes a Gas Coordination Group chaired by the European Commission and composed by representatives of the Member States, representatives of the industry concerned and

representatives of relevant consumers. In 2007, the Commission convened 5 meetings of the Gas Coordination Group. In addition, the same directive requires Member States to establish emergency plans and to implement a number of measures. An in-depth examination of these measures and emergency plans is taking place with each Member State within the Gas Coordination Group and it enables the identification of best practices and cross-fertilisation.

#### **5.1.2.9.1.2 Internal market for electricity and natural gas**

Three types of structural actions were carried out in order to cross check and make sure that national transposing measures were not only legally correct, but also duly implemented:

- Systematic fact finding missions in all member States during 2006 allowed for establishing national profiles and for identifying the main problems for the functioning of the market; these problems were identified in the Commission's report of 10 January 2007.
- Cooperation with the Commission's services in charge of Competition in the framework of the 2005 sectoral enquiry (see the parallel report adopted also on 10 January 2007).
- Reinforced cooperation with the Energy regulators (EREG), for monitoring Regulations n° 1228/2003 (cross border exchanges of electricity) and n° 1775/2005 (transport of natural gas), which allowed the Commission to detect a number of violations of the regulations in a systematic and comparable manner.

#### **5.1.2.9.1.3 Hydrocarbons**

In 2007 and pursuant to 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) or the previous stocks legislation, the Commission continued to monitor oil stocks levels in Member States as well as the timely communication of data thereupon. Following corrective actions taken by Member states, most infringement procedures addressing breaches on those grounds could be closed. The Commission however decided to refer Belgium to the Court of Justice for persistently failing to maintain the minimum level of oil stocks required by Community law.

Given improvements in stocks levels and reporting in several Member States, the Commission's services were also able to focus their attention on some of the fundamental concepts underlying the directive, such as the need to maintain stocks fully at disposal in case of supply difficulties or the obligation to ensure their availability and accessibility. Consequently, at year end, the possibility of launching one procedure was being considered, in relation to the use of stocks as security for debts. The Commission's services nevertheless kept insisting on the importance of compliance with regard to stock levels as any drop in stocks below the legally required levels in one Member State inevitably leads to a drop in the quantities available in the European Union as a whole.

With regard to the application of Directive 94/22/EC, the Commission remained attentive to OJ publications requested by Member States, concerning the granting and the use of authorisations for the prospection, exploration and production of hydrocarbons. Infringement procedures were launched in relation to conformity shortcomings of implementing measures adopted in two Member States. In the course of one of these procedures, the Commission

decided to send a reasoned opinion to Poland, asking this Member State to correct its procedures.

Concerns were raised in relation to compliance with reporting requirements under Council Regulation (EC) N° 405/2003 (monitoring of imports of hard coal). Some Member States did not provide the Commission with information on imports of hard coal and on import prices, as and within the delay stipulated under the legislation. This situation may lead to the launch of one or more infringement procedures.

#### **5.1.2.9.1.4 Electricity produced from renewable energy sources**

The purpose of the Directive on the promotion of the electricity produced from renewable energy sources in the international electricity market is to increase the contribution of renewable energy in electricity production.

Out of a total of 17 cases that were dealt with in 2007 (4 of which were opened in the same period), 7 cases could be closed by the end of the year. The cases were related to the incorrect transposition of the Directive or the incorrect application of Community law. The open infringement cases on incorrect application of Community law are mainly based on the breach or incomplete transposition of several Articles of the Directive, such as on guarantees of origin, on simplification of administrative procedures, on access to grid or on the lack of appropriate steps to encourage greater consumption of electricity produced from renewable energy sources.

Member States must report biannually to the Commission on measures taken to promote the use of renewable energy sources. Last reporting year was 2007. Nine Member States missed to send their reports on time.

#### **5.1.2.9.1.5 Biofuels**

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

Out of 13 cases that were examined in 2007, one was opened during the year. By the end of the year all cases had been closed. Three cases were related to the incorrect transposition of the Directive or the incorrect application of its provisions. The latter were mainly based on breach of Article 3.1 on minimum proportion of biofuels and other renewable fuels.

Before 1st July each year, Member States must report to the Commission on measures taken to promote the use of biofuels or other renewable. Infringement proceedings were initiated against the Member States who failed to report by 1 July in 2004, 2005, 2006 and 2007. During 2007, all 10 cases related to reporting were closed.

#### **5.1.2.9.1.6 Energy end-use efficiency and energy services**

In order to support further development of energy end-use efficiency and energy services the Commission initiated preparatory work for establishing a Concerted Action on the Energy End-Use Efficiency and Energy Services Directive (ESD). The Concerted Action will be



established with a view to enhance and facilitate information exchange (both between Member States and between Member States and the Commission) and uptake best practice to strengthen implementation of the ESD, to build capacity and transfer knowledge, to identify potential areas for convergence of national procedures, and to complement and support the work of other fora such as the Energy Demand Management Committee.

The notification of the National Energy Efficiency Action Plans was enforced by 15 infringement cases against Member States.

The Commission also supported the Executive Agency for Competitiveness and Innovation (EACI) with regard to several projects relating to the ESD under the Intelligent Energy Europe Programme including the a project on the harmonisation of measurement methodologies. Preparatory work was also conducted on cooperation with CEN standards for ESD.

The overall policy was presented to the public and stakeholders during the course of the year where the Commission actively participated in various events ranging from the Summer Study of the European Council for an Energy Efficient Economy to the Technical Assistance Information Exchange (TAIEX) conference where energy efficiency and services were the central themes.

#### **5.1.2.9.1.7 Eco-design Directive**

A total of 21 infringement procedures were launched in 2007 for non communication of national transposing measures by Member States. Up to now, 7 infringement procedures are still open for non-communication.

#### **5.1.2.9.1.8 Energy Performance of Buildings**

In order to realize energy savings in the buildings sector, several activities were initiated, in particular with regard to the Energy Performance of Buildings Directive (EPBD). The first phase of the Concerted Action (2005-2007), which provided the Member States with support for the implementation of the EPBD by establishing a platform for the exchange of best practices and lessons learnt, was finalised. In parallel the second phase of the Concerted Action was launched to continue the Member States' exchange on ways how to implement the EPBD in practice. The adoption and notification of national legislation on implementing the EPBD was enforced with 17 ongoing infringement cases against Member States.

The Commission continued its work on the 31 CEN standards for energy performance of buildings, which provide the Member States with calculation and rating methodologies and give guidance on how to establish their certification scheme. The Commission also supported the actions of the Executive Agency for Competitiveness and Innovation (EACI) with regards to 19 ongoing and 20 starting projects on the EPBD under the Intelligent Energy Europe Programme.

In order to inform the stakeholders and the general public on the actions of the Commission, the Buildings Platform ([www.buildingsplatform.org](http://www.buildingsplatform.org)) was further upgraded and an event on the EPBD was organised during the first European Sustainable Energy Week 2007. This effort was continued with the preparations of the follow-up event during the European

Sustainable Energy Week 2008. The Commission also actively participated in about 10 events of stakeholders and Member States on energy efficiency in the buildings sector.

#### **5.1.2.9.1.9 Cogeneration**

In the framework of the Directive on the promotion of cogeneration, the Commission organised two committee meetings to discuss with the Member States proposals for a future Commission Decision on detailed guidelines for this Directive, the progress of transposition in each Member State and the experiences with regard to the implementation of the Directive. In bilateral contacts the Commission provided guidance for several Member States.

The Commission also participated in conferences to explain EU cogeneration policy to stakeholders and the general public during so called Cogeneration days that were organised in about ten individual Member States. The Commission paid special attention to new Member states during a specific conference on reporting obligations and the implementation of the Directive that was organised together with the JRC in Petten.

Main events in which the Commission worked on dissemination of information to stakeholders were the annual conference of COGEN Europe in Brussels and the conference of Euroheat and Power in Copenhagen. Both are European trade associations which are important for cogeneration and district heating.

In cooperation with the Association of Issuing Bodies, a scheme for Guarantees of Origin was further developed, in order to provide Member States a ready to use scheme for implementing Article 5 of the Directive.

In 2007 also the preparations started for a cogeneration event during the Sustainable Energy Week 2008, to be organised by DG TREN, the International Energy Agency and COGEN Europe in early 2008.

#### **5.1.2.9.1.10 Euratom**

– Newest legislation

Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste and spent fuel is due to be transposed by end of 2008 and will replace the existing Directive 92/3/Euratom. During 2007, the way to transposition was closely followed up by the Commission's services based on a pre-established transposition plan, which included the immediate constitution of the advisory committee foreseen in the Directive so that the standard document to be used for the purposes of the Directive could be available as soon as possible, and the organisation of a transposition workshop, among other accompanying measures.

– Infringement procedures

With the exception of the case of the Czech Republic, all infringement procedures involving the new Member States that did not accede to the tri-partite Safeguards agreement between the EU Non-Nuclear-Weapon States, the European Atomic Energy Community and the International Atomic Energy Agency (INFCIRC/193), as required by these Member States' Act of Accession to the EU, were closed because of compliance.

Negotiations continued with the Sellafield (UK) operators with a 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). Furthermore, the progress in the case of a Commission Directive based on Article 82 of the Treaty, concerning another installation on the same site, was monitored.

On 18 July 2007, the Court of Justice of the European Communities ruled (Case C-155/06) that the UK had failed to fulfil its obligations under Article 53 of the Directive 96/29/Euratom of 13 May 1996 (Basic Safety Standards). The Commission invited the UK to outline the legislative measures planned to rectify the situation.

- Notifications of draft legislation under Article 33 Euratom

The submission of draft texts, under Article 33 of the 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.

During 2007, notifications of national measures implementing Directive 96/29/Euratom ("Basic Safety Standards") made up almost a half of the whole, while notifications related to Directive 2003/122/Euratom (on the control of high-activity sealed radioactive sources and orphan sources) represented one-third.

- Activities under Articles 35 and 37 of the Euratom Treaty

Under Article 35 of the Euratom Treaty, the Commission services conducted seven verification missions in Bulgaria, Germany, Estonia, Finland, Luxembourg, Romania and Spain. 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.

Moreover, by its Communication of 20<sup>th</sup> December (COM(2007) 847 final), the Commission provided an overview of all Article 35 verifications carried out since 1990.

Under Article 37, twelve Commission opinions were adopted on plans for the disposal of radioactive waste submitted by Member States.

- Safeguards Inspections

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. A total of 1.485 inspections were carried out during 2007.

- Post-Chernobyl legislation on foodstuffs

The Commission continued to monitor the implementation of the specific legislation, adopted following the nuclear accident in Chernobyl, governing imports of agricultural products originating in third countries.

The results of the study to update the Commission's information basis on the potential radioactive contamination of specific foodstuffs originating from third countries were presented to the Committee under Article 7 of Council Regulation n° 737/90/EEC. The study indicated that, for a number of agricultural products, controls of the radioactive caesium contamination at the border of the EU will remain necessary for at least 20 years.

– Notifications under Article 103 of the Euratom Treaty

Article 103 is part of the Treaty Chapter on external relations. It establishes a procedure for the preliminary examination of the compatibility with the Treaty of draft agreements or contracts, which are about to be concluded, within the scope of the Treaty, between a Member State and a third party (i.e. a third State, an international organisation or a national of a third State).

This Euratom Treaty-specific procedure, which has to be finalised within a binding one-month time frame, is intended to ensure that the Treaty requirements are not frustrated by international agreements or contracts that the Member States may conclude.

In 2007, the number of Article 103 (both formal and informal) notifications to the Commission grew to 15.

A clause in one of the notified draft agreements seemed to contravene Chapter 7 of the Treaty regarding safeguards. Having been informed of this possible incompatibility, the Member State concerned renounced its notification and went again into negotiations with the third party. It notified subsequently an amended draft agreement which was acceptable.

In another case, several clauses of a notified draft agreement seemed to be incompatible with provisions of Treaty Chapters 6 (on supplies, including the Euratom Supply Agency), 7 (on safeguards) and 9 (on the nuclear common market). Having been accordingly informed, the Member State concerned accepted the DG TREN arguments and renounced its notification, discontinuing the conclusion of the agreement in the terms it was notified.

– Notifications under Article 105 of the Euratom Treaty

Under Article 105 (which is also part of the Treaty Chapter on external relations), new Member States communicate to the Commission, within 30 days from their accession to the EU, the agreements or contracts they may have concluded with a third party prior to their accession.

The two States, Bulgaria and Romania, which acceded on 1<sup>st</sup> January 2007 notified, as required, their contracts and agreements; these were checked and, with one exception, grandfathered.

### ***5.1.2.9.2 Transports***

#### **5.1.2.9.2.1 Road transport**

## – Working time in road transport

The Commission lodged proceedings against eleven Member States for not having adopted the necessary legislation transposing Commission Directive 2006/22/EC<sup>91</sup> on the implementation of European social legislation relating to road transport activities by 1 April 2007. Six cases were resolved in the course of the year with five still pending at the end of 2007. The Directive provides for a tripling of the number of checks on compliance with the rules on driving time and rest periods progressively until 2010. Moreover, it requires a minimum number of joint checks between enforcement authorities of different Member States each year, a better coordination and cooperation between enforcement, joint training programmes, standard equipment levels and the establishment of electronic information exchange systems.

As regards working time the Commission continued the control of implementation concerning Directive 2002/15<sup>92</sup>. Two Member States had still not notified their national implementing measures and were brought before the Court. The national measures of the other Member States were assessed and 18 had to be considered incomplete or inaccurate. Pre-infringement letters were addressed to those Member States.

As required by the Directive the Commission prepared a report (COM(2007) 266) on the key findings of the analysis of consequences of exclusion of self-employed drivers and of night time provisions in respect of road safety, conditions of competition, structure of profession as well as social aspects. The report was adopted on 23 May 2007 and presented to the European Parliament and the Council as a part of the road package adopted by the Commission. In order to prepare the subsequent legislative proposal foreseen in the Directive, the formal impact assessment was launched in August 2007 with a view to analyse possible policy options and assess their direct and indirect impacts.

## – Road charging

During 2007, the Commission continued to verify the national transposing measures and correct application of the so called "Eurovignette Directive"<sup>93</sup>. Out of 11 infringement cases that were open beginning of 2007, one case was brought before the Court and five other cases could be closed.

### **5.1.2.9.2.2 Railway transport**

#### – Market access legislation

In 2007 the Commission services started an in-depth analysis as regards the implementation by the Member States of the 1<sup>st</sup> railway package adopted in 2001, focussing on Council Directive 91/440/EEC on development of the Community's railways as amended by Directive

---

<sup>91</sup> 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) n° 561/2006 (driving times and rest periods) and Regulation (EEC) 3821/85 (tachograph)

<sup>92</sup> 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)

<sup>93</sup> Directive 1999/62/CE of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJ L 187 du 20/07/1999 p. 0042)

2001/12/EC<sup>94</sup>, as well as Directive 2001/14/EC<sup>95</sup> of the European Parliament and the Council on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification.

As a first step questionnaires were sent out to all Member States in May 2007 requesting information about how the provisions of the Community legislation were implemented in national law. Following to the analysis of the answers received, a second enquiry was sent in November 2007 to ask Member States for more detailed information.

The exercise will be on-going in 2008 with possible opening of infringement cases where it can be presumed that national law does not comply with Community legislation.

#### – Interoperability and Safety

In the sector of railway interoperability and safety, the Commission opened 18 infringement cases for non-communication of national implementation measures addressed to 10 Member States, concerning Directives 2004/49/EC<sup>96</sup> on safety of the Community's railways and Directive 2004/50/EC<sup>97</sup> on the interoperability of the European high-speed and conventional rail system. Most of the cases were closed following the notification of national implementation measures by the Member States. The Court of Justice declared the failure by one Member State to fulfil its obligations under Community law for one and another Directives.

#### 5.1.2.9.2.3 Road safety

The bulk of infringement proceedings in this field deals with non communication of the transposition of legislation or the non fulfilment of reporting obligations.

#### – Tunnels

The Commission lodged new proceedings against two Member States for not having communicated the transposition measures for Directive 2004/54<sup>98</sup> on tunnels, one of which could be closed the same year. Three proceedings that had been launched in 2006 could be closed.

The Commission further lodged proceedings for incorrect application against twelve Member States for not having communicated the national plans towards meeting the requirements of Directive 2004/54. Eleven cases were resolved in the course of the year with one still pending at the end of 2007.

---

<sup>94</sup> Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 (OJ L 75 of 15.3.2001)

<sup>95</sup> Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 (OJ L 75 of 15.3.2001)

<sup>96</sup> Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 (OJ L 220 of 21.6.2004)

<sup>97</sup> Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system (OJ L 220 of 21.6.2004)

<sup>98</sup> Directive 2004/54/EC of 29 April 2004 on minimum safety requirements for tunnels in the trans-European Road Network (OJ L 167 of 30.4.2004, p. 39).

One procedure against a Member States for failure to communicate the required information is still pending.

– Professional drivers

The Commission could close seven proceedings for non communication of the transposing measures for Directive 2003/59/EC<sup>99</sup> without further proceeding. Reasoned opinions were sent to eight Member States. Three Member States notified the transposing measures after having received reasoned opinions and the procedures could be closed.

– Seat belts

The Commission could close 5 proceedings for non communication of the transposing measures for Directive 2003/20/EC<sup>100</sup> after sending letters of formal notice. One procedure remains open.

– Technical inspections/road worthiness

The Commission could close five proceedings for bad application of Directive 2000/30/EC<sup>101</sup> or not having communicated the national reports on inspections performed in the period of 2003 and 2004.

One letter of formal notice was sent for bad application of Directive 96/96/EEC<sup>102</sup>, on the approximation of roadworthiness tests.

#### **5.1.2.9.2.4 Air transport**

– Bilateral agreements

Following the “open skies” judgments of 5 November 2002, the Commission asked Member States to take two measures to remedy the situation: grant the Commission a mandate to open negotiations with the United States, and remove the legal problem identified by the Court by terminating existing bilateral agreements between them and the US. Infringement proceedings were initiated against all the Member States that have bilateral agreements with the United States (20 countries out of 25). These air agreements contain "nationality" clauses whereby only national companies in the signatory countries can benefit from the agreement, which is a flagrant breach of European law. The Commission has since concluded an open skies agreement with the United States in April 2007 which, once implemented, will remove the illegal "nationality" clauses and bring Member States into conformity with European law. Members States are processing with their internal procedures to ratify the agreement which

---

<sup>99</sup> Directive 2003/59/EC of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Directive 76/914/EEC (OJ L 226 of 10.9.2003, p. 4)

<sup>100</sup> Directive of 16 December 1991 relating to the compulsory use of safety belts and child-restraint systems in vehicles (OJ L 373, 31.12.1991, p. 26)

<sup>101</sup> Directive 2000/30/EC of 6 June 2000 on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community (OJ L 203, 10.8.2000, p. 1)

<sup>102</sup> Directive 96/96/EC of 20 December 1996 on the approximation of the laws of the Member Status relating to roadworthiness tests for motor vehicles and their trailers (OJ L 46, of 17.2.1997, p. 1)

will enter into force when these internal procedures will be achieved. For this reason the infringement procedures are pending accordingly.

– Single European sky

The main objective of the Single European Sky (SES) is to improve the efficiency of air traffic management (ATM) in order to avoid air traffic delays and to increase the capacity in the airspace. The main problem in Europe is fragmentation of ATM at national level. This legislative package comprises four elements: a regulation laying down the framework for the creation of SES (the "Framework regulation"); a regulation laying down common requirements for the provision of air navigation services (the "Service provision regulation"); a regulation on the organisation and the use of airspace in the SES (the "airspace regulation"); and a regulation on the interoperability of the European ATM network (the "interoperability regulation").

– Air Passengers' rights

The Commission Communication of April 2007 on the operation and results of Regulation (EC) n° 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, highlighted the existence of a number of problems, which prompted DG TREN to take twofold action in order to improve the application of the Regulation. While infringement procedures were launched where relevant, contacts were intensified with stakeholders at all levels (airlines, National Enforcement Bodies and national authorities) and public information was enhanced.

As a result of six months of intensive contacts with all stakeholders:

- (7) A consensus was achieved on improved national procedures and a common understanding on the text of the Regulation. A standardised complaint form and a guidance document entitled Questions & Answers reflect this consensus.
- (8) Better enforcement was ensured, through a pro-active approach from the Commission's security airport inspectors and verification that national provisions on sanctions are in place.
- (9) Fully reviewed posters and brochures were distributed and available in 22 official languages.

Detailed information on these achievements is available at

[http://ec.europa.eu/transport/air\\_portal/passenger\\_rights/information\\_en.htm](http://ec.europa.eu/transport/air_portal/passenger_rights/information_en.htm)

Since July 2007, Regulation (EC) N° 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, has been partially applicable, in particular its provisions on equal treatment of persons affected by reduced mobility. These provisions prohibit the refusal of carriage or bookings on the basis of reduced mobility of the disabled or the elderly by an air carrier or its agent or a tour operator for flights from airports in the EU. A conference was organised in January 2008 to ensure a successful full application of Regulation N° 1107/2006 as from July 2008 and to make each category of operators aware of the specific needs and constraints of the stakeholders concerned. A workshop with PRM



organisations was held to ensure that these organisations can fulfil the responsibilities foreseen.

– Air safety

Operational requirements for civil commercial aircraft (EU-OPS) (Regulation 3922/91): DG TREN hosted three meetings of the Air Safety Committee aiming at assisting the Member States in the correct understanding and implementation of the Regulation; DG TREN treated three formal requests for exemptions to EU-OPS requirements; it also analysed the inspections of Member States conducted by the European Aviation Safety Agency (EASA) to assess the level of compliance with applicable operational requirements.

Occurrence reporting in civil aviation (Directive 2003/42): DG TREN completed the analysis of national transposition measures notified by Member States; during the annual meeting of the ECCAIRS<sup>103</sup> Steering Committee, the representatives of civil aviation authorities and/or accident investigation bodies of the Member States met and discussed with the Commission's services to take stock of the implementation of Directive 2003/42. It gave the opportunity to exchange best practices and to help Member States to apply the Directive and operate the exchange of safety information mandated by the Directive.

Accident investigation (Directive 94/56): DG TREN opened an infringement procedure for failure to implement correctly the Directive.

The EC SAFA programme (safety assessment of foreign aircraft) (Directive 2004/36/EC): an important number of ramp inspections on foreign aircraft visiting Community airports were performed by the Member States, as prescribed under the Directive, and analysed by DG TREN services; three meetings of the Air Safety Committee served to improve and further develop the Programme as well as to assist the Member States in the correct understanding and implementation of the Directive; DG TREN continued managing 6 infringement procedures for non communication of national transposition measures by Member States and proposed appropriate decisions to the Commission: one reasoned opinion was sent, 5 Member States were sent to the Court and, after analysis of the national transposition measures notified, 5 of the procedures could finally be closed. Constant guidance on the implementation of the Directive was given to Member States as well as non-EU ECAC States participating in the SAFA Programme.

Inspections on certification and maintenance performed by the EASA (Regulations 216/2008, 1702/2003, 2042/2003 and 736/2006): DG TREN followed closely the inspections conducted by EASA to assist the Commission in monitoring the application of the Basic Regulation and its implementing rules by the national aviation authorities of the Member States. In particular, 39 inspections were conducted as regards both initial and continuing airworthiness in 2007.

Black List (Regulation 2111/2005): DG TREN contributed to the harmonised interpretation and implementation of this Regulation by the clarifications and explanations given during the three meetings of the Air Safety Committee held in 2007 and a dedicated Workshop held in the European Parliament on 28 November 2007; it also monitored the correct actual implementation of the rules through the Alert system set up with Eurocontrol; in May 2007 the Commission created a working group with Member States and representatives from

---

<sup>103</sup> European Co-ordination centre for Accident and Incident Reporting Systems.

ECAC<sup>104</sup> and EASA tasked to examine in detail the USOAP<sup>105</sup> reports issued by ICAO<sup>106</sup> according to the comprehensive approach and examine the relevance of the results of such examination in the context of the application of Regulation N° 2111/2005. This working group met twice in 2007. Thanks to its work the Commission has now more concrete and solid information regarding the safety performance of numerous ICAO States and in particular the efficiency of the exercise of oversight by various civil aviation authorities. Also, the analysis carried out in this group has confirmed measures taken in the context of Regulation N° 2111/2005.

– Aircraft noise (Directive 2002/30)

DG TREN completed the analysis of national transposition measures notified by Member States, leading to close the pending infringement case against Luxemburg.

– Air security.

The Commission carries out civil aviation security inspections in all 27 Member States as well as in Switzerland on the basis of Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002, establishing common rules in the field of civil aviation security.

Since the introduction of Community rules in 2002 and of Commission's inspections in 2004, compliance with Community rules on aviation security has improved. In total, up to 31 December 2007, 117 inspections have been carried out: 34 inspections of national administrations and 83 of airports (including follow-up inspections). In 2007, 10 national administrations and 18 airports (including follow-up inspections) have been inspected.

In 2007, one infringement procedure was initiated following inspection of its national administration and an airport situated in its territory.

The Commission has further intensified its cooperation with the US, the outcome of which will be a Working Arrangement with the Transportation Security Administration (TSA) in the field of civil aviation security inspections. In addition, the preparatory work for a Memorandum of Cooperation with the International Civil Aviation Organisation (ICAO) has been reinforced aiming at minimizing duplication of efforts within the European Union.

Every year, a report on aviation security in the European Union is published by the Commission<sup>107</sup>. The report on the 2007 situation will be published in the course of 2008.

#### **5.1.2.9.2.5 Maritime transport**

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

The Commission decided to lodge a case to the Court of Justice against Germany, Spain and Estonia. These countries failed to respect EU legislation on the improvement of the

---

<sup>104</sup> European Civil Aviation Conference.

<sup>105</sup> Universal Safety Oversight Audit Programme.

<sup>106</sup> International Civil Aviation Organisation.

<sup>107</sup> Second Report on the Implementation of Regulation (EC) 2320/2002 on civil aviation security, COM(2007) 542 final of 24 September 2007.

availability and use of port reception facilities for ship-generated waste and cargo residues (Directive adopted in 2000). In all three cases, Commission action was prompted by the insufficient implementation of the obligation to develop, approve and implement waste reception and handling plans relating to all national ports, including fishing ports and marinas. These plans are a key element in ensuring that port reception facilities made available meet the needs of the ships normally using the ports that their operation does not cause undue delay to ships and that fair, transparent and non-discriminatory fees are applied. Member States should have established and implemented waste reception and handling plans for all their ports by 27 December 2002.

On this issue, the Commission has also engaged contacts with France following its condemnation by the European Court of Justice in December in order to ascertain whether the measures required by the Court were adopted by the French authorities.

More generally, the Commission has launched a program of inspection visits to Member States in co-operation with the European Maritime Safety Agency (EMSA). The program aims at checking how the full array of the obligations contained in the Directive is implemented by Member States.

Finally, non conformity issues (in particular on inspection and enforcement of the relevant legislation) led the Commission to send a reasoned opinion on port reception facilities to Estonia.

– Traffic monitoring, Port state control, ship-source pollution

The Commission sent a reasoned opinion to Poland and Malta for incorrect transposition of Directive 2002/59/EC on traffic monitoring . This Directive is an essential part of the second maritime package adopted by the Community in the wake of the Erika disaster. It sets out the obligation to notify the maritime authorities, in particular in case a ship is carrying dangerous or polluting goods. The directive also provides for the monitoring of hazardous ships and for the intervention in the event of accidents at sea. It was deemed to be transposed by the two Member States on 1st May 2004 (accession date). The Commission found fault in the Maltese provisions dealing with the obligation to fit ships with devices such as Automatic Identification Systems (AIS) and Voyage Data Recorders (VDR), whilst Poland was criticised because inter alia of its provisions on the reporting of accidents and incidents at sea and on the notification of dangerous and polluting goods.

On port state control, the Commission followed-up the conclusion of the first series of 20 EMSA inspections in the Member States aimed at assessing their general implementation of Directive 95/21/EC . The Directive aims at reducing substandard shipping in the waters under the jurisdiction of Member States through increased compliance with international and relevant Community legislation on maritime safety, protection of the marine environment and living and working conditions on board ships of all flags. To this purpose, the directive establishes common criteria for control of ships by the port State and harmonises procedures on inspection and detention of substandard ships. Member States adopted several improvements to the operation of their systems following EMSA's inspections. The Commission requested EMSA's assistance to assess the impact of such improvements.

Finally, on ship-source pollution, the Commission sent reasoned opinions to eight Member States (Cyprus, Estonia, Finland, France, Luxembourg, Malta, Portugal and the United

Kingdom) for failure to fully transpose into national law a Directive adopted in 2005. The Directive aims at improving maritime safety and enhancing the protection of the marine environment from pollution by ships. It implements international standards for ship-source pollution into Community law, defines ship-source discharges of polluting substances at sea as infringements when committed with intent, recklessness or serious negligence and calls for adequate penalties to be imposed to all persons responsible for such discharges. The Directive should have been fully transposed into national law by 1 April 2007.

– Maritime services

In order to ensure a complete application of the ruling of the Court regarding the maritime cabotage in the bay of Vigo, the Commission sent a letter of formal notice to Spain.

### 5.1.3 *Changes Underway*

#### 5.1.3.1 *Recently adopted measures due to enter into force which may require additional work*

For a list of such measures please refer to Annex I paragraph 2.4

#### 5.1.3.2 *New measures due to be adopted which may require specific implementation / transposition work*

For a list of such measures please refer to Annex I paragraph 2.5

#### 5.1.3.3 *Volume of enquiries, complaints, infringements work and petitions, and prioritization among them*

Based on experience, DG TREN will keep monitoring implementation of the transport and energy *acquis* by all available means.

When addressing failures to comply with the EU legislation, some cases will be pursued more immediately ("priority cases").

As a matter of principle those priority cases concern those files relating to the failure to notify transposing measures and the failure to comply with a previous Court ruling (Articles 228 EC - 143 Euratom).

When identifying other priority cases (on a case by case basis), DG TREN takes into consideration the actual effects of the infringement, and examines whether the infringement at stake can have a far reaching negative impact on:

(a) The completion of the internal market for transport / energy;

(b) The safety and security of European citizens and workers;

and / or

(c) the sustainability of energy and transport policies.

DG TREN started end of 2007 a reflection exercise in order to analyse the effectiveness of its model of control of implementation and to identify possible aspects subject to improvement. An Action Plan is under development that might imply a reorientation of these tasks.

#### *5.1.4 Evaluation*

##### *5.1.4.1 Energy*

###### **5.1.4.1.1 Conventional sources of energy.**

The Community acquis concerns three main sectors with different profiles:

- Provisions on security of supply

This is a fairly stable acquis presenting a manageable volume and nature of problems arising.

National measures transposing Directive 2004/67 on security of gas supply were to be transposed by 19.05.2006 and notified to the Commission, including a correlation table, which is still missing today for three Member States. Delays in full implementation of the Directive are linked to the need to implement national emergency measures, requiring action at two consecutive levels: Member States and market players.

Implementation of this Directive implies a constant dialogue with Member States (in the framework of the Gas Coordination Group) and building crisis mechanisms. The guidance for the emergency mechanism at the European level is still to be developed.

An evaluation report on this Directive is under preparation and will be part of the 2nd Strategic Energy Review package to be adopted in late 2008. The preliminary conclusions of the report show a need of streamlining the definitions of the directive and explain some provisions.

According to this directive, Member States define the security of gas supply roles and responsibilities for market players in the internal energy market, as well as the emergency measures. The late transposition has a negative impact on the functioning of the internal energy market, because the security of gas supply can not be guaranteed adequately. Some threat of disruption affecting some Member States has shown the need to have this directive duly implemented.

The control of conformity of the national transposing measures is being completed with the information provided during national presentations at the Gas Coordination Group.

In this field, the recourse to regulations should be excluded, as it is necessary to take into account specific national provisions for each Member State, which faces different situation, i.e. from single to multiple sources and routes of supply, availability of storage etc... In addition the defined security of gas supply standards depend very much on climate conditions of Member States.

- Internal market for electricity and gas.

The origins of the EC acquis on the internal market for electricity and gas date back to 1996 and 1998, with changes introduced in 2003 and 2005. It is a fairly stable acquis which is however being developed, after the Commission identified a number of obstacles to the smooth functioning of the internal market. Five new legislative proposals are therefore under discussion at the Council and the European Parliament.

Several reasons may explain the delays in transposing the Directives, and in particular the fact that Member States had to adapt the internal structures of companies that were previously vertically integrated, this being a long process that could spread over years. Some Member States decided to postpone the implementation of some provisions of the directives for social policy reasons. As for the newest Member States, they had to produce a new legislation while they had just transposed the oldest provisions prior to accession.

Transposition deadlines usually applied in this field seem long enough to allow for timely implementation, taking into account that late transposition affects seriously competition at European level with repercussions on the energy users, whether industrial or households. As long as transposition is not complete, the quasi-monopoly of the historical undertaking remains in place. Delays have also a negative impact on the productivity of the energy producers, and therefore on their capacity to further invest on production or transport.

Community legislation in this field is also made of a number of regulations, whose implementation in the different Member States is however difficult to assess. The Commission's services are therefore putting in place, in coordination with the national regulators, a verification process based on national inspections. Appropriate conclusions will be drawn and action will be taken where necessary.

#### – Oil and Coal

As regards coal, the acquis under our responsibility can be considered to be a fairly stable legislation with a manageable volume and nature of problems.

Oil sector represents also a stable legislation with some policy developments and identified problems.

Recent enlargements have not been followed by an increase of staff as would be needed to ensure a uniform and systematic control of application of the legislation, especially regarding oil stocks and hydrocarbon licensing. Concerning more specifically the legislation on oil stocks, successive enlargements have also considerably increased the opportunities for Member States to conclude intergovernmental agreements and thus for industrial operators to rely on contractual arrangements (or "tickets") to comply with their stockholding obligations, which has rendered control activities a lot more complicated themselves.

#### **5.1.4.1.2 Renewable sources of energy**

Legislation on renewable sources of energy represents a new acquis with significant policy developments. The main instruments are Directive 2001/77/CE on the promotion of electricity produced from renewable energy sources in the internal electricity market and Directive 2003/30/EC on the promotion of the use of biofuels or other renewable fuels for transport.

Late transposition of some of the elements of the directives was usually due to lengthy legislative procedures combined with a lack of political decision (decision on midterm targets,

support scheme). In some cases, detailed rules for transposing key provisions were left to secondary legislation (e.g. issuance of guarantees of origin), not put in place.

These directives set political targets for renewables for 2010. All the relevant legal instruments contribute to reach these targets, so the implementation is dynamic. Trends can be observed and judged if they reflect the appropriate measures for target achievement or not. Late transposition therefore makes it more difficult to reach targets as it creates uncertainty. Environmental objectives (share of renewable energy sources in transport and electricity consumption limiting polluting technologies and GHG emissions) will also be more difficult to reach.

A risk-based assessment of conformity was carried out, by a selective check of the most important provisions for individual Member States (based on renewable energy deployment and development not in line with objectives); follow-up is based on complaints and Member State reporting.

Given the differing nature of renewable energy markets, of support regimes and policy frameworks in the different Member States, a directive is an appropriate instrument, rather than a regulation.

#### **5.1.4.1.3 Energy efficiency**

Legislation on energy efficiency represents a fairly new legislation and in a crucial phase of their implementation with significant policy developments.

It is based on the following legislative pillars: Directive 2002/91/EC on the energy performance of buildings, Directive 2004/8/EC on the promotion of cogeneration based on a useful heat demand in the internal energy market, Directive 2006/32/EC on energy end-use efficiency and energy services, Directive 2005/32/EC establishing a framework for the setting of ecodesign requirements for energy-using products and Directive 92/75/EEC on the energy labelling of household appliances.

While being relatively new Directives (except for 92/75/EEC), which have been recently transposed, some provisions need already further clarification and deepening. This is for instance the case of the Directive on energy performance of buildings, recasting of which will be proposed in late 2008. Evaluation of the subsequent legislation could take place in 2010. Regarding the Directive on cogeneration, a calculation method which is crucial for its further implementation by the Member States is being finalised in the Comitology process. Deadlines for the implementation of the Directive on energy end-use efficiency and energy services have just expired. The results of the reporting obligations of the Member States with the National Energy Efficiency Action Plans are under evaluation. The first results hereof are expected during autumn 2008 and the full assessment of this Directive is foreseen in 2009. Eventual modifications or supportive actions will be considered afterwards.

Concerning in particular the Directive establishing a framework for the setting of ecodesign requirements for energy-using products, a number of execution measures are being prepared, which will be adopted in the form of Commission's regulations in the coming years. An evaluation will be possible around 2010 as the first implementing measures will enter into force in 2009 and the first requirements will be applicable one year later.

As a rule, no late transposition is acceptable because late transposition implies the lack of a legislative/regulatory framework at Member State level for the application of the upcoming implementing measures, and as a matter of consequence a negative impact on the functioning of the internal market, on consumers at the EU, and on the achievement of the goals fixed for increasing the energy efficiency of the European economy.

However, specific circumstances may justify a certain delay in the Member States' transposition. This is for instance the case with the Cogeneration Directive. Committee discussions on the establishment of a crucial calculation methodology have delayed the implementation of some of the clauses of the Directive. Although the delay in fixing this methodology may have a market impact by not sufficiently supporting high efficiency cogeneration, the benefits of globally accepted methodology outweigh the inconvenience of a disputed methodology in place. This does not permit the Member States, however, to ignore unrelated obligations, such as reporting, which are monitored and will be followed by appropriate action.

Introducing correlation tables in which the Members States indicate themselves which national measure implements which article of the Directive, would be an important help to facilitate the monitoring of the implementation of the *acquis*. Especially in Member States that are composed of regions with legislative power, correlation tables could be a vital instrument for the follow-up of implementation. The introduction of an obligation to submit correlation tables is thus an absolute priority.

The assessment of all national transposing measures legislation is performed by DG TREN services, partially in cooperation with the Joint Research Center and with the Directorate General for Enterprise and Industry.

#### **5.1.4.1.4 Euratom *acquis***

The Community *acquis* on Radiation Protection constitutes a consistent, fairly stable legislative framework in permanent evolution, with Directive 96/29/Euratom, laying down the Basic Safety Standards, as principal piece of legislation, as supplemented by more than 25 instruments of both binding and non-binding nature, covering all the fields of application of ionising radiation, such as the medical exposures, the information of the public in case of radiological emergency, the protection of so-called «outside workers» or the import restrictions to contaminated foodstuffs and feedingstuffs among others. The Basic Safety Standards Directive is in the process of being modified based on the latest recommendations of the International Commission on Radiation Protection, and a proposal for a new Directive is expected in 2010, integrating as much as possible the provisions of several complementary directives.

Member States notified the national transposing measures for Directive 2003/122/Euratom, on the control of high activity sealed radioactive sources at the stage of drafts. Control of conformity was carried out at that stage, under Article 33 of the Euratom Treaty, within a 3-month-deadline from notification required by this Article. In a majority of the cases, Member States were not able to meet the transposition deadline, which was mainly due to the difficulties in transposing into national law the requirements on financial guarantees imposed by the Directive in very general terms as a result of long negotiations at the Council. This gave rise to different national approaches.



Transposition work is ongoing for Directive 2006/117/Euratom on procedures for the shipment of radioactive waste and nuclear spent fuel, which is due to be transposed by end of 2008. Significant policy developments are expected before the end of 2008, as foreseen in the Directive itself, in particular through the definition of criteria allowing Member States to forbid shipments to a given Member State, as well as recommendations for a secure and effective system of transmission of documents and information. In the field of radiation protection, where Community acquis largely reflects the latest stand of scientific knowledge, the directive and recommendation instruments have been traditionally privileged, but there are also a number of regulations and decisions. In view of the very detailed nature of some of the Directives (in particular the provisions on shipments - Directive 2006/117, replacing Directive 92/3) a regulation might have been more appropriate, but has historically been refused by the Council.

This radiation protection framework should be completed in the medium term by a Community framework on nuclear safety, which has been claimed by the Commission for decades now. In parallel to this, the so-called "nuclear energy revival" will need to be accompanied with appropriate measures, possibly harmonising the nuclear liability regimes or through deregulation or new internal market legislation, as well as with an increase of the resources allocated.

#### *5.1.4.2 Transport*

##### **5.1.4.2.1 Land Transport**

Land transport legislation represents in general a stable acquis in development, with a manageable volume and nature of problems arising, and presenting specificities in each of its five sectors:

###### **5.1.4.2.1.1 Road transport**

Three main Directives under development will require a special attention in 2008 and beyond:

- Directive 2002/15, on the organisation of working time of persons performing mobile road transport activities, as a consequence of the outcome of the control of conformity of the transposing measures and conclusions drawn so far.
- Directive 2006/22/EC, determining the minimum level of enforcement for the European provisions on driving times and rest periods, and on the use of tachograph.
- Directive 96/26, on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas. This Directive is part of the road package currently being revised and discussed at the Council and European Parliament.
- Directive 1992/62 on the on the charging of heavy goods vehicles for the use of certain infrastructures ("Eurovignette"), as amended by Directive 2006/38, due to be implemented by 10th June 2008. Correct transposition will be checked, and an evaluation of the application of new rules is expected by end 2008.

Control of implementation in this field is carried out internally by the Commission's services, with additional assistance of external consultants, as it was the case of the working time Directive. It represents a considerable time-consuming task, requiring appropriate resources.

#### **5.1.4.2.1.2 Railway transport**

Rail legislation, both in the market access and interoperability fields represents a relative new *acquis* with significant policy developments to be implemented and applied. Since its adoption, a number of difficulties arose with its implementation, implying a permanent evolution in recent years (rail legislation developed since 1991 includes a total of three packages of legislative measures adopted in 2001, 2004 and 2007).

Aware of the difficulties encountered by Member States in implementing the relevant *acquis*, the Commission's services have undertaken a progressive approach to control of implementation, by addressing in a first stage conformity issues related to the 1<sup>st</sup> Railway Package (Directive 91/440, as amended by Directives 2001/12 and 2001/14). In the short term, the Commission interest will focus on redressing points of non conformity with these directives. In the medium term, action will cover the compliance with the second package, and the transposition of the provisions third railway package (Directives 2007/58 and 2007/59, to be transposed by June and December 2009).

#### **5.1.4.2.1.3 Road safety.**

European provisions in this field represent a fairly stable *acquis* in permanent development for those aspects that need to be adapted to technical progress.

The Commission's control of implementation in the short and medium terms will concentrate on the following pieces of legislation:

- Directive 2000/30/EC on the technical roadside inspection, which imposes a yearly reporting obligation to the Member States, and the obligation for the Commission to report every 2 years, based on the information provided by the Member States
- Directive 2003/59/EC on the initial qualification and periodic training of drivers, to be applied from 10.09.2008 for the initial qualification of categories D1, D1+E, D and D+E, and from 10.09.2009 for initial qualification of categories C1, C1+E, C and C+E.. The Commission is expected to report by 10.09.2011 on the implementation of these provisions.
- Directive 2004/54/EC on minimum safety requirements for tunnels in the Trans-European Road Network. Member States are expected to report to the Commission on fires and accidents in tunnels by 30.09.2008, and on their implementation plan by 30.10.2008. The Commission shall report on risk analysis practices by 30.04.2009 based on the information provided by the Member States.
- Directive 2006/126/EC on driving licences, recasting Directive 91/439 as amended by four directives, which is meant to be transposed by January 2011 and applied as from January 2013. A possible evaluation will take place as from mid 2013.
- Directive 2007/38/EC on the retrofitting of mirrors to heavy goods vehicles registered in the Community, to be transposed by 06.08.2008. The Directive foresees that by 31.03.2009

all vehicles shall be equipped with improved devices for indirect vision. The Commission is expected to report on the implementation by 06.08/2011, together with a study on blind spot accidents covering all vehicles and costs incurred, with the aim of improving road safety.

- Directive 96/96/EC, relating to roadworthiness tests, which is currently under recast.

#### **5.1.4.2.1.4 Transport of dangerous goods**

The relevant legal framework is defined by regional, national, Community and international (UN) provisions. At Community level, there are four pieces of EU legislation applicable: Directive 94/55/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road; Directive 96/49/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail; Directive 96/35/EC on the appointment and vocational qualification of safety advisers for the transport of dangerous goods by road, rail and inland waterway; and Directive 2000/18/EC on minimum examination requirements for safety advisers for the transport of dangerous goods by road rail or inland waterway. These Directives are regularly adapted to the revisions of the relevant international agreements, requiring the full translations of voluminous technical annexes. The new Directive under discussion at the Council and Parliament will substantially simplify the Community law, by covering all three modes of transport (road, rail and inland navigation), and by making reference the provisions of the relevant “international agreements”, instead of reproducing their provisions. The simplification of this legislation is expected to make the enforcement of the provisions both simpler and more equitable. Its implementation will be assessed in due time, and in particular as far as national derogations are concerned.

#### **5.1.4.2.1.5 Legislation on logistics, innovation and co-modality**

Council Directive 96/53 on maximum authorized dimensions and maximum authorized weights for heavy goods vehicles and buses has been in place for 12 years. Transposition is complete and there are no outstanding issues. A study is under way to assess the need for a possible updating of the directive in order to reflect technological progress since 1996 as well as to enhance harmonisation and raise the efficiency of heavy goods vehicles. As for, Council Directive 92/106 on combined transport of goods, a Commission's report to the Council is expected in 2009, focussing in particular on the economic development of combined transport and the application of Community law in this area.

#### **5.1.4.2.2 Air transport**

Community legislation on air transport is mainly made of regulations and case-law, and constitutes a fairly stable and manageable *acquis* which is in development, with the ongoing proposal to amend several Regulations dealing with different aspects of the air traffic management.

The internal market for air transport, achieved in three stages in the 90's, removed all commercial restrictions for stakeholders within the EU. But the experience of the last decade has shown that some measures of the “third package” consisting of Regulations (EC) No 2407/92, 2408/92 and 2409/92 of 23 July 1992 pertaining to operating licences, the right to

operate air services within the EU and the pricing of such services are either not homogeneously applied or need to be clarified or revised.

Discussions are ongoing for the adoption of a recasting regulation that will update and modify these three regulations. The proposal is expected to be adopted mid 2008 and aims at increasing market efficiency, enhancing safety of air services and improving passenger protection by ensuring a consistent application of EU legislation in all EU Member States and a true level playing field for all EU airlines. By removing obsolete measures, the application of the rules should be facilitated.

Considerable work is also expected as from September 2008 concerning the notification of the national transposing measures for Directive 2006/23/EC on the Community Air Traffic Controller Licence, due to be transposed by 18<sup>th</sup> May 2008.

### Passengers rights

Regulation (EC) No 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air becomes fully applicable in July 2008 and offers persons with reduced mobility non-discriminating access to air transport by means of four basic rights: accessibility, non-discrimination, assistance and information.

The adoption of this Regulation raised expectations of passengers with reduced mobility. A close follow up of the application of this regulation will be needed (similar to the Commission's efforts on the general regulation on passenger rights), as a number of difficulties could already be identified. While the necessary assistance is in general available, these measures might not be free-of-charge everywhere and area-wide available. National Enforcement Bodies shall be established by the Member States to ensure that the provisions are applied on their territory.

The Commission is active by following up the conclusions of the plenary European conference of January 2008, that prepared to better implement the Regulation. It will be particularly alert to difficulties identified and to feed-back from citizens.

A European framework protecting the rights of passengers in general, and of those with reduced mobility in particular, is under development by covering other means of transport.

Regulation N° 1371/2007 on rail passengers' rights and obligations was adopted as a part of the 3<sup>rd</sup> Railway Package and will be applicable as from October 2009.

Relevant Commission's proposals are also being prepared in the maritime and coach sector.

#### ***5.1.4.2.3 Maritime transport***

The maritime acquis is generally fairly recent and subject to considerable developments (see, for instance, the current III Package on maritime safety). It contains:

- Texts which are fairly stable and originating a manageable volume of problems (i.e. Regulation "double-hull" ((EC) n° 417/2002), Directives on passenger ships (98/18/EC), fishing vessels (97/70/EC), electronic road toll systems (2004/52/EC);

- Texts in development (not expected to be controversial), like current directives on port State control (95/21/EC), classification societies (94/57/EC) and port reception facilities (2000/59/EC));
- New texts or significant policy developments to be implemented (i.e. III Package proposals currently in 2nd Reading on accident investigation, traffic monitoring and the Athens Convention, Commission Decision (in preparation) on the European Electronic Toll Service – evaluation by 2012); and
- Texts which are subject to problems causing concern and requiring particular attention (directive on ship-source pollution (2005/35/EC), III Package proposals on civil liability and "flag").

The most important causes of late transposition in this sector, are insufficiencies in Member States' legislative and administrative procedures, in particular low political prioritisation, lack of resources and cumbersome formalities. This is all the more the case in Member States where competences are regionalised. When the issue is particularly complex or new, services endeavour to provide Member States with additional clarification of the rules adopted by Council and Parliament. EMSA's assistance in this type of exercise is most valuable.

Repercussions of late transposition vary significantly: in the maritime safety area, however, late transposition is potentially most detrimental to citizens' safety and the protection of the environment.

Concerning the control of the conformity of national transposition measures, DG TREN faced some constraints which do not allow for a systematic, detailed control of all national measures. In the area of maritime safety, we have concentrated our efforts on key directives (port State control, port reception facilities, classification societies and traffic monitoring) in accordance with multi-annual programming. Translation constraints have a significant impact on conformity checking exercises.

**Inland waterways:** Community acquis had considerable recent developments. Directive 2005/44/EC regarding River Information Services (RIS) introduced new acquis, establishing the basis for the harmonised implementation of River Information Services (RIS) on inland waterways in the Community. A first evaluation of the application of the new rules is under preparation for the fourth quarter of 2008. With Directive 2006/87/EC, laying down technical requirements for inland waterway vessels, significant new acquis has been established in the area of inland waterway transport now ruling on all EU waterways without exception. The Directive and its comprehensive approach to the safety of inland navigation will have to be implemented by end of 2008. A first overall evaluation on the application of the new acquis will be possible by the end of 2009.

#### *5.1.5 Overall conclusion*

Given the number of recent pieces of legislation and ongoing proposals, an increased amount of resources will be concentrated on the different tasks related directly or indirectly to control of implementation.

As in the past, all enquiries, complaints, infringement cases and petitions will be paid due attention. Work patterns might however be modified, based on the guidelines of the forthcoming Action Plan, and other external elements, like the launching of a pilot project at Commission's level implying a more active role of Member States in the assessment of complaints.

The fact that DG TREN manages a mostly new Community *acquis* in constant evolution implies an increasing effort from all parties in ensuring, first, that the national legislative frameworks duly reflect the evolutions, and, then, that the relevant legislation is applied by all stakeholders and enforced by the national authorities at the appropriate levels.

DG TREN applies a "0 – tolerance" policy on late transposition, as this is the natural consequence of the priority treatment of the failure by Member States to transpose Community Directives, as confirmed by the Commission communication "A Europe of Results – Applying Community Law" of 4 September 2007.

While transposition deadline might be reduced in the case of Commission Directives introducing purely technical changes, current transposition deadlines seem appropriate. Prolonging them would not necessarily guarantee a timely transposition. One cause for delay is the difficulty in transposing provisions resulting from compromises in inter-institutional discussions, National administrations could start preparing the national procedures in parallel with discussions at EU level. A more direct involvement of national experts who will be in charge of transposition in the negotiations would also be advisable.

Well prepared correlation tables, giving comprehensive information on all relevant provisions of the national legislation (and not only to those that were newly adopted), are an indispensable tool for the management of the Directives under the responsibility of DG TREN, and in particular those with a strong technical content. The obligation to notify correlation tables to the Commission should be considered as duty to cooperate in the sense of Articles 10 EC and 192 Euratom. Making correlation tables accessible to the public would be more transparent to citizens, national institutions and stakeholders in general.

The choice between regulations and directives depends essentially on the nature of the provisions to be adopted and on considerations of political opportunity. Texts such as those translating into Community law rules and standards of a technical nature already established at international level and which do not contain discretionary obligations could well become regulations. Directives seem more appropriate where Member States situations differ widely.

The strategic importance of the energy and transport sectors for securing a sustainable and competitive future for Europe is increasingly being recognised. The Commission's challenges are considerable in these fields in the years to come, with many pieces of Community *acquis* in development, which will require major effort to be able to face the workload and the level of responsibility.

The ambitious EU policies brought forward by the Commission in the fields of energy and transport would lose any credibility should the Commission disregard its function as watchdog in the many perspectives this role is carried out today.

## 6 ENVIRONMENT

### 6.1. General overview

The European environmental legislation is based on Articles 174-176 of the EC Treaty. Over several years, the EU has established a comprehensive system of environmental protection by adopting of more than 200 pieces of legislation. The areas covered range from noise to waste, from protection of rare species to limits on air pollution, and from standards for bathing water to emergency responses to environmental disasters. That more than 20 % of all Commission enforcement dossiers are devoted to the environment reflect the specific factors relevant to EC environmental law i.e the extent and complexity of environmental legislation, the need to ensure that this *acquis* is respected in a wide diversity of natural conditions, and, in particular, the high level of public interest.

In the environment sector, the total number of open cases at the end of 2007 was 739. In 2007, 461 new cases were opened, out of which 113 were complaints submitted by citizens and non-governmental organisations. In addition to the high number of complaints highlighting potential breaches in EC environmental legislation, the Commission services have been receiving an increased number of enquiries on issues related to implementation. The high degree of external interest is also reflected in the number of parliamentary questions and petitions submitted to the Committee on Petitions of the European Parliament. The environment accounts for about 10% of all parliamentary questions put to the Commission and the environment is currently the main subject in 35% of the petitions handled by the Petitions Committee. In 2007, the Commission received 146 petitions and more than 800 written and oral parliamentary questions concerning issues related to the field of the environment.

Enquiries, including complaints, parliamentary questions and petitions concern varied issues such as problems with environmental impact assessment procedures related to construction projects or urban building, non respect of provisions of nature directives, groundwater and drinking water pollution, air and noise pollution in cities, lack of effective waste management measures and issues related to access to information concerning environmental matters.

Managing the high number of environmental cases is in itself a challenge. The Commission has sought to manage its case-load more effectively by targeting on a priority basis particularly serious categories of breaches. In addition to the two priorities identified in the communication 'A Europe of Results' (lack of transposition of EC directives and lack of execution of rulings of the European Court of Justice), in the environment field there are four categories of breaches raising issues of principle or having far-reaching negative impacts on citizens and the environment:

Bad transposition of directives presenting a significant risk for correct implementation of environmental rules;

Systemic breaches of environmental protection requirements, such as broad-scale contraventions to environmental quality standards or to obligations relating to the development of environmental infrastructure;

Breaches of core, strategic obligations under EC legislation such as those concerning the designation of Natura 2000 sites or the adoption of national allocation plans for emissions of greenhouse gases;

Breaches concerning big infrastructure projects or interventions involving EU funding.

At the same time, the Commission has taken measures to better handle other cases of bad application of EC environmental law by "horizontalising" its approach to problems, i.e. by tackling them at a more strategic level. By way of example, this approach is allowing the Commission to address lack of waste-water treatment facilities in a far higher number of cities and the presence of illegal landfills in a far higher number of places than would have been possible if it had only focused on individual failures. In 2008-2009, the Commission will continue to pursue its horizontal approach and further intensify its efforts to address the high number of individual cases concerning, for example, nature conservation, impact assessment and waste issues.

Other practical measures put in place by the Commission to improve implementation of EC environmental law include the establishment of implementation task forces. The work of the implementation task forces has resulted in the identification of a comprehensive set of proactive measures to foster implementation of nature, air, waste, water and impact assessment legislation, being the five sectors with the highest number of open cases. The task forces have been working primarily on the elaboration or updating of implementation action plans, including the identification and development of proactive measures to improve implementation, and the definition of priority-setting criteria for the handling of cases and infringements.

In order to better monitor progress in legal enforcement work, DG Environment has also developed an internal monitoring tool (a 'tableau de bord' listing for all open cases the last useful decision and the proposals expected for the following six months). This internal tool is used as the basic information system to monitor progress of open cases on a quarterly basis. The quarterly review allows DG Environment management to analyse the sectoral distribution of cases and to measure performance of legal enforcement action against a set of pre-determined quantitative indicators.

Concerning more specifically the transposition of directives, quite a number of them, have a transposition deadline in 2008-2009 and will require additional work. The Commission has recently developed a systematic methodology for monitoring the transposition of all new environmental legislation. Within this context, a transposition action plan will be drawn up for each directive as a first step. This plan will follow a risk-based approach which will focus on the content of the directives concerned and the risks of bad transposition. The transposition action plan will include the actions to be undertaken in the time available between the adoption of a directive and the expiry of the transposition period. It will also include specific information how the conformity checking will be carried out, adoption of a timetable for the conformity checking and the launching of subsequent non-conformity cases.

In the time available between the adoption of a directive and the expiry of the transposition period, the Commission will monitor progress and assist Member States in the transposition by a combination of different means such as meetings or workshops for each directive, preliminary analysis of draft legislative measures, advice on certain specific points and drawing up of guidance on the interpretation of certain provisions. For directives with close transposition date, a decision will be taken on a case by case basis on what can reasonably be done before the expiry of the transposition period. The aim is however to have at least one meeting with Member States during the transposition period.



Once the full transposition by a Member State is received, the conformity checking will be launched. The conformity checking of the transposition measures is planned within 6 months from the publication of the transposition measures, in order to, whenever necessary and on the basis of a risk-assessment, launch non-conformity cases and refer them to the European Court of Justice within 2 years.

## **6.2. Analysis by sector**

### *6.2.1 Nature Conservation*

#### *6.2.1.1 Current position*

The most important pieces of nature conservation legislation are the Birds Directive, 79/409/EEC<sup>108</sup> and Habitats Directive, 92/43/EEC<sup>109</sup>. 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”.

Work in 2007

It should be stressed that, in November 2007, the Commission adopted a new Community list of Sites of Community Importance (Pannonian region) and updated Community lists of Sites of Community Importance for several other biogeographical regions<sup>110</sup>, which have significantly extended the Natura 2000 network. The total area of Natura 2000 is now 809 811 km<sup>2</sup> and includes 24 524 sites.

#### *Main infringements in 2007*

##### *Non-conformity with the Birds and Habitats Directive*

In 2007, the Commission followed infringements dealing with non-conformity of national transposing legislation with the Birds and Habitats Directive. In 2007, as regards the Birds Directive, second warning letters were sent to two Member States. As regards the Habitats Directive, a second warning letter was sent to one Member State, while the Commission decided to refer two Member States to the European Court of Justice.

In 2007, the European Court of Justice considered that Austria had failed to correctly transpose the Birds and Habitats Directives (Case C-507/04 and Case C-508/04).

##### *Designation of Special Protection Areas*

---

<sup>108</sup> Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds *OJ L 103, 25.4.1979, p. 1-18.*

<sup>109</sup> 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.*

<sup>110</sup> [http://ec.europa.eu/environment/nature/natura2000/sites\\_hab/biogeog\\_regions/index\\_en.htm](http://ec.europa.eu/environment/nature/natura2000/sites_hab/biogeog_regions/index_en.htm)

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 2007, the Commission sent first written warnings to Cyprus, the Czech Republic, Slovakia, Hungary, Latvia, Lithuania, Malta and Slovenia for failing to designate enough Special Protection Areas on their territory. The number and/or the size of protected areas selected by these eight Member States are insufficient compared with the list in the IBA inventory. Also in 2007, the Commission took Austria, Germany and Poland to the Court of Justice for failing to designate sufficient Special Protection Areas on their territory.

In 2007, the ECJ declared that the SPA network in Spain, Greece and Ireland was insufficient (Case C-235/04, Commission v Spain, Case C-334/04, Commission v Greece and Case C-418/04, Commission v Ireland).

#### *Development in Rospuda Valley, Poland*

In February 2007, the Polish authorities gave the green light to start construction work on bypasses in important nature sites in the Rospuda river valley (Puszcza Augustowska) and in Puszcza Knyszynska in north-eastern Poland. The sites concerned are a Special Protection Area designated under the Birds Directive and they should also benefit from protection under the Habitats Directive on account of their rare habitats. Concerning the damage that would be done to primeval woodland and other natural habitats of European importance as a result of the imminent construction of the Augustow bypass (a part of the Helsinki-Warsaw road corridor in the North-East Poland), the Commission accelerated an existing infringement procedure against Poland by sending it a final warning letter. On the basis of an insufficient reply from Poland, the case was reported to the Court of Justice (Case C-193/07). The Commission used the instrument of an interim measure, under Article 243 of the EC Treaty, in its application to the Court in order to avoid irreversible imminent damage to protected sites. The request for an interim measure was withdrawn when Poland agreed to halt the relevant works pending a Court of Justice judgment of the case.

#### *Illegal 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.

The European Commission sent a final warning letter to Malta for allowing the hunting of certain species of birds in breach of EU legislation. Currently, laws in Malta allow the hunting of the birds during spring, a key period for migration and breeding. In taking this step, the Commission asked Malta to bring its rules on hunting into line with the Birds Directive. The final written warning to Malta, which followed the first written warning in July 2006, concerns the hunting of quails (*Coturnix coturnix*) and turtle doves (*Streptopelia turtur*) during spring.

Following the decision of Cyprus to grant a derogation allowing for the spring hunting of *Streptopelia turtur* (turtle dove) on 6 and 9 May 2007, the Commission sent a first written warning in June 2007. As the Cypriot authorities announced that the derogation allowing for the spring hunting of turtle doves would not be renewed, the Commission decided to close the case in October 2007.

In December 2007, the Commission has also closed an infringement case against Finland in relation to spring hunting.

### *Species protection*

In June 2007, the Court of Justice declared in Case C-342/05 that, by authorising wolf hunting on a preventive basis, without being specifically justified by the need to prevent serious damage within the meaning of Article 16(1)(b) of the Habitats Directive, the Republic of Finland had failed to fulfil its obligations under Articles 12(1) and 16(1)(b) of that directive.

In 2007, it was possible to close two infringements under Article 228 against Greece. The infringements concerned with the protection of *Caretta caretta* (Case C-103/00) and *Milos Viper* (Case C-518/04). Greece has adopted and implemented an adequate legal framework to ensure the strict protection of these species in accordance with Article 12 of the Habitats Directive.

A guidance document on the implementation of Articles 12 and 16 of the Habitats Directive was published in 2007 (Guidance on Habitats Directive Articles 12 and 16)<sup>111</sup>.

### *Further judgments of the Court of Justice in 2007*

The Court delivered several rulings in relation to the implementation of Article 6(3)-(4) of the Habitats Directive concerning respectively, the assessment of implications of certain plans and project on the site and the compensatory measures, (Case C-388/05, Case C-304/05, Case C-179/06). Those rulings are based on the Waddensee case-law (Case C-127/02) and provide further clarification on the interpretation of Article 6(3)-(4), which is a key provision of the Habitats Directive.

As regards the concept of a ‘plan’, the Court clarified that it must be “more than at the stage of preliminary administrative reflection and carry a degree of precision in the planning in question which calls for an environmental assessment of their effects” (Case C-179/06, paragraph 41).

---

<sup>111</sup> [http://ec.europa.eu/environment/nature/conservation/species/guidance/index\\_en.htm](http://ec.europa.eu/environment/nature/conservation/species/guidance/index_en.htm)

As regards the obligation for an assessment, the Court recalled that “the environmental protection mechanism provided for in Article 6(3) of the Directive requires that there be a probability or a risk that a plan or project will have significant effects on the site concerned” (case C-179/06, paragraph 33). In this regard, the Court considers that “under Article 6(3) of Directive 92/43, then, it is for the Commission to furnish the proof that, in the light of the characteristics and the specific environmental conditions of the site affected by a plan or project, that plan or project is likely to have a significant effect on that site, in the light of the conservation objectives fixed for the site” (Case C-179/06, paragraph 39).

Regarding the content of an ‘appropriate assessment’, in Case C-304/05 (paragraphs 56-59), the Court recalls its previous case-law (Case C-127/02 ‘Waddenzee’, paragraphs 34, 56-61, and Case C-239/04 Commission v Portugal (‘Castro Verde’), paragraph 19-20 and 24):

Article 6(3) provides for an assessment procedure intended to ensure, by means of a prior examination, that a plan or project which is not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site.

The assessment must be organised in such a manner that the competent national authorities can be certain that a plan or project will not have adverse effects on the integrity of the site concerned, given that, where doubt remains as to the absence of such effects, the competent authority will have to refuse authorisation.

With regard to the factors on the basis of which the competent authorities may gain the necessary level of certainty, no reasonable scientific doubt may remain, those authorities having to rely on the best scientific knowledge in the field.

The Court further specified that an appropriate assessment must contain complete, precise and definitive conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the site concerned (Case C-304/05, paragraphs 69-73).

Finally, on the relationship between Articles 6(3) and 6(4), the Court decided that, “Article 6(4) of Directive 92/43 can apply only after the implications of a plan or project have been studied in accordance with Article 6(3) of that directive. Knowledge of those implications in the light of the conservation objectives relating to the site in question is a necessary prerequisite for application of Article 6(4) since, in the absence thereof, no condition for application of that derogating provision can be assessed. The assessment of any imperative reasons of overriding public interest and that of the existence of less harmful alternatives require a weighing up against the damage caused to the site by the plan or project under consideration. In addition, in order to determine the nature of any compensatory measures, the damage to the site must be precisely identified” (Case C-304/05, paragraph 83).

#### *6.2.1.2 Changes underway*

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.

### 6.2.1.3 Evaluation of the current position in terms of implementation

Despite the small number of legal instruments in this field, nature conservation legislation accounts for between a fifth and a quarter of environmental infringements, i.e. 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 25 000 sites: there are Natura 2000 sites in the vicinity of 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 and the non-energy extractive industry, 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 were 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. This is also confirmed by the number of open cases, which has been significantly reduced, despite the accession of 10 new Member States. At the end of 2003, 589 open cases were related to the nature conservation directives while, at the end of 2007, the number of open nature cases was 235.

### 6.2.1.4 Further challenges in implementing Nature Protection legislation

- *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 exercise is expected to be finalised in the short term. In the medium term, the Commission will tackle the issue 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 are expected to submit their proposals by end 2008, based on existing knowledge. In order to facilitate the process, a guidance document has already been prepared by the Commission services.

- *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 promote best practice within specific economic sectors, such as European ports, wind energy and non-extractive industries. Mention may also be made of the value of broad-based analysis and follow-up of problematical implementation<sup>112</sup>.
- *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.

#### 6.2.1.5 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 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 Justice<sup>113</sup>. 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

---

<sup>112</sup> Case C-418/04, *Commission v Ireland*, the subject of decision of 13 December 2007, illustrates how, by examining and analysing site protection problems across a whole economic sector, in this case aquaculture, a non-governmental organisation can lay the basis for a more effective and significant Commission intervention than if it had limited its examination to isolated cases in that sector.

<sup>113</sup> 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.

problems of bad implementation, the established practice of launching horizontal infringement cases will continue to be followed.

## 6.2.2 Waste Management

### 6.2.2.1 Current position

The basic requirements for Member States regarding the management of waste and a definition of the term ‘waste’ are set out in Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (the Waste Framework Directive<sup>114</sup>). More specifically, this Directive requires Member States to create and maintain an adequate network of waste disposal installations to enable the Community as a whole and the Member States individually to become self-sufficient in waste disposal. In order to achieve this objective, waste management plans have to be drawn up. It also established the waste hierarchy. This means that, ideally, waste should be prevented and what cannot be prevented should be re-used, recycled and recovered as much as feasible, with landfill being used as little as possible. The general framework directive is complemented by specific legislation to address particular environmental threats associated with waste. These include:

- Harmonised rules on waste management practices, including strict emission limits and operating requirements for the incineration<sup>115</sup> and landfill of waste. Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (the Landfill Directive<sup>116</sup>) establishes a set of detailed technical rules landfills must comply with. The objective is to prevent or minimise the negative effects that landfills can have, such as pollution of water, soil and air, and also gas emissions, notably emissions of methane, which is a powerful greenhouse gas. The Landfill Directive also helps to promote the recovery and recycling of waste, in particular by banning whole used tyres from landfills and by requiring waste to be treated prior to landfilling. Best available techniques were chosen as the benchmark for the management of hazardous waste<sup>117</sup>
- Harmonised rules on the shipment of waste, both inside the EU and to third countries, set by the Waste Shipment Regulation. This Regulation sets out rules for the trans-frontier movement of waste to ensure that waste is handled in an environmentally sound manner throughout the shipment process, including recovery or disposal in the country of destination.

Product specific recycling legislation, setting targets for the collection and recycling and introducing producer responsibility principles for specific waste streams from consumer goods (including packaging waste<sup>118</sup>, end of life vehicles<sup>119</sup> and waste electrical and electronic

---

<sup>114</sup> OJ L 114, 27.4.2006, p. 9–21.

<sup>115</sup> 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).

<sup>116</sup> OJ L 182, 16.7.1999, p. 1–19.

<sup>117</sup> Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ L 377, 31.12.1991, p. 20–27).

<sup>118</sup> European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10–23).

<sup>119</sup> Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles (OJ L 269, 21.10.2000, p. 34–43).

equipment<sup>120</sup>). Examples of recently adopted legislative measures in the sector of waste management include Directive 2006/21/EC on the management of waste from extractive industries and amending Directive 2004/35/EC<sup>121</sup> (transposition deadline: 1 May 2008) and Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC<sup>122</sup> (transposition deadline: 26 September 2008).

Work in 2007

### Main infringements in 2007

#### *Horizontal non-conformity case on transposition of the Landfill Directive*

The European Commission carried out a check on EU-25 Member States' legislation to assess its conformity with the Landfill Directive and decided to start legal action against 14 Member States for inadequately transposing this directive into their national law. Having sent first warning letters to seven Member States in December 2006, the Commission continued by also sending first warning letters to Cyprus, the Czech Republic, Denmark, Estonia, Finland, Hungary, Ireland, Lithuania, Malta, Poland, Slovakia, Slovenia, Spain, Sweden and the United Kingdom in 2007.

#### *Horizontal non-conformity case on transposition of the WEEE and RoHS Directives*

In 2007, the Commission sent a first warning letter to eight Member States for their incorrect transposition of the WEEE Directive and the RoHS Directive. The Commission considered that the three Baltic States (Estonia, Latvia and Lithuania) had not correctly transposed certain provisions of the Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (the WEEE Directive) and that six Member States (Belgium, Denmark, Lithuania, Malta, Finland and Sweden) had not correctly transposed the Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (the RoHS Directive).

#### *Horizontal cases related to illegal landfills*

The Court of Justice declared on 29 March 2007 (Case C-423/05, Commission v France) and 26 April 2007 (Case C-135/05, Commission v Italy) that both countries have failed to ensure that waste is disposed of in landfills managed in accordance with the Waste Framework Directive and the Landfill Directive. Thousands of sites in France and Italy have been identified as illegal landfills in the Court of Justice case. France and Italy are requested to

---

<sup>120</sup> Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment ((*OJ L 37, 13.2.2003, p. 19–23*), and Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (*OJ L 37, 13.2.2003, p. 24–39*).

<sup>121</sup> This Directive introduces measures to prevent or minimise any adverse effects on the environment and resultant risks to health resulting from the management of waste from the extractive industries, such as tailings and displaced material (*OJ L 102 of 11.04.2006*).

<sup>122</sup> This Directive prohibits the placing on the market of most batteries and accumulators with a certain mercury or cadmium content and establishes rules for the collection, recycling, treatment and disposal of batteries and accumulators. (*OJ L 266 of 26.9.2006*).



rapidly comply with the judgment. The Commission will monitor closely execution of there Court judgements.

The Commission sent a final written warning to Spain over its failure to comply with a 2005 European Court of Justice ruling (Case C-157/04) which found it had violated several EU directives on waste. The waste disposal site at Punta de Ávalos on the Canary island of La Gomera poses a serious risk to the surrounding environment and human health.

#### *Waste crisis in the Campania Region, Italy*

The Commission launched legal action against Italy over the chronic waste crisis affecting Naples and the rest of the Campania region. The Commission considered that the region's waste disposal installations are inadequate and pose serious problems for human health and the environment, constituting a violation of EU waste legislation. In June 2007, the Commission therefore sent Italy a first warning letter requesting information about the measures being taken to protect human health and the environment in the region. In parallel, the Commission was assessing government plans to open four new waste landfill sites in Campania to check their compliance with EU law and to establish if these would be sufficient to help resolve the region's waste problems.

#### *Sofia waste case, Bulgaria*

The Commission also decided to send a first written warning to Bulgaria for its failure to provide an adequate system for the disposal of household waste in Sofia.

#### Judgments of the Court of Justice in 2007

Judgments of the Court of Justice in the waste sector delivered in 2007 are: Case C-139/06, Commission v United Kingdom, , Case C-361/05, Commission v Spain, Case C-82/06 Commission v Italy, Case C-90/07, Commission v Belgium, Case C-523/06, Commission v Finland, Case C-106/07, Commission v France, Case C-508/06, Commission v Malta, Case C-194/05, Commission v Italy, Case C-195/05, Commission v Italy, Case C-263/05 Commission v Italy.

#### 6.2.2.2 *Changes underway*

EU waste management legislation is characterised by several pieces of consolidated legal instruments as well as important new pieces of legislation. The waste management legislation is underpinned by the Thematic Strategy on the Waste Prevention and Recycling<sup>123</sup>. It sets as long term objective for the EU to become a recycling society, that seeks to avoid waste and uses waste as a resource.

Following the Thematic Strategy, the Waste Framework Directive has been modernised, introducing a new approach to waste management that encourages the prevention of waste. The revised directive clarifies that the waste hierarchy should not be seen as a hard-and-fast rule but that deviations from the hierarchy are possible based on a life-cycle analysis of environmental impacts. The revised directive also sets energy-efficiency criteria on the basis of which waste incineration can be considered as a recovery operation to promote resource

---

<sup>123</sup> COM(2005)666.

efficiency, thus reducing the consumption of fossil fuels. It also sets new recycling targets: By 2020, Member States must recycle 50% of their household and similar waste and 70% of their construction and demolition waste.

#### *6.2.2.3. Evaluation of the current position in terms of implementation*

The overall situation of waste management has to be seen as critical. The by far biggest challenge concerns the implementation of the Waste Framework Directive, the Landfill Directive and the Waste Shipment Regulation. The lack of adequate waste management infrastructure, the persistently high number of illegal landfills in a significant number of Member States and the significant number of illegal shipments of waste, notably electronic waste and end-of-life vehicles, threaten human health and the environment. The chronic waste crisis affecting Naples and the rest of the Campania region in Italy is a striking example. In Member States where this phenomenon exists, efforts, particularly in terms of investment in waste infrastructure, will have to be stepped up considerably. Implementation of separate waste collection, notably for packaging waste and biodegradable waste, as well as effective pre-treatment of waste before disposal are a prerequisite for boosting recycling and reducing the rate of landfilling, in particular for the EU-12 Member States, where it still oscillates around 90%. Specific aspects of landfilling have received higher attention under the present climate change discussion. Insufficient methane collection from landfills and alternative waste management options addressed under the label “waste to energy” will fuel the discussion about improving waste management in the near future.

#### *6.2.2.4. Further challenges in implementing Waste Management legislation*

- *Ensuring an adequate network of safe and legal waste disposal and recovery facilities.* Matching the capacity of waste infrastructure to the volume of waste generated is fundamental to good waste management. Waste management plans can help ensure the necessary capacity, but only if they are effectively implemented.
- *Reducing and managing certain waste streams.* The achievement of certain EC waste reduction and management goals such as the diversion of biodegradable waste from landfills and the collection and handling of end-of-life vehicles and waste electrical and electronic equipment (WEEE) also depends on adequate forward planning and development of organisational arrangements and recovery facilities.
- *Combating the illegal waste trade and illegal waste disposal.* Tackling the use of thousands of illegal landfills in several Member States requires strategic action on several fronts to comply with the Waste Framework Directive and the Landfill Directive: investments in legal facilities, better systems of national detection, enforcement and deterrence and adequate site clean-up. Adequate controls on transfrontier waste shipments are also essential. The Commission has taken horizontal legal action for lack of controls on illegal landfills, and there have been several important ECJ rulings.

#### 6.2.2.5. *Prioritisation of Commission's legal enforcement work*

In the coming years, the Commission will pursue its legal enforcement action to help meet the objectives of the waste management legislation, i.e. to reduce the negative impact on the environment and human health that is caused by waste throughout its life-span, from production to disposal, via recycling.

To this effect, high priority will continue to be given to “*horizontalising*” infringement action, i.e. tackling widespread problems of bad implementation at a more strategic level. This approach allows the Commission to address the lack of adequate waste management capacity and infrastructure and the presence of illegal landfills in a far higher number of places than would have been possible if it had only focused on individual failures, and to ensure consistency and coherence in the actions taken.

In addition, since the completeness and correctness of implementing legislation within the Member States are important determinants of good implementation in practice, the Commission will continue to systematically pursue infringements concerning the non-conform transposition of the most important pieces of waste management legislation (for example, the Landfill Directive, the WEEE Directive, the End-of-life vehicles Directive) likely to affect the attainment of the legislative objectives.

As for other new proposals for directives, to ensure timely and correct transposition of the new waste management directives, primarily the new Waste Framework Directive, the responsible units within DG Environment will prepare risk-based implementation action plans.

By way of preventive action, the Commission will continue to carry out awareness-raising campaigns and information exchange in most Member States. Particular emphasis will be placed on two implementation gaps, illegal and mismanaged landfills and illegal waste shipments, and waste management plans and prevention programmes. It is hoped that this will increase understanding of Community legal requirements, identify bottlenecks and promote best practice.

Furthermore, bilateral and multilateral meetings will take place with Member States and stakeholders.

#### 6.2.3 *Environmental Impact Assessment and Strategic Environmental Assessment*

##### 6.2.3.1 *Current position*

The most important pieces of legislation in this sector are the Environmental Impact Assessment Directive and the Strategic Environmental Assessment Directive. Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment as amended by Directives 97/11/EC and 2003/35/EC (the Environmental Impact Assessment or EIA Directive)<sup>124</sup> 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. Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and

---

<sup>124</sup> OJL 175, 5.7.1985, p. 40.

programmes on the environment (the Strategic Environmental Assessment or SEA Directive)<sup>125</sup> 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.

Work in 2007

### Main infringements in 2007

#### *Non-conform transposition of the EIA Directive*

In 2007, the Commission moved forward infringement actions on with regard to the non-conform transposition of the EIA Directive. Second warning letters were sent to four Member States and an application to the Court of Justice was decided as regards two other Member States.

#### *Infringement under Article 228 on transposition of SEA Directive in Belgium*

Following an infringement procedure brought by the Commission, the Court of Justice ruled in December 2006 (Case C-54/06) that Belgium had not complied with its obligations because the Flemish Region had not transposed the SEA directive. The deadline for doing so was 21 July 2004. The Flemish government has taken steps towards transposing the directive since the judgment, but has not yet completed the process. In view of this continuing infringement, the Commission sent Belgium a first warning letter under Article 228 in March 2007 and a final warning in June 2007 that Flanders must fully comply with the directive.

### Judgments of the Court of Justice in 2007

The Court of Justice in a judgment of 5 July 2007 (Case C-255/05) declared, among other things, that, by not making the project to implement a ‘third line’ of the incinerator belonging to ASM Brescia SpA subject to the environmental impact assessment procedure, before consent was given for its construction, the Italian Republic has failed to fulfil its obligations under the EIA directive.

Further judgments of the Court of Justice in the environmental impact assessment sector in 2007 are: Case C-199/04, Commission v United Kingdom, Case C-376/06, Commission v Portugal, Case C-255/05, Commission v Italy, Case C-93/07, Commission v Belgium, Case C-354/06, Commission v Luxembourg and Case C-40/07, Commission v Italy.

#### 6.2.3.2 *Changes underway*

The application and effectiveness of the environmental impact assessment legislation, in particular the EIA Directive has been subject to regular reviews in the past. On the basis of such reviews, the EIA Directive was subsequently amended in 1997. Directive 97/11/EC<sup>126</sup> widened the scope of EIA Directive by increasing the types of project covered, and the number of projects requiring mandatory environmental impact assessment (Annex I). It also strengthened the procedural basis of the EIA Directive by providing for new screening

---

<sup>125</sup> OJL 197, 21.7.2001, p. 30.

<sup>126</sup> OJL 73, 14.03.1997.

arrangements, including new screening criteria (at Annex III) for Annex II projects, and providing minimum information requirements. Following this first amendment, the Directive was later modified in 2003 by Directive 2003/35/EC<sup>127</sup> seeking to align the provisions on public participation in accordance with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters. Depending on the results of future reports on their application, further amendments and changes to both the EIA and the SEA Directive cannot be excluded.

#### 6.2.3.3. *Evaluation of the current position in terms of implementation*

The EIA Directive has been the subject of several cases brought before the European Court of Justice and the case-law of the Court has contributed to the better understanding of certain provisions of the Directive. In the interests of better implementation of the EIA and the SEA Directive, the Commission services have developed in recent years a number of guidance documents on particularly important aspects of both directives<sup>128</sup>.

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, so that at the end of 2007 this sector ranked only fifth in terms of the number of infringements. Most open cases still relate to the EIA Directive, but cases relating to the SEA Directive are on the increase. The deadline for transposing the latter Directive was 21 July 2004, but significant delays in transposition have occurred in many Member States, which means that the experience in the actual application of the Directive is still somewhat limited. In addition, the conformity of Member States' legislation cannot yet be considered to have been secured. Given the similar nature of the obligations in the two instruments, 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 thereof require an SEA (the so-called "screening" decisions) could pose problems of bad application. However, forthcoming reports on the application of both the EIA and the SEA Directives will clarify this and form the basis for the future Commission's action in the sector.

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. This provision has been used by Italy three times in 2006 and twice so far in 2008.

In 2006, two notifications concerned the building of port infrastructure in Sicily: one in the Eolie islands after damage by a tsunami and the other in Lampedusa due to the lack of facilities to receive a high number of immigrants. The third 2006 notification was for the temporary use of an existing waste disposal facility for special waste in Lecce in Puglia due to the waste emergency in the region at the time. In 2008, both notifications concerned new landfills in Campania needed due to the waste emergency there.

---

<sup>127</sup> OJ L 56, 25.06.2003.

<sup>128</sup> Examples for the EIA Directive include guidance documents on screening, scoping, assessment of indirect and cumulative impacts, or most recently, on the interpretation of the different project categories.

#### 6.2.3.4 Further challenges in implementing Environmental Impact Assessment legislation

- *Ensuring that citizens and NGOs can seek reviews at Member States level.* Every year, thousands of projects are proposed across the Community. A key challenge arises from the fact that, when citizens are aggrieved or concerned about proposed new infrastructure, industrial and other projects, they look to environmental impact assessment provisions contained in the EIA Directive when formulating their objections and concerns. The provisions are therefore frequently invoked in relation to controversies about proposed new development and in relation to complaints and petitions. In line with the Aarhus Convention, the last revision of the Environmental Impact Assessment Directive in 2003 seeks to give citizens and NGOs a right of review of decisions that concern rights of public participation. Making this effective is a way of better addressing nationally the many EIA concerns that are expressed by citizens about individual projects across the Community.
- *Developing capabilities in Member States to ensure effective implementation of the EIA and SEA Directives.* For the effective application of the EIA and the SEA Directives, capacity building must be strongly encouraged within institutions having critical responsibilities in planning and environmental decision-making, notably through targeted campaigns for the recruitment and training of EIA and SEA experts. In this context, training programmes offered and guidance documents prepared by the Commission are contributing to the capacity building efforts of the Member States.
- *Taking into account the horizontal character of the EIA and SEA Directives, there are possible overlaps between these two Directives and certain other EC environmental legislation and policies.* This may require co-ordinated or joint procedures to avoid duplication of assessment. Overlaps may occur between the EIA and SEA Directives themselves, as well as with the Water Framework Directive (Directive 2000/60/EC), the Nitrates Directive (91/676/EC), the Waste Framework Directive (Directive 2006/12/EC), the Air Quality Directive (2008/50/EC) and the Habitats Directive (92/43/EC). Furthermore, the SEA Directive also applies to plans and programmes co-financed by the EC, and the environmental assessment is carried out in conformity with the specific provisions in relevant Community legislation.

#### 6.2.3.5. *Prioritisation of Commission's legal enforcement work*

High priority will continue to be given to legal action addressing non-conformity of transposing measures for the EIA Directive likely to affect the attainment of the legislative objectives. These cases now mainly concern EU-12 Member States. Similarly, the Commission will continue to pursue infringement procedures against Member States that have failed to correctly and/or completely transpose the SEA Directive. Since these directives contain mainly procedural requirements which figure in many complaints and petitions, the Commission will continue to seek improved national legislation to implement these requirements. By doing so, the Commission seeks to avoid at least some procedural problems at the level of individual plans and projects.

In addition to the emphasis on pursuing non-conformity cases and work aimed at improving national legislation which implements the procedural requirements of the environmental impact assessment legislation, the following types of bad implementation cases will be followed up more closely by the Commission:

- 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 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.

Apart from the above cases where the Commission legal enforcement action might be indispensable, individual breaches of certain provisions of the environmental impact assessment legislation should primarily be addressed through the existing review mechanisms at Member State level.

#### 6.2.4 *Protecting Water Resources*

##### 6.2.4.1 *Current position*

The most important piece of legislation in this area is the Water Framework Directive<sup>129</sup>, which establishes a strategic framework for the protection of all water bodies, i.e. rivers, lakes, coastal waters and groundwater, in the European Union. Council Directive 91/271/EEC concerning urban waste water treatment<sup>130</sup> is another key instrument for reducing water pollution: it addresses the waste water discharges of cities and towns. Complementing it is the Nitrates Directive<sup>131</sup>, designed to protect Community's waters against nitrates from agricultural sources, one of the chief causes of diffuse pollution. Aimed at ensuring that drinking water is kept free of contamination, the Drinking Water Directive<sup>132</sup> is important for public health. Besides the above-mentioned key directives, European water legislation also covers further specific uses of water including rules for the monitoring, assessment and management of the quality of bathing water<sup>133</sup>. Moreover, various pieces of legislation cover rules for preventing and reducing the discharges of substances into water bodies<sup>134</sup>.

---

<sup>129</sup> 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*).

<sup>130</sup> *OJ L 135, 30.5.1991, p. 40–52*.

<sup>131</sup> 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*).

<sup>132</sup> Council 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (*OJ L 330, 05.12.1998, p. 32–54*).

<sup>133</sup> Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (*OJ L 31, 5.2.1976, p. 1–7*).

<sup>134</sup> The following directives can be mentioned as examples of such legislation: Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (*OJ L 129, 18.5.1976*); and Council Directive 80/68/EEC of 17

Work in 2007

### Main infringements in 2007

#### *Infringements under Article 228*

In 2007, the Commission sent Italy a final warning letter under Article 228 following its first warning in 2006 for failing to comply with a ruling of the Court of Justice of 12 January 2006 (Case C-85/05) which condemned Italy for failing to transpose the Water Framework Directive. The Commission's view is that the legislative decree sent by Italy in May 2006 following the above ruling of the Court did not fully transpose the directive. A final warning letter was also sent to Luxembourg in 2007 for not complying with a similar ruling on the same directive delivered by the Court on 30 November 2006 (Case C-32/05).

During 2007, the Commission sent first warning letters to Belgium, Luxemburg, Spain and the United Kingdom for not fully complying with Court of Justice rulings concerning the Urban Waste Water Treatment Directive. The rulings in question are Case C-27/03, *Commission v Belgium*, delivered on 8 July 2004 over the failure to sufficiently treat the waste water of many Belgian agglomerations; Case C-452/05, *Commission v Luxembourg*, delivered on 23 November 2006 for failure to sufficiently treat the waste water of eleven agglomerations; Case C-416/02, *Commission v Spain*, delivered on 8 September 2005 in relation to the lack of treatment of the waste water of the agglomeration of Vera; and Case C-405/05, *Commission v United Kingdom*, delivered on 25 January 2007 for failure to adequately treat the waste water of thirteen agglomerations.

The Commission sent Ireland a final warning letter for failing to comply fully with a 2002 Court of Justice ruling requiring drinking water supplies to be kept free of E. coli bacteria in accordance with the Drinking Water Directive (Case C-316/02). Portugal also received a first warning letter for failing to comply with a 2005 Court of Justice ruling concerning the same directive (Case C-251/03).

The Commission also sent Ireland a final warning letter for failing to comply with a 2002 Court of Justice ruling (Case C-282/02) requiring greater controls on polluting discharges to surface water by local authorities, in particular through the establishment of an authorisation system. Ireland subsequently notified legislation establishing such authorisation system.

#### *Infringement concerning the Nitrates Directive*

In 2007, the Commission updated an infringement action against Spain (launched originally in 2003) by sending an additional letter of formal notice covering the incomplete monitoring and insufficient designation of nitrate vulnerable zones as well as the failure to adopt fully compliant action programmes for these zones.

### Judgments of the Court of Justice in 2007

In 2007, the Court of Justice delivered several rulings in the water sector.

---

December 1979 on the protection of groundwater against pollution caused by certain dangerous substances(*OJL 20, 26.1.1980, p. 43-48*)



In Case C-405/05 the Court declared that the United Kingdom had failed to fulfil its obligations under the Urban Waste Water Treatment Directive by failing to take the measures necessary to ensure that adequate treatment was provided for urban waste waters from certain agglomerations by 31 December 2000 at the latest.

In Case C-219/05, the Court ruled that Spain had failed to fulfil its obligations under the Urban Waste Water Treatment Directive by failing to ensure that certain coastal waste water discharges were subject to more stringent treatment by the required deadline of 31 December 1998.

In Case C-440/06, *Commission v Greece*, the Court ruled that, for several agglomerations, there had been a failure to provide collecting systems and/or waste water treatment in accordance with the Urban Waste Water Treatment Directive.

The Court ruled in Case C-248/05 that Ireland failed to fulfil its obligations under Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances with regard to a municipal landfill at Ballymurtagh (County Wicklow). In Case C-148/05, it ruled that Ireland had failed to designate all shellfish waters requiring designation under Directive 79/923/EEC on the quality required of shellfish waters and that it had also failed to take all necessary measures to establish pollution reduction programmes for shellfish waters requiring designation.

In Case C-85/07, the Court ruled that Italy had failed to complete and notify the analyses of certain Italian river basin districts as it was required to do under the Water Framework Directive.

#### 6.2.4.2 Changes underway

European water legislation consists of a number of fairly stable, consolidated legal instruments, but there are also important new developments in this domain. Examples of recently adopted measures include a new Bathing Water Directive<sup>135</sup>, a new Groundwater Directive<sup>136</sup>, which supports the Water Framework Directive, and a directive on flood risks<sup>137</sup>.

---

<sup>135</sup> Directive 2006/7/EC of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC (transposition deadline 24 March 2008) (*OJ L 64 of 4.3.2006*). Directive 76/160/EEC is repealed by this new Directive with effect from 31 December 2014. It is designed to ensure consistency with the Water Framework Directive and is also intended to simplify procedures in the light of scientific developments and improve participatory processes for the actors concerned and the information given to the public.

<sup>136</sup> Directive 2006/118/EC of 12 December 2006 on the protection of groundwater against pollution and deterioration (transposition deadline 16 January 2009) (*OJ L 372, 27.12.2006*). This Directive is designed to prevent and combat groundwater pollution. Its provisions include: criteria for assessing the chemical status of groundwater; criteria for identifying significant and sustained upward trends in groundwater pollution levels, and for defining starting points for reversing these trends; and preventing and limiting indirect discharges (after percolation through soil or subsoil) of pollutants into groundwater.

<sup>137</sup> Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks (transposition deadline 26 November 2009) (*OJ L 288, 6.11.2007*). This Directive aims to establish a common framework for assessing and reducing the risk that floods within the European Union pose to human health, the environment, property and economic activity. The purpose of this Directive is to manage and reduce the risk of floods, particularly along rivers and in coastal areas. It provides for assessment of the risk of flooding in river basins, the mapping

The new Marine Strategy Framework Directive<sup>138</sup>, which extends the application of the principles of the Water Framework Directive to the European Seas, has recently been adopted. In addition, a proposal for a Directive relating to priority hazardous substances<sup>139</sup> which also supports the Water Framework Directive is currently in the adoption pipeline.

#### 6.2.4.3 Evaluation of the current position in terms of implementation

The strong stakeholder processes that have been put in place, combined with Commission enforcement action, have helped to ensure a broad degree of compliance with the first implementation deadlines under the Water Framework Directive. These comprise the deadlines for transposing the directive into national law (December 2003), the setting up and notification of river basin districts (June 2004), the analysis and notification of pressures on river basin districts (March 2005) and the organisation and notification of monitoring (March 2007). However, studies have identified problems with the quality of national implementing legislation, and the Commission faces the challenge of securing from Member States clearer and more complete national implementing provisions.

In the EU-15, i.e. those Member States that joined the EU in the period before 2004-2007, the implementation of the Urban Waste Water Treatment Directive presents a mixed picture. On the one hand, key infrastructure is in place in several Member States and significant investments have been made elsewhere. This serves not only the immediate goals of the Urban Waste Water Treatment Directive but also supports the achievement of wider water policy objectives, including those of the Water Framework Directive. On the other hand, in the EU-15, there are infrastructure deficits in up to a quarter of the 8000 larger cities and settlements that were subject to 1998 and 2000 collection and treatment deadlines. The deficits are the subject of ongoing Commission infringement procedures that have already resulted in several important ECJ rulings. These in turn are helping to secure the necessary implementation work in the Member States concerned, and a steady narrowing of the deficits is to be expected. However, several factors such as slippage of expected infrastructure completion dates make it difficult to forecast when full compliance will be achieved.

#### 6.2.4.4 Further challenges in implementing European water legislation

- *Making the Water Framework Directive fully operational.* Momentum must be maintained to ensure that critical upcoming deadlines are respected and that in the crucial period 2009-2015, effective action is taken at the level of each European river basin district to prevent and reduce water pollution and avoid the unsound use of water resources.
- *Implementing the Urban Waste Water Treatment Directive:* It is important to ensure effective implementation of the Urban Waste Water Treatment Directive in the EU-12 and continue to ensure effective implementation in the EU-15. For the

---

of flood risks in all regions where there is a serious risk of flooding and the drawing up of flood risk management plans based on close cooperation between and the broad participation of Member States.

<sup>138</sup> Directive 2008/56/EC of the European Parliament and of the Council 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*).

<sup>139</sup> Proposal for a Directive of the European Parliament and of the Council on environmental quality standards in the field of water policy and amending Directive 2000/60/EC (COM(2006)397).

EU-12, legal deadlines are later but it is clear that many cities and settlements require upgrades and the Commission will need to follow progress closely. The Commission will also need to monitor closely compliance in EU-15, for example to ensure that collecting systems and treatment match urban growth.

#### 6.2.4.5 *Prioritisation of Commission's legal enforcement work*

Horizontal legal actions addressing systemic breaches, such as widespread contraventions to obligations for the development of environmental infrastructure under the Urban Waste Water Directive will continue to be pursued as priorities. This approach means that a single case can encompass significant numbers of non-compliant cities and towns, bringing much more pressure to bear than would be possible through a policy of pursuing individual failures.

An important focus of the Commission's enforcement work as regards water is to make sure that the various deadlines of the Water Framework Directive are respected. To this effect, the Commission will continue to take concerted legal action to address missed deadlines in the upcoming crucial period 2009-2015

The Commission will continue to take infringement action against Member States that have not correctly or completely transposed into their national legislation the provisions of the Water Framework Directive in ways likely to affect the attainment of the legislative objectives.

Similar action will be taken to secure from Member States (mainly from EU-12 countries) clearer and more complete national implementing provisions of the Drinking Water Directive.

As regards the important new legal instruments, DG Environment will prepare risk-based implementation action plans for the Marine Strategy Directive and the new Groundwater Directive. This will involve forward planning of work to encourage correct and timely transposition.

#### 6.2.5 *Air quality*

##### 6.2.5.1 *Current position*

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 sector<sup>140</sup>. This merges four Directives<sup>141</sup> and one Council Decision<sup>142</sup> into a single air quality instrument. Other important legal instruments contributing to ensuring adequate air quality are the two fuel quality Directives, i.e. Directive 98/70/EC relating to the quality of petrol and

---

<sup>140</sup> . *OJL 152, 11.6.2008, p. 1–44.*

<sup>141</sup> 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

<sup>142</sup> 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.

diesel fuels<sup>143</sup> and Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels<sup>144</sup>. Furthermore, mention must also be made of the Noise Directive<sup>145</sup> which lays down a common approach to avoiding, preventing or reducing on a prioritised basis the harmful effects of exposure to environmental noise.

Work in 2007

### Main infringements in 2007

#### *Action on SO<sub>2</sub> levels*

The Commission started infringement procedures against France, Italy, Spain, Slovenia and the UK for exceeding EU limits on ambient concentrations of sulphur dioxide (SO<sub>2</sub>), an air pollutant from industrial installations that can cause respiratory problems and aggravate cardiovascular disease. The Directive 1999/30/EC sets hourly and daily limit values for SO<sub>2</sub> concentrations which entered into force on 1 January 2005. The five Member States facing infringement procedures all reported exceeding the values in their territory during 2005.

#### *Action on PM10 levels*

Under Directive 1999/30/EC, binding daily and annual limit values for airborne particles known as PM10 have been in force since 1 January 2005. In 2007, the Commission asked 23 Member States that have reported exceeding the levels of the PM10 values for 2005 to provide information on the measures they were taking to eliminate or reduce the levels to meet EU standards. This information will allow the Commission to better assess the extent of the problem and to decide upon request received from the Member States on granting possible time extensions under the new Directive on ambient air quality and cleaner air for Europe to comply with PM10 limit values.

#### *6.2.5.2 Changes underway*

This domain of EC environmental law is characterised by important new developments. The most important recent legal instrument is the new Air Quality Directive, 2008/50/ which entered into force on 11 June 2008. It introduces new objectives for fine particles PM<sub>2.5</sub> but does not change existing air quality standards. It does, however, give under certain conditions Member States greater flexibility in meeting some of these standards in areas where they have difficulty complying. Another important legal instrument that is currently in the legislative procedure is the revision of the Fuel Quality Directive<sup>146</sup>. This will contribute to reducing air pollutant and greenhouse gas emissions from road and non-road fuel use and help to

---

<sup>143</sup> 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).

<sup>144</sup> Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC (*OJ L 121*, 11.5.1999, p. 13–18).

<sup>145</sup> 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).

<sup>146</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and the introduction of a mechanism to monitor and reduce greenhouse gas emissions from the use of road transport fuels and amending Council Directive 1999/32/EC, as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC (COM (2007) 18).

implement the Community strategies on air quality and on climate change. The main reasons for reviewing the Fuel Quality Directive stem from evolving fuel and engine technology and the growth in biofuel use.

### 6.2.5.3 Evaluation of the current position in terms of implementation

Available evidence points to serious problems in complying with the air quality limit values in many European air quality zones. The Commission has been following closely the situation in all Member States and, so far, has taken the following action in this field:

- *Action on SO<sub>2</sub> levels:* The Commission has already launched infringement procedures against several Member States that have shown widespread exceedances of sulphur-dioxide (SO<sub>2</sub>) limit values that have been in force since 1 January 2005.
- *Action on PM<sub>10</sub> levels:* The binding limit values for particulate matter (PM<sub>10</sub>) have also been in force since 1 January 2005. It is clear from official reports that most of the Member States have experienced significant difficulties in achieving compliance with these limit values. For 2006, around 400 zones in 23 Member States were reported being in non-compliance. It is expected that Bulgaria and Romania, which were not under obligation to report for that year, are also facing serious compliance problems. In this context, it must be noted that PM<sub>10</sub> compliance problems were recognised well in advance by the Commission. Hence, it proposed a revision of the legislation aimed at maintaining standards but allowing extra time and greater flexibility to address the most serious difficulties under certain conditions. The dilemma was how to treat the breaches of existing Community law in the intervening period before the new Directive was adopted. The Commission took the option not initiating immediate legal actions, and instead, required the Member States to implement the pollution-abatement measures necessary to improve the situation. It warned Member States that this would be a condition for any time extension for compliance under the new Air Quality Directive.
- *Action concerning non-communication of plans and programmes aimed at achieving compliance with other limit values:* The Commission has pursued legal enforcement action against a number of Member States which had failed to communicate their plans and programmes for complying by the end of the transitional periods with the other limit values set under EC Air Quality legislation<sup>147</sup>.
- *Actions concerning noise* Under the Noise Directive, Member States had to send to the Commission by 30 December 2007 information from the strategic noise maps which had to be drawn up by 30 June 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. The Commission prepared guidance and electronic templates (so-called 'electronic reporting mechanisms') designed to support and assist the Member States in fulfilling their reporting

---

<sup>147</sup> In addition to sulphur-dioxide and particulate matter for which binding limit values have been in force since 1 January 2005, EC legislation sets limit values that are not yet in force for the following pollutants: nitrogen dioxide, oxides of nitrogen, lead, benzene, carbon monoxide, ozone, arsenic, cadmium, mercury and nickel.

requirements. The Commission, together with the European Environmental Agency, is currently assessing the information received and carrying out a quality checking of the noise maps. It is to be noted that there are still some Member States who have not yet submitted their report. The Commission has requested all Member States to provide information on the current state of play concerning their noise maps.

#### 6.2.5.4 Further challenges in implementing Air Quality legislation

- *Ensuring compliance with air quality limit values:* Air pollution has long been recognised as posing a significant risk to human health and the environment. On the basis of past experience, it is likely that ensuring compliance with binding limit values will remain a difficult issue in several Member States. In the coming period, it will be crucial to ensure that measures aimed at bringing about compliance with limit values are systematically put in place and implemented.
- *Implementing the mechanisms of the new Air Quality Directive postponement of attainment deadlines:* The new Air Quality Directive provides Member States the possibility to obtain, under certain conditions, time extensions for compliance with certain limit values. Most of the Member States are expected to apply for such time extensions. Before granting its final agreement to the postponement of attainment deadlines, the Commission will have to assess thoroughly if a number of conditions are fulfilled, in particular if Member States have implemented appropriate pollution-abatement measures. *Effective implementation of the Environmental Noise Directive.* The Commission efforts need to continue to ensure that the Noise Directive is fully and correctly implemented.

#### 6.2.5.5 Prioritisation of Commission's legal enforcement work

- 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.
- As regards excessive SO<sub>2</sub>, the Commission will continue to pursue the legal enforcement action it has already launched against several Member States. As for PM<sub>10</sub>, the Commission will assess closely whether time extension requests expected to be submitted by most of the Member States meet the relevant criteria. Infringement procedures are to be envisaged against Member States in breach of the limit values which do not apply for a time extension or do not meet the conditions for obtaining such extension.
- In addition, legal enforcement procedures will be pursued to ensure that Member States fulfil their reporting obligations under the air quality legislation.
- The Commission will continue its efforts to ensure that the Noise Directive is fully implemented. To this end, it will continue to carefully assess the information, i.e. the strategic noise maps and action plans, submitted by the

Member States under the directive and will launch legal action should it identify breaches in the application of this legislation.

For newly adopted directives, implementation action plans will be drawn up. This will involve forward planning of work to encourage correct and timely transposition.

## 6.2.6 *Climate change*

### 6.2.6.1 *Current position*

The most important cross-cutting measures in this domain are the Emissions Trading Directive<sup>148</sup> and Decisions 280/2004/EC<sup>149</sup> and 2005/166/EC<sup>150</sup>. With the adoption of the Emissions Trading Directive, the EU has established a scheme for greenhouse gas emission allowance trading within the Community (EU ETS). This is a market-based instrument aimed at gradually reducing emissions in selected sectors. It should help the Community and the Member States to meet their Kyoto Protocol commitments to reduce greenhouse gas emissions in a cost-efficient way. With the adoption of Decisions 280/2004/EC and 2005/166/EC the EU established a mechanism for monitoring and reporting greenhouse gas emissions. This makes it possible to evaluate more accurately and more regularly the progress made in reducing emissions under the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol.

Work in 2007

#### *Main infringements in 2007*

The main aim of infringement procedures launched under the climate change legislation has to ensure that the European Union and its Member States meet all their various obligations under the United Nations Climate Change Convention and the Kyoto Protocol, notably to ensure that the European Union Emissions Trading Scheme is fully operational and that the monitoring of greenhouse gas emissions is effective within the European Union. Infringements in 2007 related to the late notification of national allocation plans under the Emissions Trading Directive, reporting under Article 3(1) and (2) of Decision 280/2004/EC, failure to prepare for international emissions trading according to Decision 2005/166/EC and failure to link national registries with the EU-wide registry system.

#### *National Allocation Plans*

It should be noted that the Commission closed in 2007 all the cases it had launched in 2006 against those Member States, which had failed, in violation of the Emissions Trading

---

<sup>148</sup> 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*).

<sup>149</sup> 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*).

<sup>150</sup> 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 Council concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (*OJ L 55, 1.3.2005, p. 57–91*).

Directive to submit by 30 June 2006 their national allocation plans (“NAPs”) for the second trading period (2008-2012) of the EU ETS.. The individual 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 2008-2012 are thus an important element in the Member States' strategies for achieving their relevant emission reduction targets under the Kyoto Protocol.

It should be noted that several Member States were opposed to the 2006 and 2007 Commission's decisions approving their NAPs for the period 2008-2012. Most importantly, they claimed that the upper limit set by the Commission on the total quantity of allowances that they may allocate was too low. Consequently, those Member States have brought annulment actions on the basis of Article 230 EC before the European Court of Justice (pending cases). In addition, individual companies, which were also opposed to several 2006 and 2007 Commission's decisions approving NAPs (they seek more emission allowances) have also referred these matters to the European Court of Justice. Some of these company cases have been declared inadmissible, whilst others are still pending.

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

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) and a bi-annual report on national policies and programmes aimed at reducing these emissions (due by the 15 March). Such reports are required by the Commission in order for it to draft its annual reports on Community's actual and future predicted GHG emissions in compliance with the UN Framework Convention on Climate Change and the Kyoto Protocol..

In 2007, the Commission closed numerous cases against several Member States that had failed to submit 2006 annual and 2005 bi-annual reports. Those Member States have now provided the Commission with missing reports and information. For those that have still not communicated complete annual and bi-annual 2005 and 2006 reports, the Commission proceeded further in 2007 by addressing to concerned Member States a second warning letter or by referring the matter to the Court of Justice.

New cases were also opened in 2007 against several Member States on the ground that they had communicated to the Commission no or incomplete 2007 annual reports on GHG emissions and/or bi-annual reports.

#### *Failure to prepare for international emissions trading under the Kyoto Protocol*

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

In 2007, the Commission closed all existing cases that had been launched against several Member States on the basis of Article 23 of Decision 2005/166/EC on the ground that they had finally communicated all missing information.



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

Over 10,000 installations that are participating in the EU emissions trading scheme are not given emission allowances in printed form, but these are held on accounts in electronic registries set up by Member States. These registries are linked via the Community Independent Transaction Log so that companies can directly trade with each other. In order to link up to the registries system, each Member State must establish a national registry in the form of a standardised electronic database as well as a communication link in compliance with Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries<sup>151</sup>. In 2006, the Commission initiated several infringement procedures for the failure to ensure compliance with Articles 3 (1) and 6 (1) of Regulation (EC) No 2216/2004. In 2007, the Commission closed the remaining cases opened under this Regulation on the ground that the Member States concerned had now set up compliant standardised electronic databases and the necessary communication link.

#### *6.2.6.2 Changes underway*

Climate Change legislation is an evolving part of EC environmental law. The Commission has taken many climate-related initiatives since 1991, when it issued the first Community strategy to limit carbon dioxide (CO<sub>2</sub>) emissions and improve energy efficiency. It became clear that action by both Member States and the European Community needed to be strengthened if the EU is to succeed in cutting its greenhouse gas emissions to 8% below 1990 levels by 2012, as required by the Kyoto Protocol. Decisions 280/2004/EC and 2005/166/EC make easier to gauge the EU's progress towards meeting this target.

In June 2000 the Commission launched the European Climate Change Programme (ECCP) as the Commission's main instrument for discussing and preparing the further development of the EU's climate policy. Under the first ECCP, an extensive range of policy sectors were examined and several instruments with potential for reducing greenhouse gas emissions were adopted. One of the most important and innovative initiatives is the EU Emissions Trading Scheme, under Directive 2003/87/EC, which covers carbon dioxide (CO<sub>2</sub>) emissions from some 10 500 installations in the energy and some industrial sectors.

The second European Climate Change Programme (ECCP II) was launched in October 2005. It has several working groups preparing new legislative instruments in the following main fields: ECCP I review (transport, energy supply, energy demand, non- CO<sub>2</sub> gases, agriculture), aviation, CO<sub>2</sub> and cars, carbon capture and storage, adaptation and the EU ETS review.

Examples of legislative proposals that are currently under adoption are:

- *Revision of the Emissions Trading Directive*<sup>152</sup>: The main objectives are (1) full exploitation of the potential of the EU ETS to contribute to the EU's overall

---

<sup>151</sup> Commission Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council

<sup>152</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading system of the Community (COM (2008) 16).

greenhouse gas reduction commitments in an economically efficient manner; (2) Refinement and improvement of the EU ETS in the light of experience; and (3) contribution to transforming Europe into a low greenhouse-gas-emitting economy and creating the right incentives for forward-looking low carbon investment decisions by giving a clear, undistorted and long-term carbon price signal.

- *Proposal to include aviation activities in the EU ETS*<sup>153</sup>: This Directive provides for aviation to be brought into the EU ETS so as to limit the rapid growth in emissions of the sector.
- *Proposal on the geographical storage of carbon dioxide*<sup>154</sup>: This Directive establishes a legal framework for the geological storage of carbon dioxide, the purpose being permanent containment of CO<sub>2</sub> in such a way as to prevent or minimise negative effects on the environment and any resulting risk to human health.
- *Proposal to limit the CO<sub>2</sub> emissions from cars*<sup>155</sup>: This Regulation lays down harmonised rules to limit the average CO<sub>2</sub> emissions from new cars in the Community. It thus seeks to fight climate change, reduce fuel costs and boost European competitiveness.

#### 6.2.6.3 Evaluation of the current position in terms of implementation

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 twice-yearly reports on domestic climate change policies and measures and emission projections. The Commission has been rigorously checking whether national reports were submitted on time and whether they were correct and complete. As a result of the enforcement action, reporting has steadily and significantly improved in terms of timing and content. As far as the Emissions Trading Directive is concerned, following Commission enforcement action, all Member States have communicated their national implementing legislation.

#### 6.2.6.4. Further challenges in implementing Climate Change legislation

- *Implementing the EU ETS*. Launched in January 2005, the EU ETS is the world's largest company level 'cap-and-trade' system for trading in emissions of carbon dioxide (CO<sub>2</sub>) and has quickly become the main driving force behind the expansion of the emerging global carbon market. Putting this system into effect should allow the EU to achieve its greenhouse gas emission reduction targets under the Kyoto Protocol in a particularly cost-effective way.

---

<sup>153</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (COM (2006) 818)

<sup>154</sup> Proposal for a Directive of the European Parliament and of the Council on the geological storage of carbon dioxide and amending Council Directives 85/337/EEC, 96/61/EC, Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC and Regulation (EC) No 1013/2006 (COM (2008) 18)

<sup>155</sup> Proposal for a Regulation of the European Parliament and of the Council setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO<sub>2</sub> emissions from light-duty vehicles (COM (2007) 856).

- *Ensuring provision of climate-relevant data.* Accurate, up-to-date information is an essential basis for fighting climate change. 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 the Kyoto Protocol

#### 6.2.6.5 *Prioritisation of Commission's legal enforcement work*

The Commission has assessed the national allocation plans (NAPs) of all the 27 Member States for the second trading period (2008-2012) of the EU ETS and has adopted decisions based on the Emissions Trading Directive. It is currently checking to see whether the way Member States implement their NAPs, i.e. how they allocate the accepted total quantity of allowances to individual installations, is in conformity with its decisions.

Having secured the transposition of the Emissions Trading Directive, the Commission will now focus on assessing the correctness and completeness of the national implementing legislation in the Member States. Priority will be attached to the pursuit, through infringement proceedings if necessary, of any shortcomings likely to affect the attainment of the legislative objectives.

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 reporting and monitoring the Community's greenhouse gas emissions and implementing the Kyoto Protocol.

For the new directives, the Commission will draw up implementation action plans. This will involve forward planning of work to encourage correct and timely transposition.

#### 6.2.7 *Industrial Installations*

##### 6.2.7.1 *Current position*

The most important piece of legislation relating to industrial emissions is Directive 96/61/EC concerning integrated pollution prevention and control (the IPPC Directive), which was codified by Directive 2008/1/EC<sup>156</sup>. It sets out common permit rules for industrial installations. Operators of installations covered by the IPPC Directive are required to obtain an authorisation (environmental permit) from the authorities of the Member States. The Large Combustion Plant (or LCP) Directive<sup>157</sup> aims to reduce emissions of sulphur dioxide, nitrogen oxides and dust from large combustion plants – i.e. plants whose rated thermal input is equal to or greater than 50 MW. The control of emissions from such plants plays an important role in the Community's efforts to combat acidification, eutrophication and ground-level ozone as part of the overall strategy to reduce air pollution. Further important legislation

---

<sup>156</sup> OJ L 24, 29.01.2008, p. 8-29.

<sup>157</sup> 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*

relating to industrial emissions includes the Waste Incineration Directive<sup>158</sup> and the Solvents Directive<sup>159</sup>.

The Seveso II or Major Accident Hazard Directive<sup>160</sup> 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. One of the key requirements is that emergency plans must be drawn up for areas surrounding so-called “upper tier“ establishments in order to properly protect the public should an emergency arise.

Work in 2007

#### *Follow-up work concerning permit procedures for existing IPPC installations*

Under the IPPC Directive, existing IPPC installations had to obtain permits in accordance with the requirements set in that directive by 30 October 2007 at the latest. After the expiry of this deadline, the Commission requested that all Member States provide information on the number of permits issued for existing IPPC installations and the number of outstanding permits in order to obtain an updated picture of the situation and decide the kind of actions to be taken. The replies that were received showed that around 10.000 installations across the EU were not yet permitted in accordance with the Directive.

#### *Follow-up work concerning the LCP Directive*

Under the LCP Directive Member States had to submit the summary of their emission inventories for the years 2004, 2005 and 2006 to the Commission by 31 December 2007 at the latest. In October 2007, the Commission reminded all Member States to this obligation and requested Member States to submit also plant-by-plant emission data. The summary of emission inventories and the plant-by-plant data are essential pieces of information for the Commission in order to assess the actual implementation of the Directive and to prepare a summary of the comparison and evaluation of the national inventories within the timeframe set in the Directive.

#### *Infringements concerning the Ozone Regulation<sup>161</sup>*

The Ozone Regulation sets out controls on production, importation, exportation, supply, use leakage, recovery and lays down the phasing-out in line with the definitions of the Montreal Protocol. Over the course of the last few years, the Commission has opened a number of infringement procedures based on different provisions of the Regulation. In 2007, the

---

<sup>158</sup> 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).

<sup>159</sup> 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).

<sup>160</sup> Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances OJ L 10, 14.1.1997, p. 13–33.

<sup>161</sup> Regulation (EC) No 2037/2000 of the European Parliament and of the Council on substances that deplete the ozone layer (OJ L 244, 29.9.2000, p. 1–24).

Commission launched further procedures against five Member States with regard to the non-decommissioning of the halons used in the fire extinguishers of ships.

#### *Non-conform transposition of the SEVESO II Directive*

In 2007, the Commission checked the conformity of legislation for EU-10 Member States and launched a infringement procedures against nine Member States.

#### *External Emergency Plans*

The Commission continued infringement proceedings against 12 Member States over the failure to adopt emergency plans for chemical plants required under the SEVESO II Directive

#### *Judgments of the Court of Justice in 2007*

The Court delivered a ruling concerning Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (Case C-263/07, Commission v Luxembourg) concerning the non-transposition of some provisions of this Directive.

#### *6.2.7.2 Changes underway*

Some EC environmental legislation in this domain has been subject to an important review recently. This development is marked by the proposal for a Directive on industrial emissions<sup>162</sup> that the Commission adopted in December 2007. It aims at simplifying the existing legal framework in the field of industrial emissions. The proposal was adopted in the form of a recast of seven existing directives in the field (the IPPC Directive, the LCP Directive, the Waste Incineration Directive, the Solvents Directive and three directives in relation to titanium dioxide 78/176/EEC<sup>163</sup>, 82/883/EEC<sup>164</sup> and 92/112/EEC<sup>165</sup>). The result was a single text combining, the substantive amendments to the directives and the original provisions which remain unchanged. The recast technique enables existing provisions to be simplified and streamlined: redundant provisions and unnecessary obligations can be repealed, while reporting and monitoring requirements are simplified. This should help Member States to reduce unnecessary administrative burdens.

A review of the Seveso II Directive, the provisions of which have remained essentially unchanged for over 10 years, is underway.

---

<sup>162</sup> COM(2007)844

<sup>163</sup> Council Directive 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry (*OJ L 54, 25.2.1978, p. 19*).

<sup>164</sup> Council Directive 82/883/EEC of 3 December 1982 on procedures for the surveillance and monitoring of environments concerned by waste from the titanium dioxide industry (*OJ L 378, 31.12.1982, p. 1*).

<sup>165</sup> Council Directive 92/112/EEC of 15 December 1992 on procedures for harmonising the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry (*OJ L 409, 31.12.1992, p. 11*).

### 6.2.7.3 Evaluation of the current position in terms of implementation

The IPPC Directive requires some 52 000 existing industrial installations to operate by 30 October 2007 at the latest according to a permit issued in accordance with the IPPC Directive.. The Commission has drawn the attention of the Member States to this deadline on several occasions. However, there are indications that, for about 10 000 installations, the deadline for issuing the permits was missed. The Commission has subsequently launched infringement procedures against the Member States with the highest number of missing permits.

The Commission has developed an action plan for implementation of the existing legislation on industrial emissions that formed part of the Commission's Communication *'Towards an improved policy on industrial emissions'*<sup>166</sup>. This set out key actions over the timeframe 2008-2010. The details of each action are set out within the Communication itself. The Commission will produce regular reports on the implementation of the action plan and will review the plan by the end of 2010, assessing how it fits in with the Commission's proposal on the new Directive on industrial emissions.

### 6.2.7.4. Further challenges in implementing industrial installations legislation

- *Lack of permits for existing industrial installations.* The Commission started to analyse how effectively Member States have implemented the requirements of the IPPC Directive by reference to installation specific case studies, in particular those related to the permits; and to identify where problems in implementation may have arisen.
- *Achieving uniform interpretation and implementation of BAT and BREFs.* The IPPC Directive does not set standards or thresholds for the prevention and control of emissions, or for other environmental aspects, but leaves this responsibility to the Member States. Member States must ensure that IPPC permits include emission limit values based on Best Available Techniques (BAT). In determining what constitutes BAT, the competent authorities have to take into account the reference documents on BAT (BREFs). BREFs are adopted by the European Commission based on an exchange of technical information between experts from industry, Member State authorities, research institutes and NGOs<sup>167</sup>. It is particularly challenging to ensure that BREFs are interpreted and implemented uniformly in all Member States.
- *Controlling major specific sources of air pollutants.* Compliance with legislation aimed at limiting air pollutant emissions from specific sources, as for instance the Large Combustion Plants, the Waste Incineration and the National Emissions Ceiling Directives<sup>168</sup>, will also be essential.
- *Lack of emergency plans for Seveso "upper tier" installations.* Plans are required for about 8 000 installations in all. They should have been in place

---

<sup>166</sup> COM(2007) 843 final.

<sup>167</sup> This exchange is coordinated by the IPPC Bureau in Seville (<http://eippcb.jrc.es/>), which sets up a technical working group for each BREF.

<sup>168</sup> Directive 2001/81/EC of the European Parliament and of the Council on national emission ceilings for certain atmospheric pollutants, (OJ L 309, 27.11.2001, p. 22–30).

since 2002 for the EU-15 Member States and 2004 for the EU-10, but a considerable number of installations in many Member States are still not covered. The Commission launched a "horizontal" legal action in 2007, that is a similar legal action against all Member States lacking emergency plans.

#### 6.2.7.5. *Prioritisation of Commission's legal enforcement work*

The Commission will continue to pursue the infringement procedures launched against Member States with the highest number of missing IPPC permits. Legal actions are also envisaged against Member States with fewer missing permits if no progress is forthcoming.

The Commission will also take action against systematic breaches of the IPPC Directive, and will ensure that Member States fulfil their reporting obligations. Legal enforcement action over lack of provision of relevant data by certain Member States has already been launched recently under the LCP Directive.

With regard to guidance concerning the Commission's proposal on industrial emissions, work is likely to be undertaken after 2010 in the context of the new Committee suggested within the proposal. The Commission has already begun preparations in this respect with a proposal to amend the remit of the existing IPPC Experts Group (IEG) to consider wider industrial emissions legislation in the future under the title of Industrial Emissions Experts Group (IEEG). Transposition of the resulting directive will be confirmed, and the Commission will offer support to Member States in such transposition. The exact form of such support has not been determined at this early stage in proceedings, although as indicated above, it is likely that the measures that presently exist in the Commission's Action Plan for implementation of the legislation on industrial emissions will continue into the implementation of the proposal.

The Commission will continue to press for external emergency plans under the Seveso II Directive.

#### 6.2.8 *Chemicals, Pesticides, Biocides and Biotechnology*

##### 6.2.8.1 *Current position*

The REACH Regulation (1907/2006)<sup>169</sup>, 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

---

<sup>169</sup> 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.

for the regulation of Community-wide conditions for the manufacture, placing on the market or use of certain substances where there is an unacceptable risk to health or the environment.

Separate legislation currently continues to govern the classification, packaging and labelling of dangerous substances and preparations. The main provisions in this regard are contained in Directive 67/548/EEC<sup>170</sup> (for substances) and Directive 1999/45/EC<sup>171</sup> (for preparations). Directive 76/769/EEC, which concerns restrictions on the marketing and use of certain dangerous substances, will remain in force until 1 June 2009, when it will be repealed by the REACH Regulation. Two other pieces of legislation should be mentioned here. First, persistent organic pollutants (“POPs”) are governed by Regulation 850/2004. Second, basic provisions concerning the protection of laboratory animals used in experiments are contained in Directive 86/609/EEC.

Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market<sup>172</sup> (the Biocides Directive) concerns the authorisation and placing on the market of biocidal products in the Member States and the establishment at Community level of a list of active substances which may be used in biocidal products. Council Directive 90/219/EEC<sup>173</sup> lays down common measures for the contained use of genetically modified micro-organisms for the purpose of protecting human health and the environment. Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC<sup>174</sup> establishes a common methodology for risk assessment and a safety mechanism. It also introduces mandatory public consultation and GMO labelling.

Work in 2007

#### Main infringements in 2007

##### *Non-conformity with the Directive on Contained Use of genetically modified micro-organisms*

A horizontal case dealing with non-conform transposition of Directive on Contained Use of genetically modified micro-organisms<sup>175</sup> was opened in 2007. This Directive lays down common measures for the contained use of genetically modified micro-organisms with a view to protecting human health and the environment. In 2007, first warning letters were sent to twelve Member States.

##### *6.2.8.2 Changes underway*

This sector of EC environmental law is characterised by substantial new developments, in particular in the chemicals and pesticides sectors.

- Firstly, REACH entered into force on 1 June 2007. This included the establishment of the European Chemicals Agency (ECHA) and the preparation of

---

<sup>170</sup> OJ L 196, 16.08.1967, p. 1.

<sup>171</sup> OJ L 200, 30.07.1999, p. 1.

<sup>172</sup> OJ L 123, 24.4.1998, p. 1–63.

<sup>173</sup> OJ L 117, 8.5.1990, p. 1–14.

<sup>174</sup> OJ L 106, 17.4.2001, p. 1–39.

<sup>175</sup> Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms as amended by Council Directive 98/81/EC



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 will have 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. If a company fails to pre-register, from 1 December 2008 it can no longer place its phase-in substances on the market until it has completed registration.

- Furthermore, the Commission's Proposal for a new Regulation dealing with the classification, labelling and packaging of substances and mixtures<sup>176</sup> has almost completed the legislative procedure for adoption by the European Parliament and the Council. This new proposal incorporates the UN GHS (United Nations Globally Harmonised System) into Community law and replaces, to a large extent, the existing legislation on classification, labelling and packaging.
- Secondly, as regards pesticides, the Commission adopted in June 2006 the Thematic Strategy on the Sustainable Use of Pesticides together with a proposal for a Framework Directive on the sustainable use of pesticides<sup>177</sup> and a proposal for a Regulation on the placing of plant protection products on the market revising Directive 91/414/EEC. The aim of the Thematic Strategy is to fill the current legislative gap regarding the use-phase of pesticides<sup>178</sup> at EU level by setting minimum rules for the use of pesticides in the Community, so as to reduce risks to human health and the environment from the use of pesticides. For the time being, the Commission has proposed to restrict the scope of the Framework Directive to plant protection products. The intention is, however, to include biocides in the scope as soon as possible.

### *6.2.8.3 Evaluation of the current position in terms of implementation*

As the REACH Regulation entered into force on 1 June 2007 and its main obligations started applying on 1 June 2008, 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. 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. Penalties for non-compliance must be notified to the Commission by 1 December 2008.

The Biocides Directive stipulates that Member States have to take the necessary steps to monitor their market and make sure it complies with the requirements of the Directive. The first reporting covering the period of May 2000 to November 2003 provided a lot of useful information and revealed a few points of concern. The second composite report prepared by the Commission in April 2008, covering the period December 2003 to November 2006, has

---

<sup>176</sup> COM (2007) 0611.

<sup>177</sup> Proposal for a Directive of the European Parliament and of the Council establishing a framework for Community action to achieve a sustainable use of pesticides (COM (2006) 373).

<sup>178</sup> The current legislative framework mainly concentrates on the beginning and the end of life stages of pesticides.

found that Member States have made a significant progress to implement and enforce the directive's provisions by taking the appropriate measures. In this regard, mention must be made of the number of guidance document prepared by the Commission to help ensuring effective implementation of the Biocides Directive.

Concerning the Biotechnology sector, studies obtained by the Commission revealed a number of shortcomings in the national implementing legislation for Directive 90/219/EEC as amended by Directive 98/81/EC (contained use of GMOs) in several Member States. Since the completeness and correctness of implementing legislation within the Member States are important determinants of good implementation in practice, the Commission has launched legal enforcement action against several (mainly EU-15) Member States that have not properly transposed this directive.

#### *6.2.8.4 Further challenges in implementing legislation relating to the Chemicals and Biocides sector*

- *Effective implementation of REACH.* The Chemicals Agency will play 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. 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.
- *Delays in transposition of a large number of directives.* The Biocides Directive provides for the evaluation and inclusion in a Community positive list (its Annex I, IA or IB) of active substances used in biocidal products that are found acceptable for a specific use (product-type) from the point of view of health and the environment. Member States that did not make a dynamic reference to Annex I, IA or IB to the Biocides Directive have to transpose the directives amending its annexes by adding the newly approved active substances. This takes a lot of time, in particular considering that there are hundreds of active substances currently scheduled for evaluation. The planned change of the Biocides Directive into a Regulation should solve this problem as a transposition will no longer be necessary— though it should not be forgotten that Member States may also need to take legislative action in this event, for example repeal existing incompatible national legislation..

#### *6.2.8.5. Prioritisation of Commission's legal enforcement work*

Legal enforcement action in these fields does not constitute a significant workload for the Commission. In the coming years, the main priorities in terms of enforcement work can be summarised as follows:

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 Regulation can operate

effectively. The Commission will work closely with the Forum for Exchange of Information on Enforcement in this regard.

The Commission will continue to pursue infringement procedures concerning the non-communication of the national implementing measures of recently adopted directives that update the relevant Annexes to the Biocides Directive.

Work will also be done on securing that the Directive on contained use of GMOs is correctly transposed in all Member States. To this end, the Commission will extend its legal action to cover all Member States that have failed to properly transpose this Directive.

After the adoption of the new framework directive on the sustainable use of pesticides, the Commission will carefully monitor its transposition into the Member States' national legislation on the basis of a risk-based implementation action plan. This will involve forward planning of work to encourage correct and timely transposition.

### *6.2.9 Governance and Environmental Liability*

#### *6.2.9.1 Current position*

Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC<sup>179</sup> (Access to Environmental Information Directive) aims to ensure that environmental information is available to the public upon request and actively disseminated through computer telecommunication or electronic technology. 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)<sup>180</sup> establishes a framework for environmental liability based on the "polluter pays" principle, with a view to preventing and remedying environmental damage.

Work in 2007

#### *Main infringements in 2007*

##### *Transposition of the Environmental Liability Directive*

The Environmental Liability Directive 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 opened infringement procedures in June 2007 against those Member States which had failed to transpose the Directive on time.

---

<sup>179</sup> OJL 41, 14.2.2003, p. 26–32  
<sup>180</sup> OJL 143, 30.4.2004, p. 56–75

#### 6.2.9.2 *Changes underway*

The Access to Environmental Information Directive and the Environmental Liability Directive are both recent instruments. The former was adopted in order to fully comply with the Aarhus Convention. While modifications cannot be excluded in the future, there are no current plans to change them.

#### 6.2.9.3 *Evaluation of the current position in terms of implementation*

The Commission has pursued the failure to transpose the Access to Environmental Information Directive, obtaining two ECJ rulings in 2007 (Case C-391/06, *Commission v Ireland*, decision of 3 May 2007 and Case C-340/06, *Commission v Austria*, decision of 5 July 2007).

By the end of 2007, a total of eleven Member States had notified complete transposing measures: Italy, Lithuania, Latvia, Hungary, Germany, Romania, Slovakia, Sweden, Spain, Estonia and Cyprus.

#### 6.2.9.4. *Further challenges in implementing legislation*

Commission efforts need to continue to ensure that the Environmental Liability Directive (ELD) is fully and correctly transposed. Apart from the application of the significance criteria (Annex I) and the application of the appropriate measures to ensure the remedying of environmental damage ('primary', 'complementary' and 'compensatory' remediation according to Annex II), the proper functioning of financial security instruments will be significant for successful implementation of the ELD in the Member States. Based on various information sources (studies commissioned by the Commission, information drawn from national experts as well as from stakeholders such as the financial sector, industry and NGOs etc.), the Commission will have to present a report before 30 April 2010 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.

#### 6.2.9.5 *Prioritisation of Commission's legal enforcement work*

The Commission will continue its efforts to ensure that the Environmental Liability Directive is correctly transposed in all Member States.

#### 6.3.1 *Implementation of Communication 2002 on Better Monitoring the Application of Community Law*

Despite being a very powerful tool to address implementation problems, infringement proceedings pursuant to Articles 226 and 228 of the Treaty are not the only way to improve Member States' compliance with EC environmental law. In order to ensure an effective implementation, the Commission is making use of a wide range of non-legal instruments and initiatives aimed at promoting better implementation and at identifying and addressing potential problems as early as possible. This is in line with the 2002 Communication of the Commission on better monitoring of the application of Community law<sup>181</sup>.

---

<sup>181</sup> COM(2002) 725 final, 13.12.2002

Better implementation is also promoted through contacts with Member States in expert groups and committees to discuss implementation issues. In 2007, seven package meetings were organised between the Commission and Member States; in addition, numerous ad-hoc meetings, workshops and seminars with the participation of national, regional and local authorities took place with a common aim of improving better implementation. The Commission also gave technical advice to Member States prior to transposition of some directives in order to address implementation problems at an early stage. The cooperation on the implementation of the Directive on Environmental liability, where an informal network of national liability experts was set up, may serve as an example here.

#### *6.3.1.1 Existing networks promoting better implementation of EU environmental law*

##### Implementation of Environmental Law (IMPEL)

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

IMPEL's work programme for 2007 included a variety of project activities amongst which were the European Enforcement action on waste shipment, the IMPEL Review Initiative (IRI) in Scotland and Norway, End of Life Vehicles for Export, Incidental release from industrial installations, Practical aspects of EU Emission trading scheme, Comparison programme for landfill inspection and monitoring, comparison of methodologies used for fine estimation. IMPEL was also called to participate in the review of the IPPC Directive. Towards the end of the year new projects such as the comparison of ENV Tariffs and INSPEC-CEM had their kick-off meetings. The projects aimed at improving the quality of implementation of existing EU legislation through training, in-depth discussions on environmental issues and enforcement aspects; including monitoring and permitting processes.

The European Commission led some of the projects in 2007, particularly in the context of the review of the Recommendation on the Minimum Criteria of the Environmental Inspection (RMCEI) and IPPC; this went some way to address overall Strategic Goals set in its new Multi Annual Work Programme 2007-2010 (adopted in Espoo, Finland in 2006). One of the goals was the specific development of a common basis for the better performance of environmental inspection tasks within the Member States and even further to improve the quality of the environmental inspection mechanism through networking at Community and MS level.

It is envisaged that all the resulting experience will enable IMPEL, in future, to play an important role at different stages of the regulatory chain by providing advice on general question related to implementation and enforcement.

GreenEnforce Network

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

In 2007, the Network hosted two experts meetings, held in June ( Madrid - Implementation of Forest Management Plans on Natura 2000 sites) and in September ( Netherlands - Achieving conservation objectives on designated sites with the support and involvement of stakeholders). The 2 reports have been endorsed by the Plenary session, which took place in December and which fixed the specific objectives of the 2 experts meetings for 2008.

#### European Forum of Judges for the Environment

Created in 2003, the European Forum of Judges for the Environment (EFJE) aims to promote the implementation and enforcement of national, European and international environmental law. The objectives of the Forum are to share experience on judicial training and on environmental case law and to contribute to the better implementation and enforcement of international, European and national environmental law.

In 2007, the Commission pursued its support to this Forum, in particular through its participation to the Annual Conference of the EFJE (Luxemburg, Dec. 2007) addressing criminal enforcement of environmental legislation; it presented the Commission's proposal for a directive on the protection of the environment through criminal law.

#### 6.3.1.2 *Better Regulation*

Of all the simplification initiatives scheduled for adoption in 2007 in the context of the Simplification Rolling Programme, 62% of the programme has been delivered by the Commission. In that context, after a two year review process including comprehensive consultation of stakeholders, the Commission adopted on 21 December 2007 a proposal for a Directive on industrial emissions, COM (2007)844, as the most important contribution to the Simplification Rolling Programme in that year in the environmental law sector. This proposal was adopted in the form of a recast of altogether seven existing directives in that field (IPPC Directive 96/61/EC, LCP Directive 2001/80/EC, Waste Incineration Directive 2000/76/EC, VOC Solvents Directive 1999/13/EC, and the three directives in relation to titanium dioxide 78/176/EEC, 82/883/EEC and 92/112/EEC).

The use of the recasting technique made it possible to combine in a single text both, the substantive amendments proposed to the directives and those of their original provisions which remain unchanged. The recast allows simplifying and streamlining of existing

provisions. Redundant provisions and unnecessary obligations are going to be repealed, while reporting and monitoring requirements will be simplified by a move towards electronic reporting. This should assist Member States' actions to reduce unnecessary administrative burdens.

Work aiming at simplifying Community legislation progressed also in other areas of environmental policy in 2007, to mention only further work on the Shared Environmental Information System (SEIS), on the revision of the EMAS and of the Eco-Label schemes (Regulations 761/2001 and 1980/2000), and on the revision of the RoHS- and WEEE-Directives 2002/95 and 2002/96.

#### *6.3.1.3. Petitions and Complaints*

Petitions to the European Parliament and complaints to the Commission represent a valuable source of information in detecting violations of Community law. This is of particular importance since the Commission does not have any “inspection” powers. Facts brought to the attention of the Commission through both petitions and complaints allow it to verify compliance on the ground. After examination of those facts and, in most cases, after checking with the authorities concerned, the Commission verifies whether the Member States have correctly applied European Community Law. Sometimes, the Commission's intervention helps to resolve potential infringements before they occur. However, some of these complaints and petitions lead to the opening of an infringement procedure.

This preventive role, in terms of the Commission's handling of complaints and petitions, provides fruitful results and helps to ensure better implementation. However, it is particularly important that the petitioners/complainants provide a clear identification of potential breaches of community law, with supporting data, in order to facilitate the handling of files. In 2007 the Commission received 146 petitions related to the field of environment which is around one third of the petitions sent by the European Parliament to the Secretariat General of the Commission and up from 25 % in 2006.

#### *6.3.1.4. Implementation sessions with the European Parliament*

The implementation sessions are organised by the Committee on Environment, Public Health and Food Safety of the European Parliament. Four sessions were organised in 2007. The issues that were mainly dealt with were nature and water protection, waste, and climate change.

The last session held in November 2007 introduced a new format for the implementation session. The new format aims to concentrate the questions on one environmental directive at the time and in that way make the session more informative and ensure a possibility for a dialogue between the Commission and the Parliament on these issues. The new format for the session includes a technical presentation of the Directive and the challenges in implementing it, a presentation of the infringement procedures that the Commission has started for ensuring correct implementation as well as replies to the questions asked followed by a discussion. The first directive dealt with in the new format was the Urban Waste Water Treatment Directive.

#### *6.3.1.5 Role of Non-Governmental Organisations*

An important role when identifying breaches of EU Environmental legislation, mainly through the instrument of a complaint, is played by environmental non-governmental

organisations (NGOs). In 2007, NGOs contributed to promoting good implementation of environmental legislation and public awareness. DG Environment is pro-active in keeping a regular dialogue with NGOs and a practice of meeting representatives of NGOs back to back to the package meetings in Member States has recently been developed and proves to be efficient.

#### 6.3.1.6 *Conformity checking*

The environmental *acquis* is characterised by many individual instruments, mostly directives, reflecting the many subject-areas that have been addressed. This makes for a high volume of national implementing legislation, as does the fact that, in many Member States, regional implementing legislation is necessary. The completeness and correctness of implementing legislation within the Member States are important determinants of good implementation in practice. That is why, in recent years, the Commission has put a strong emphasis on checking the quality of national legislation. It has undertaken many studies and, for key directives assessed as presenting high risks of serious practical problems in the absence of compliant legislation, launched horizontal infringement procedures (examples include impact assessment, nature conservation and certain water legislation). This work is ongoing. It has also been decided that, for important recently adopted directives, the responsible units within DG ENV will prepare individual implementation action plans. This will involve forward planning of work to encourage correct and timely transposition.

### 6.4 **General evaluation**

The implementation of the Community's environmental *acquis* presents significant challenges which are outlined in the Commission's Communication on implementing EC environmental law. The Commission will continue in 2008-2009 its efforts to use the right combination of compliance promotion and enforcement work to overcome problems and close implementation gaps.

The state-of-play is that the transposition process remains to be completed for certain recent directives such as that on environmental liability (transposing measures having already been transmitted for older directives), with delays sometimes involving specific regions within Member States; improvements need to be made to transposing measures already submitted for other directives such as those on nature conservation; certain key administrative steps such as site designations and grant of pollution licences need to be completed in certain Member States; overdue reports need to be submitted by certain Member States; important waste-water and other infrastructural investments need to be finalised in many parts of the Community; greater efforts need to be made to ensure that air quality standards are respected; and procedural requirements in relation to impact assessment need to be respected for thousands of plans and projects.

The Communication on implementing EC environmental law has set out the priorities for addressing problems and gaps. These encompass non-transposition, defective transposition and other failures that are important in nature or scale, as well as non-compliance with ECJ rulings.

In the period 2008-2009, the Commission will in particular focus efforts on the following:



- Reducing as far as possible the number of incompletely resolved ECJ rulings. At the end of 2007, there were 77 such open cases. The Commission will strive to reduce this number by the next reporting period.
- For the main recent directives, the Commission has started a process which involves it preparing transposition action plans. These will seek to apply a range of means to encourage timely transposition and to ensure that transposition is complete and correct.
- Once legal deadlines have passed, infringements will be vigorously pursued for non-transposition.
- There will be ongoing systematic checking of the conformity of transposing legislation, with infringement procedures being pursued for key failures. Particular emphasis is currently being placed on complete and correct transposition of, amongst others, the Birds Directive, the Habitats Directive, the Impact Assessment Directive, the Landfill Directive, the Waste Framework Directive, the WEEE Directive and the Water Framework Directive.
- Several of the directives mentioned in the previous point contain procedural requirements which figure in many complaints and petitions. By seeking improved national legislation to implement these (and other related instruments such as the Access to Information and Public Participation Directives), the Commission seeks to avoid at least some procedural problems at the level of individual plans and projects.
- Apart from non-transposition and defective transposition, work will be devoted to key problems of practical application. These include, for water, lack of wastewater collection and treatment systems; for nature, designation shortfalls and poor site management; for waste, lack of solid waste treatment facilities and tolerance of illegal landfills; and for air, excessive urban concentrations of certain air pollutants; for industrial installations, fulfilment of permit and other requirements.
- Required reports and information updates, such as on measures to combat climate change, will be the subject of systematic Commission action.

In 2007, the readiness of the Commission to seek interim measures in relation to a Polish motorway project attracted considerable interest. In general, interim measures can be seen as a means of avoiding possibly irretrievable environmental harm before a legal dispute has run its normal course. Where the circumstances warrant it, the Commission intends to resort to such measures in future cases.

The Commission will also need to manage the continuing demands created by individual complaints, enquiries and petitions. It hopes that the improved problem-solving mechanism will make a positive contribution to this challenge.

As for the outlook in 2008-2009, the Commission expects to have a considerable work-load but it hopes and expects that the sum of its efforts will produce results in terms of improved implementation. In this regard, a few points can be made. Commission intervention tends to produce relatively rapid results within a one to two-year time-frame for certain categories of

problem, such as non-transposition or lack of reporting. For other more complex problems, complete resolution can take several years to achieve: while this is not satisfactory, sight should not be lost of the positive interim progress that often marks such longer-lasting cases – for example, increased though not complete networks of designated sites or partially though not completely implemented infrastructure requirements.

## 7 INFORMATION SOCIETY AND MEDIA

### 7.1 Electronic communications

#### 7.1.1 Current position

##### 7.1.1.1 Existing measures in force

The Commission's overarching initiative for information society and media policies, i2010<sup>182</sup>, confronts the challenge of rapid convergence and technological change with a **regulatory** framework for electronic communications that promotes competition, investment, innovation, the single market and consumer benefits. Enforcing full and effective implementation of the regulatory framework in electronic communications is therefore essential for the sector's contribution to the overall Lisbon goals.

The EU regulatory framework for electronic communications networks and services came into force in 2002. It consists of five Directives<sup>183</sup>. The Framework Directive outlines the general principles, objectives and procedures. The Authorisation Directive creates a regime of general authorisations for providers of communications services. The Access and Interconnection Directive sets out rules for a multi-carrier marketplace, ensuring, in particular, access to networks and services and interoperability. The Universal Service Directive guarantees basic rights for consumers and minimum levels of availability and affordability. The e-Privacy or Data Protection Directive covers protection of privacy and personal data communicated over public networks.

Transposition of the regulatory framework into the national law of the 27 Member States was completed in 2007 with the adoption of primary legislation by Bulgaria and Romania.

The 2004 and 2005 Commission radio spectrum harmonisation decisions<sup>184</sup> have not yet been implemented at least in part in Ireland, the United Kingdom, Luxembourg, Slovakia, Bulgaria and Romania by the end of 2007.

---

<sup>182</sup> COM(2005) 229

<sup>183</sup> 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).

<sup>184</sup> 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

The 2006 decisions, including 2006/771/EC of 9 November 2006 on the harmonisation of the radio spectrum for use by short-range devices (SRD) and 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, had been implemented in most Member States in 2007, except for Belgium, Latvia and Romania in case of Decision 2006/771/EC and Latvia, Luxembourg, Romania and Austria in case of Decision 2006/804/EC.

In 2007 the Commission adopted the following spectrum harmonisation decisions:

2007/90/EC of 12 February 2007 amending EC Decision 2005/513/EC of 11 July 2005 on 5 GHz WAS/RLAN, 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), 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) and 2007/344/EC of 16 May 2007 on harmonised availability of information regarding spectrum use within the Community<sup>185</sup>.

By the end of 2007 their implementation was incomplete. In particular, the MSS Decision had been implemented by 23 Member States, the UWB Decision by 19 Member States and the amending WAS/RLAN Decision by 20 Member States.

#### 7.1.1.2 Report of work done in 2007

In line with the Commission Communication on better monitoring of the application of Community law<sup>186</sup>, the Commission services have continued to avoid the need for recourse to infringement proceedings by providing general guidance on transposition requirements via the Communications Committee (COCOM) and the Radio Spectrum Committee (RSC), and by making use of intensive bilateral contacts with the relevant national authorities. Following discussion in COCOM, measures on the harmonised application of the regulatory framework for electronic communications were adopted, namely an amendment to the decision on the "116" number range<sup>187</sup>.

At the heart of the 2002 regulatory framework for electronic communications lies the principle that undertakings should not be subject to *ex ante* regulatory obligations unless they have been found to be dominant in a relevant market, on the basis of a thorough market review by their national regulatory authority (NRA). Following the launch of infringement

---

for the time-limited use by automotive short-range radar equipment in the Community; and

Commission Decision 2004/545/EC of 26 July 2004 on the harmonisation of radio spectrum in the 79 GHz range for the use of automotive short-range radar equipment in the Community.

<sup>185</sup> Decision 2007/344/EC entered into force on 1 January 2008.

<sup>186</sup> COM(2002) 725, of 11 December 2002.

<sup>187</sup> OJ L 284 of 30 October 2007.

proceedings, this market review process has made significant progress in 2007. All NRAs, apart from the ones in the two new Member States Romania and Bulgaria, have now substantially completed the first round of market analysis and notified their results to the Commission and other NRAs in accordance with Article 7 of the Framework Directive. This has created a genuine body of know-how and experience which can be shared by NRAs across the Community.

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

Finally, DG INFSO continued to monitor the general state of implementation of the regulatory framework, in close contact with the national authorities and other stakeholders, when preparing for the Commission's sector specific annual Progress Report addressed to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions<sup>188</sup>.

Nonetheless, ensuring full and effective implementation of the regulatory framework by formal infringement proceedings remained a priority also in 2007. By the end of the reporting year the Commission had opened nearly 160 infringement proceedings under Article 226 of the Treaty since the date of application of the new regulatory framework; in some 100 cases this action is prompted by failure to implement the regulatory framework correctly. These proceedings concerned all EU 27 Member States. The relatively high number of non-conformity cases is the result of DG INFSO's proactive monitoring policy which entails a systematic conformity assessment of the national transposition measures notified to the Commission. This approach has proven to be critical for electronic communications, being a highly innovative and dynamic sector which requires swift action to ensure regulatory consistency. The conformity assessment for each Member State is carried out on the basis of correlation tables which had been discussed and communicated to the Member States via the Communications Committee already before the date of application of the current regulatory framework.

During the reporting year, the Commission opened 13 new proceedings, while 9 pending cases were taken to the second phase with a reasoned opinion being sent to the Member States concerned. The Commission decided to refer twelve cases to the Court of Justice in 2007. At the same time, the Commission decided to close twenty-one proceedings following action by the Member States. Six infringement proceedings were launched due to the failure of the new Member States, Bulgaria and Romania, to notify on time all transposition measures taken. All these cases, however, could be closed after the sending of letters of formal notice, following the adoption and notification of the relevant transposition measures. The Commission services have now started scrutinising the implementation measures notified to it by Bulgaria and Romania.

---

<sup>188</sup> "Towards a Single European Telecoms Market (13<sup>th</sup> Progress Report)", COM(2008) 153 of 19 March 2008.

Finally, although all 27 Member States had completed formal transposition of the regulatory framework, there were still 37 proceedings for incorrect implementation pending at the end of 2007.

The focus of enforcement has continued to shift from transposition issues to ensuring full compliance and effective application in all 27 Member States. In particular, the Commission services undertook an examination of the major concerns expressed in the annex to the 2006 Implementation Report<sup>189</sup>. New proceedings accordingly focused on the availability of 112 and of caller location information to emergency authorities for calls to 112 made from fixed and/or mobile phones. Other issues addressed concerned the independence and the powers of the NRA, rights of way, the regulation of new markets, broadband retail regulation and the universal service designation and financing.

Most of the twelve cases which the Commission decided to refer to the Court of Justice in 2007 concerned the non-availability of caller location information for calls to 112 (Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal and Slovakia). In the case of Portugal the problem was resolved, and the proceeding was subsequently withdrawn. Other actions were related to a limitation of powers of the NRA (Germany) and consumer issues (Poland, Portugal).

Following the completion of the first round of market reviews in most Member States, proceedings closed in 2007 mainly concerned the implementation of the market review procedures (seven proceedings). Moreover several proceedings concerning caller location information for 112 could also be closed due to implementation measures taken by the Member States (four proceedings).

Other proceedings that were closed in 2007 concerned cost accounting provisions, cost recovery, directory services, ePrivacy legislation, the lack of reference unbundling offer, must-carry issues, number portability, the powers of the NRA, spam protection and the universal service designation (one case each).

The Commission has continued frequently to issue press releases at various stages of the proceedings that have been opened. These press releases are available on the implementation and enforcement website of the Directorate-General for Information Society and Media<sup>190</sup> together with overview tables for all cases, which are updated regularly.

In addition to the pending infringement proceedings, there were 18 complaints pending at the end of 2007, most of them related to authorization issues, including frequency management and rights of way, and to obligations resulting from the Universal Service Directive.

### Petitions

In 2007 three petitions concerning the regulatory framework were registered (Italy: after-sales services of the incumbent fixed network operator; Ireland: fixed line connection availability in

---

<sup>189</sup>

[http://ec.europa.eu/information\\_society/policy/ecommlibrary/communications\\_reports/annualreports/12threport/index\\_en.htm](http://ec.europa.eu/information_society/policy/ecommlibrary/communications_reports/annualreports/12threport/index_en.htm)

<sup>190</sup>

[http://europa.eu.int/information\\_society/policy/ecommlimplementation\\_enforcement/index\\_en.htm](http://europa.eu.int/information_society/policy/ecommlimplementation_enforcement/index_en.htm)

a remote area; Austria: availability of a naked DSL subscription). All these petitions were answered without opening an infringement proceeding.

Finally, the European Court of Justice issued several important judgments on substance in the electronic communication area in 2007, in particular on request for preliminary ruling by a national court or tribunal under Article 234 of the Treaty. These covered amongst others the taxation for the allocation of UMTS frequencies (C-369/04 – *Hutchison 3G UK*, C-284/04 *T-Mobile Austria*), the transitional regime (C-64/06 – *Český Telecom* and C-262/06 – *Deutsche Telekom*) and must-carry obligations (C-250/06 – *UPC Belgium et alt.*).

### 7.1.2 *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 spectrum management are needed. These needs were considered in the Review of the current regulatory framework which led to new legislative proposals aiming at addressing these issues.

#### 7.1.2.1 *Recently adopted measures*

As regards roaming prices in the Community, the Commission proposed a complement to the framework by a single market measure in the form of a Regulation on roaming within the Community which was slightly amended and then approved by the European Parliament and Council. It entered into force on 30 June 2007<sup>191</sup>. The Commission services assess first experience with the regulation based on data provided by Member States. Pursuant to Article 11 of the Regulation the Commission will have to report to the European Parliament and the Council on the functioning of the Regulation no later than 30 December 2008.

#### 7.1.2.2 *New measures due to be adopted*

In accordance with i. a. Article 25 of the Framework Directive, the Commission reviewed the framework, and came forward with proposals covering the Directives, a Regulation establishing a European Electronic Communications Market Authority (EECMA) and a revised Recommendation on relevant markets in November 2007<sup>192</sup>. These proposals aimed in particular to consolidate a competitive internal market through more consistent national regulatory approaches; reinforced consumer protection and users' rights; more effective spectrum management and implementation. Moreover, the Commission services worked closely with the Member States in the Radio Spectrum Committee to achieve a consistent approach across the EU for a more flexible use of relevant frequency bands which resulted in a proposal for a Directive of the European Parliament and the Council repealing Council Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction

---

<sup>191</sup> OJ L 171 of 29 June 2007, p. 32.

<sup>192</sup> 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/ecomms/library/proposals/index\\_en.htm](http://www.ec.europa.eu/information_society/policy/ecomms/library/proposals/index_en.htm)

of public pan-European cellular digital land-based mobile communications in the Community<sup>193</sup>.

### *7.1.2.3 Volume of enquiries and priorities*

In the light of complaints and issues raised by market players and national regulatory authorities, the priorities will most likely remain the same as in the reporting year: the functioning of the national regulatory authorities and consumer protection rights. The number of cases of infringements, complaints, enquiries and petitions is expected to stay at the same level as in previous years.

### *7.1.3 Evaluation*

Overall, the implementation of the regulatory framework is working to bring competition to electronic communications markets, with resulting benefits to consumers in terms of prices and innovative converged services. Examples of best practice are available from every Member State across the range of regulatory and market issues. However, there is considerable scope for further benefits to flow from a reinforced single market, strengthened competition and a reduction in the regulatory burden.

While all issues of late transposition and two third of the implementation issues addressed by formal infringement proceedings have been settled, a significant number of non-conformity and incorrect application issues remains requiring attention and appropriate follow-up, with continued focus on the functioning of the national regulatory authorities and consumer protection rights. In addition, special focus will be given on the effective application of the Roaming regulation, and its overall impact will be reviewed in 2008. The Commission's legislative proposals currently before the European Parliament and Council seek to address identified weaknesses of the 2002 regulatory framework, while retaining its basic overall concept.

## **7.2 The Audiovisual and Media**

### *7.2.1 Current position*

#### *7.2.1.1 Existing measures in force*

The main instrument is the Television without Frontiers (TWF) Directive recently modified into the Audiovisual Media Services (AVMS) Directive<sup>194</sup>. It combines the country of origin principle with a minimum harmonisation of the laws applicable to all audiovisual media services (television and on-demand). Non-binding measures include the Recommendation on

---

<sup>193</sup> COM(2007) 367 final.

<sup>194</sup> 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.



Film Heritage<sup>195</sup> and the Recommendation on the protection of minors and human dignity in audiovisual and information services<sup>196</sup>.

#### *7.2.1.2 Report of work done in 2007*

7 new cases were opened (2 complaints, 1 presumed infringement and 4 identified infringements, all referring to TWF). 6 cases were closed, 3 were treated under other cases, and 2 letters of formal notice were sent. 4 petitions of the European Parliament were handled. At the same time, a commissioned study on the application of quantitative limits on TV advertising rules in Member States (Audimetrie) was continued, thereby examining the situation in 5 Member States.

On 18 October 2007, the European Court of Justice adopted a judgment giving guidance on the conditions in which call TV programmes may qualify as tele-shopping or television advertising. On 24 October 2007, the Commission adopted the Sixth Report relating to the application of the "Television without Frontiers" Directive for the period 2005 – 2006. In 2007, the Commission adopted a number of decisions in order to draw the consequences of the Infront judgment of 15 December 2005 concerning the application of the provisions on the retransmission of events of major importance for the society. Two of these decisions (the UK and the Belgian ones) have been challenged before the Court of First Instance.

#### *7.2.2 Changes Underway*

##### *7.2.2.1 Recently adopted measures*

The amending Directive was adopted at the end of 2007; Member States have until the end of 2009 to transpose the AVMS Directive. Questions that all Member States face in the transposition process will be clarified at an early stage in more frequent meetings of the Regulator's Group and of the Contact Committee set up under Art 23a of the Directive. This close monitoring of the implementation also involves the participation in conferences and public consultations held in the Member States on the transposition of AVMS.

##### *7.2.2.2 New measures due to be adopted*

The Commission is working on the adoption of a proposal for a consolidated version of the AVMS Directive which should be adopted around the end of 2008.

It is envisaged to submit new documents to the Contact Committee:

- Working documents on the application of Art 3 (2) - (5) and Art 2a (4) – (6) (jurisdiction issues);

---

<sup>195</sup> 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.

<sup>196</sup> 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.

- new guidelines for the report on the application of the rules (Articles 4 and 5) on cultural diversity (minimum programming of European works, minimum programming of and/or investment in independent works).

#### *7.2.2.3 Volume of enquiries and priorities*

The transposition period for the AVMS Directive lasts until 19 December 2009. In the light of complaints and parliamentary questions received so far, priority will most likely be on the following areas: television advertising, promotion of European and independent works, protection of minors, non incitement to hatred and jurisdiction. The issue of the right to information regarding 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. The number of cases of infringements and petitions is expected to stay at the same level as in previous years. The monitoring of quantitative TV advertising rules (Audimetrie) will continue, possibly involving further infringement proceedings.

#### *7.2.3 Evaluation*

The application of the provisions of the present regulatory framework in force (i.e. prior to the adoption of the amending Directive) has been relatively satisfactory. However, it remains necessary to carry out a close monitoring of the application of TV advertising rules in the Member States, and more generally, of audiovisual commercial communication. The audiovisual landscape has changed dramatically and seen an explosion of channels in recent years. The scope of the AVMS Directive - including on demand services - will cover all audiovisual media services once transposed. Therefore, there is a possibility of rising numbers of complaints, notably regarding issues of protection of minors and non incitement to hatred. The position will continue to be monitored and reported.

### **7.3 Public Sector Information**

#### *7.3.1 Current Position*

##### *7.3.1.1 Existing measures in force*

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

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

Decision 2006/291/EC, Euratom on the re-use of Commission information applies the principles of the PSI Directive to Commission documents. It goes beyond the PSI Directive in certain provisions such as only charging marginal costs for dissemination. Examples of re-use of Commission information include statistical data of Eurostat, the legal database Eurlex and the extensive translation collections of the Commission.

#### *7.3.1.2 Report of work done in 2007*

The deadline for implementing the Directive by the Member States was 1 July 2005. The Commission has been closely monitoring the transposition process and providing technical assistance in order to enhance re-use and to facilitate the exchange of good practices in the Member States.

At the end of 2007, all Member States had notified full transposition, except one Member State which had notified partial transposition. Infringement procedures under Article 226 EC for non-communication of national transposition measures were initiated in autumn 2005 by letters of formal notice to 15 Member States. They reached the final stage in the second half of 2007 when the Court of Justice gave judgements regarding the remaining four Member States (Austria, Belgium, Luxembourg and Spain) for failure to transpose the Directive. These Member States completed transposition by the end of the year 2007, except one (Belgium) which had transposed partially. The evaluation of the conformity of the notified national transposition measures continued during 2007, in parallel with the management of complaints.

In conformity with the Commission Communication on better monitoring of the application of Community law (COM (2002)725), the Commission has continued pursuing several accompanying measures in addition to formal infringement procedures regarding the transposition of the PSI Directive.

First of all, the Commission regularly organises and chairs the Public Sector Information Group for Member State representatives and stakeholders in order to provide assistance regarding implementation issues and to facilitate the exchange of good practices. Secondly, the Commission pursues intensive bilateral contacts with Member States in view of ensuring correct implementation and application of the Directive. These have contributed to the process of legislative change in various Member States. Thirdly, the Commission contributes 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 reuse (ePSIplus) through the Commission's eContentplus Programme. Finally, following the benchmarking study Measuring European Public Sector Information Resources (MEPSIR, 2006), two more studies were commissioned in 2007. They concern the Assessment of the Re-use of Public Sector Information in the Geographical, Meteorological and Legal Information Sectors, and the Assessment of the Economic and Social value of the Public Domain, which will include a chapter on cultural content with regard to the PSI Directive. Both studies are due in 2008 in view of the review of the PSI Directive.

#### *7.3.2 Changes underway*

##### *New measures due to be adopted*

The Commission will carry out a review of the application of the PSI Directive in 2008 , communicating the results, together with any proposals for modifications where necessary, to the European Parliament and the Council. In accordance with Article 13 of the Directive, the review will in particular address the scope and impact of the Directive, including the extent of the increase in re-use of public sector documents, the effects of the principles applied to charging and the re-use of official texts of a legislative and administrative nature.

#### *Volume of enquiries and priorities*

Infringement procedures under Article 226 EC for failure to transpose were completed when the Court of Justice gave four judgments in 2007 and all but one Member States notified complete transposition by the end of the year. In the light of the evaluation of the conformity of the notified national transposition measures, complaints and parliamentary questions, the main substance issues are related notably to the scope and definitions, exclusive agreements, non-discrimination, charging and transparency. The completion of transposition of the Directive in the Member States may have an impact on the number of complaints received by the Commission in the future concerning non-conformity issues.

#### *7.3.3 Evaluation*

It should be noted that the completion of transposition of the Directive by the last Member State took almost two years longer than envisaged in the legislation, requiring some actions against individual Member States to get as far as a first judgment 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 transposition measures just being completed. For this reason, the number of complaints is still scarce and there are no preliminary rulings based on the Directive, as Member States and stakeholders are still in a learning mode and institutional mechanisms are in the process of being implemented (e.g. new mediation mechanisms for dealing with refusal of requests for reusing public sector information). Thus a thorough evaluation of the application of the new rules is still premature, although some preliminary findings will be presented in the first review of the Directive started in 2008.

The priority is shifting now from the first stage of completing transposition and notifying the national transposition measures to the Commission, to ensuring full compliance and effective application of the Directive in all the 27 Member States. This is likely to lead to the launching of infringement procedures for incorrect transposition and/or application of the Directive in 2008 and 2009. One area that the Commission will monitor particularly closely concerns exclusive arrangements, for which the transitional period foreseen in Article 11 of the Directive will expire at the end of 2008.

## 7.4 Electronic Signatures

### 7.4.1 Current Position

#### 7.4.1.1 Existing measures in force

The principal instrument is the Directive 1999/93/EC on a community framework for electronic signatures<sup>197</sup>. The implementing measures include the Commission Decision on the minimum criteria for the designated bodies<sup>198</sup> and the Commission Decision on the generally recognised standards for some electronic signatures products<sup>199</sup>.

All 27 Member States have implemented the Directive and there is no open infringement procedure.

#### 7.4.1.2 Report of work done in 2007

In 2007, the Commission commissioned a study<sup>200</sup> in order to have an assessment for a possible review of the standardisation needs in the field of electronic signatures supporting the Directive 1999/93/EC.

The results of the study have been made available in December 2007 and will be considered in connection with any revision of the Commission Decision on generally recognised standards.

### 7.4.2 Changes underway

#### *Volume of enquiries and priorities*

On the basis of the recommendations of the Study, the Commission plans to revise, in 2008, the abovementioned Decision on generally recognised standards for electronic signatures products to update the list of referenced standards.

As stated in its Communication "A single market for the 21st century Europe" adopted on 20 November 2007, the Commission will adopt by the end of 2008 an e-signature/e-authentication Action Plan. The objective of the Action Plan is to promote the implementation of mutually recognised and interoperable electronic signatures and e-authentication solutions between Member States in order to facilitate the provision of cross-border public services in an electronic environment.

### 7.4.3 Evaluation

The main use of electronic signatures is today in the field of public service applications. The Commission does not plan to revise the Electronic Signatures Directive but some

---

<sup>197</sup> OJ L 13, 19.01.200, p.12

<sup>198</sup> OJ L 298, 16.11.2000, p.42

<sup>199</sup> OJ L 45, 15.07.2003, p.45

<sup>200</sup> Study on the standardisation aspects of eSignatures : [http://ec.europa.eu/information\\_society/europe/i2010/docs/esignatures/e\\_signatures\\_standardisation.pdf](http://ec.europa.eu/information_society/europe/i2010/docs/esignatures/e_signatures_standardisation.pdf)

complementary actions to improve its functioning could be taken in the framework of the Action Plan. Priority work will be on the development of the Action Plan and follow-up.

## **8 FISHERIES AND MARITIME AFFAIRS**

### **8.1 Current position**

#### *8.1.1 Existing measures in force*

The Common Fisheries Policy is based on the EC Treaty. Article 3 of the EC Treaty lays down that the activities of the Community shall include a common policy in the sphere of fisheries. Title II (Articles 32 to 38) of the EC Treaty sets out basic rules for the content and functioning of a common policy covering fisheries products. The existing Regulations and other legal acts covering the different areas of the policy can be found in the following website of the Commission: [http://ec.europa.eu/fisheries/index\\_en.htm](http://ec.europa.eu/fisheries/index_en.htm). In this site, under the heading "Legislation and state aid", the following information is available: EU fisheries legislation in force (with the chapters legislation in force; proposals for legislation; documents of public interest; state aid to fisheries and aquaculture). The heading "Legislation in force" covers the basic legislation of the Common Fisheries Policy: the basic Regulation governing the policy as well as other legislation on the different areas of the policy (conservation, structures and fleet, common organisation of markets, bilateral agreements with third countries, regional fisheries organisations, aquaculture, processing, marketing, research, control and monitoring of fishing activities, governance, food hygiene).

#### *8.1.2 Report of work done in 2007*

Owing to deficiencies identified in the enforcement of technical measures concerning the use of a specific fishing gear, the Commission sent a reasoned opinion to the United Kingdom on 27 June.

Under proceedings initiated owing to the non respect by Italy and France of legislation on the use of drift nets, the Commission decided to bring the matter before the Court on 21 March and 27 June.

Under proceedings initiated owing to the non respect by the Netherlands of the rules on measurement of vessel engine capacity in the Plaice box, the Commission decided to bring the matter before the Court on 27 June.

Owing to deficiencies identified in implementing the bluefin tuna plan (overfishing of the quotas and non communication of certain data), the Commission sent a letter of formal notice to Cyprus, France, Greece, Italy, Malta, Portugal and Spain on 25 September.

Owing to deficiencies identified in the monitoring and inspection of fishing activities and in the pursuit of those responsible for practices contrary to the respective laws, and due to deficiencies in the closure of the fishery of cod in the Baltic sea, the Commission sent letters of formal notice to Poland on 27 of June and on 19 October.

The Commission decided to close proceedings against France (non communication of data on fishing effort), Ireland (non communication of data on prices of fish products), Italy (non respect of technical measures on seasonal fishing activities with a certain gear), Spain (use of

non traditional fishing methods) and United Kingdom (lack of control of the rules on protection of salmon). Information was provided by the Member States concerned on the measures taken to ensure compliance with the applicable Regulations and to ensure closer monitoring of fishing activities.

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

The basic Regulation of the Common Fisheries Policy<sup>201</sup> requires the Commission to draw up every three years an evaluation report on its control activities and on the application of the common policy rules by the Member States. In addition, the Regulation on control of fishing activities<sup>202</sup> requires the Commission to draw up an assessment report every three years on the application of the regulation on the basis of implementation reports submitted by the Member States. In this context, the Commission published, on 10 April, a Report to the Council and the European Parliament on the monitoring of the Member States on behaviours which seriously infringed the rules of the Common Fisheries Policy in 2003-2005<sup>203</sup>.

## 8.2 Changes underway

### *New measures due to be adopted requiring implementation*

The year of 2008 will be a decisive year for the future development the framework of control of fishing activities which is a very important element of the Common Fisheries Policy. The intention of the Commission is to introduce an ambitious package to replace the existing set of rules by way of adopting a new set of rules designed to replace Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy<sup>204</sup>. The new control rules should be simpler while, at the same time, they should strengthen the current framework.

### *Recently adopted measures due to enter into force which may require additional work*

The measures that should be mentioned are the following:

- Rules for the implementation of Council Regulation (EC) No 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing<sup>205</sup>.
- Multi-annual recovery plan for bluefin tuna in the Eastern Atlantic and Mediterranean<sup>206</sup>.

---

<sup>201</sup> OJ L 358, 31.12.2002,p.59.

<sup>202</sup> OJ L 261, 20.10.1993,p.1. Regulation last amended by Regulation (EC) No 1967/2006 – OJ L 409, 30.12.2006,p.11.

<sup>203</sup> Document COM (2007) 167 final of 10.4.2007.

<sup>204</sup> OJ L 261, 20.10.1993,p.1. Regulation last amended by Regulation (EC) No 1967/2006 – OJ L 409, 30.12.2006,p.11.

<sup>205</sup> OJ L 340, 22.12.2007,p.46.

<sup>206</sup> OJ L 340, 22.12.2007,p.8.

- Conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation<sup>207</sup>.
- Measures for the recovery of the stock of European eel<sup>208</sup>.
- Multiannual plan for the cod in the Baltic Sea and the fisheries exploiting those stocks<sup>209</sup>.
- Multiannual plan for fisheries exploiting stocks of plaice and sole in the North Sea<sup>210</sup>.
- Technical measures for the conservation of certain stocks of highly migratory species<sup>211</sup>.
- Multiannual plan for the sustainable exploitation of the stock of sole in the Western Channel<sup>212</sup>.
- Management measures for the sustainable exploitation of fisheries resources in the Mediterranean Sea<sup>213</sup>.

*Identify volume of enquiries, complaints and infringements work and – prioritisation among them*

A total of 39 infringement cases have been handled in 2007. Three cases have reached the stage where the Commission decided to bring the matter before the Court of Justice (France and Italy in respect of illegal drift netting and the Netherlands concerning measurement of vessel engine capacity in the Plaice box).

In line with the priorities set out by the Directorate General for Fisheries and Maritime Affairs, two new cases have been opened against Poland (deficient control regime and defiance to the closure of the cod fishery in the Eastern Baltic Sea) and seven new cases have been opened against the Member States engaged in the bluefin tuna fisheries (Cyprus, France, Greece, Italy, Malta, Portugal and Spain).

Work is being undertaken for the definition of a strategy for the institution of infringement proceedings in line with the Directorate General priorities. This will encompass a selection of substantive issues which should form the subject matter of infringement proceedings henceforth. The measures pertaining to the conservation of resources will be of major importance in this context.

---

<sup>207</sup> OJ L 318, 5.12.2007,p.1.  
<sup>208</sup> OJ L 248,22.9.2007,p.17.  
<sup>209</sup> OJ L 248, 22.9.2007,p.1.  
<sup>210</sup> OJ L 157, 19.6.2007,p.1.  
<sup>211</sup> OJ L 123, 12.5.2007,p.3.  
<sup>212</sup> OJ L 122, 11.5.2007, p.7.  
<sup>213</sup> OJ L 36, 8.2.2007,p.6.



### 8.3 Evaluation

Through the Regulation on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy<sup>214</sup>, the framework for the Community control system was reinforced (control throughout the whole fisheries chain). In this context, action at Community level relies on the following: the adoption of legislation; the support to Member States by providing financial assistance to develop the national systems of control; the political pressure (publication of reports on enforcement of Community law) and the legal pressure (the launching of infringement procedures under Articles 226 and 228 of the EC Treaty).

In this context, one of the major difficulties consists in obtaining proof solid enough to initiate an infringement procedure. An increased cooperation between Member States and the Commission could provide better conditions for a more effective implementation of Community law in this area. As already mentioned, the intention to replace the existing rules laid down in Regulation (EEC) No 2847/93 aims at reaching a strengthened framework dealing with the enforcement system in general.

On the other hand, a major development in the area of control was the recent set up of the Community Fisheries Control Agency<sup>215</sup>. The Agency, through the pooling of national control and inspection resources, should achieve the conditions for a uniform inspection and enforcement in the fisheries sector throughout the European Union and contribute to a culture of control and enforcement, taking into account the increasing volume of Community legislation related with the conservation of resources.

The Agency can also play an important role in the fight against illegal, unreported and unregulated fishing (IUU fishing). In fact, this is a priority for action to ensure the sustainability of fisheries.

Against this background, the Commission has recently adopted a proposal for a Council Regulation establishing a Community system to prevent, deter and eliminate IUU fishing<sup>216</sup>.

## 9 INTERNAL MARKET AND SERVICES

### 9.1 General overview

#### 9.1.1 Existing measures in force

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](http://ec.europa.eu/dgs/internal_market/mission_en.htm)

*Efficient and effective enforcement of Community law – the general approach*

---

<sup>214</sup> OJ L 358, 31.12.2002, p.59.

<sup>215</sup> Council Regulation (EC) No 768/2005 – OJ L 128, 21.5.2005,p.1.

<sup>216</sup> Document COM (2007) 602 final of 17.10.2007.

Proper application of Community law in Member States is part and parcel of the efforts to ensure better regulation. The efforts made to adopt good quality legislation will not deliver the desired outcome if the legislation is not transposed correctly and in time and applied on the ground. Conversely, the proper application of Community law in Member States is facilitated by good quality legislation which should also include provisions to facilitate its efficient and effective implementation in Member States.

In an EU 27 the proper application of Community law in Member States cannot be achieved solely by the pursuit of infringement procedures to resolve breaches of Community law. Such procedures will continue to play a vital role but must be complemented by preventive actions and the further development and promotion of complementary informal problem-solving mechanisms.

For all these reasons efforts to ensure an effective and efficient enforcement of Community law encompasses a range of actions.

– Preventive action

Early efforts to prevent breaches of Community law are of key importance. The premise is simple: It is better for citizens and business if problems do not arise in the first place. In addition, in an EU 27 it is increasingly difficult to find efficient and effective solutions to all the potential problems which citizens and business face in the Internal Market. We need to address those problems at the core to improve the situation on the ground.

– Risk-based approach

A risk-based approach guides the preventive actions and essentially consists of early identification of potential risks related to the proper application of Community legislation.

To facilitate the task the provision of correlation tables by Member States are required systematically in proposed directives<sup>217</sup>. This obligation is not always maintained during the negotiations in Parliament and Council. Directives also include information/reporting obligations<sup>218</sup> and, where appropriate, mechanisms to ensure an effective and efficient application of the directive in Member States.<sup>219</sup>

---

<sup>217</sup> E.g. Proposal for a Directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance - Solvency II, COM/2007/0361 final; Proposal for a Directive of the European Parliament and of the Council on the coordination of procedures for the award of certain public works contracts, public supply contracts and public service contracts in the fields of defence and security, COM/2007/0766 final; 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, COM/2008/0194 final; Proposal for a Proposal for a Directive of the European Parliament and of the Council 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 merger and divisions, COM/2008/0576 final.

<sup>218</sup> E.g. Article 144 of Directive 2004/48 which requires, inter alia, competent authorities to publish electronically some key information regarding the implementation of the Directive including the national implementing measures.

<sup>219</sup> E.g. provisions on administrative cooperation (IMI, contacts points), enforcement measures (setting-up authorities, providing powers) or sanctions.

A risk-based transposition plan is prepared for each new directive. Such plans provide an inventory and planning of pro-active measures during the transposition period. They focus on the timely and proper transposition and correct application of provisions which are key for achieving the policy objectives and/or likely to pose difficulties in Member States. Very detailed plans have been prepared and are already in place for the transposition of the Services Directive and the Payment Services Directive. In 2008 substantial work is devoted to establish similar plans for the transposition of the new Postal Services Directive and the new Remedies Directive in the field of public procurement.

– Pro-active guidance to MS

Permanent dialogue, close cooperation and extensive guidance to Member States are essential to ensure complete and timely transposition of Directives. To prevent or detect incorrect transposition, advisory or regulatory committees and sectoral working groups are used to clarify national legislation<sup>220</sup> and achieve a substantial convergence of the practices. In 2007 several transposition workshops took place in various sectors: regulated professions, insurance, banking, securities, accounting, auditing. For the implementation of the Services Directive an expert working group was set up. It met six times in 2007. Twelve meetings have already been scheduled.

Detailed questionnaires are regularly sent to Member States in order to follow the transposition process<sup>221</sup> and bilateral technical assistance is offered to national authorities. For instance, in 2007 systematic bilateral meetings were held with each Member State on the implementation of the Services Directive. Web-pages with "Most Frequently Asked Questions and Answers" have been used extensively in some areas. These pages are open to all stakeholders. They contribute to educate the final users and to gather factual information on problems related to transposition, application or interpretation of Community legislation in a specific area. Particularly successful have been the web-pages concerning the Capital Requirements Directive and the "MiFiD" Directive.

Transposition package meetings have been organised in Member States with particularly high transposition deficits. In 2007, such meetings took place in France, Luxembourg, Czech Republic and Spain. They serve to address problems before the deadline for transposition expired. They serve also to urge Member States to start transposition works early and highlight the advantages of advance planning and coordination. Experience shows that such meetings are useful to improve Member States track record.

In its 2004 Recommendation on transposition of Internal Market directives<sup>222</sup> the Commission provided further guidance to Member States in the shape of a set of best practices in Member States with respect to the correct and timely transposition of Internal Market directives. In the 2006 Internal Market Scoreboard data concerning the implementation of the various best

---

<sup>220</sup> E.g. Directive 2007/44/EC<sup>220</sup>, amending some directives in the financial sector (banking, insurance and securities) by introducing new rules and evaluation criteria for the prudential assessment of acquisitions and mergers. This Directive has to be implemented by 21 March 2009.

<sup>221</sup> E.g. in the case of the UCITS Directive or for the audit Directive.

<sup>222</sup> Commission Recommendation of 12 July 2004 on the transposition into national law of Directives affecting the internal market, OJ L98 of 16.4.2005, p. 47 and following, not to be confused with the recommendations made under Guideline 12 of the Commission Communication to the Spring European Council, 'Integrated Guidelines for Growth and Jobs (2005-2008)' to be found on [http://ec.europa.eu/growthandjobs/pdf/integrated\\_guidelines\\_en.pdf](http://ec.europa.eu/growthandjobs/pdf/integrated_guidelines_en.pdf)

practices in the Member States were compared with the transposition deficit figures. It showed that there is a strong correlation between implementing all or most of the recommendations and a good overall performance on timely transposition.

– Administrative cooperation

Problems in application of Community law may have their origin in a lack of cooperation/mutual trust between authorities in different Member States. Appropriate provisions on administrative cooperation in secondary legislation are one way to address this problem. The provisions on administrative cooperation in the Services Directive<sup>223</sup> and the most recent Directive on Mutual Recognition of professional qualifications<sup>224</sup> are good examples of this approach.

The current roll-out of the Internal Market Information system (IMI) is a good illustration of what can be done to facilitate administrative cooperation. IMI is being developed to improve communication between Member State administrations and provides a system for the exchange of information so that Member States can engage in more effective day-to-day co-operation in the implementation of Internal Market legislation. It is meant to help overcome important practical barriers such as different administrative and working cultures, different languages and a lack of clearly identified partners in other Member States. Its aim is to reduce administrative burdens and to increase efficiency and effectiveness in day-to-day co-operation between Member States. Operational on a pilot basis since November 2007, it supports the mutual assistance provisions of the Professional Qualifications Directive (2005/36/EC). From December 2009, it will also be used to support the administrative cooperation provisions of the Services Directive (2006/123/EC). The Commission has recently (03/04/2008) adopted a Recommendation to Member States suggesting that IMI could be used to support the Posting of Workers Directive.

In the securities, banking and insurance fields, and on a cross-sectoral basis, the cooperation between national supervisory authorities is intensified within the framework of the Lamfalussy process and provides an additional tool to enhance proper transposition. The committees of national supervisors (called Level 3 Committees<sup>225</sup>), provide technical advice for the preparation of implementing legislation to be adopted through comitology by the Commission. The involvement of supervisors in the preparation of the legislative process ensures that they feel "ownership" for these rules when they have to apply them. Furthermore, the cooperation among supervisors in day-to-day application of Community legislation helps eliminating certain inconsistencies in the transposition and/or application.

– The Internal Market Scoreboard

As an incentive for Member States to speed up transposition of Internal Market directives twice a year an Internal Market Scoreboard is drawn up. It provides detailed information on Member States' timely transposition of IM directives. The combination of a clear, objective and politically agreed benchmark for transposition (the benchmark is now a maximum transposition deficit of 1% by

---

<sup>223</sup> Directive 2006/123/EC

<sup>224</sup> Directive 2005/36/EC

<sup>225</sup> Committee of European Securities Regulators (CESR); Committee of European Banking Supervisors (CEBS); Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS).

2009) and the peer pressure created by making Member States performance transparent has proven very effective. December's Scoreboard 2007 shows an EU average transposition deficit of 1,2%.

- In the financial services area, a more detailed scoreboard focusing on the directives adopted as *part of the Financial Services Action Plan (FSAP)* is published once a month on DG Internal Market and Services' website. It is complemented by an internet database giving access to national laws implementing the FSAP Directives. This concept will be used for other directives in 2008/2009<sup>226</sup>.

- Partnership with Member States

Building on the experience as outlined above the Commission included in its Communication of 2007 on a Single Market for the 21st Century an initiative to further develop the partnership with Member States to improve the functioning of the Single Market. This initiative aims to identify good practices and formulate recommended actions to be implemented by the Member States and the Commission (as the case may be), in a range of Single Market tasks including; transposing, applying and enforcing Single Market rules; informing citizens and businesses about their rights and opportunities; promoting problem-solving; advocating Single Market-friendly policies at national level; and ensuring coordination on Single Market issues within national administrations, between Member States and with the Commission. The work is carried out in close cooperation with Member States and on the basis of their experiences and national good practices. It will lead to adoption of a Commission Recommendation in mid 2009.

- Dialogue and cooperation with the European Parliament

The European Parliament takes a strong interest in the proper application of Community law. A close dialogue and cooperation has been established for the promotion of SOLVIT with interested MEPs. A regular dialogue with the EP on other aspects of the application of EU law is desirable. The European Parliament may provide useful feedback on the results and benefits of the enforcement policy and, moreover, such a dialogue will build support and mutual confidence. These contacts should take place at all levels, including the political level. One useful example is the constructive dialogue with the EQUI Committee in 2007. The final report emphasised the need for a more comprehensive approach to ensure effective implementation of EU legislation and formulated suggestions which are part of the reflection concerning future enforcement activities.

Petitions received by the European Parliament constitute a useful source of information on how the legislation works on the ground and on problems and possible violations in member States.

#### Problem-solving

- The instruments

---

<sup>226</sup> A scoreboard as regards company law and anti-money laundering directives is being published on a monthly basis and a scoreboard showing the state of play of transposition of Directive on Statutory Audit (Directive 2006/43/EC) is under preparation.

To ensure an effective and efficient enforcement of Community law in an EU of 27 Member States the right instruments must be used to deal with the problems which arise. Moreover, the most serious infringements must be solved as a matter of priority.

In the areas for which DG Internal Market and Services is responsible the breaches of Community law concern both Treaty provisions (the basic freedoms of establishment, provision of services and free movement of capital) and secondary legislation. The formal infringement procedure under Article 226 EC is an essential instrument to tackle the more complicated, structural and politically sensitive problems. On the other hand, the Article 226 procedure is not the most appropriate instrument for other types of problems, in particular isolated cases of incorrect application of national law by national authorities. In these cases the individual citizen and business needs a solution to his/her problem quickly. The infringement procedure under Article 226 will not necessarily satisfy this need.

SOLVIT was established for that very reason and has become an integral part of the wider efforts to ensure effective and efficient application of EU law by the Member States. Looking at its activities over the last five years results are impressive: it started in 2002 with around 12 cases per month. In 2007 it accepted to handle 819 complaints about bad application of EU internal market law and found solutions for 83% of them. Solutions were found within an average of 58 calendar days. Of all complaints in SOLVIT, 82% were submitted by citizens and 18% by enterprises. From its establishment in 2002 and until today 1805 problems submitted by citizens and businesses were solved by SOLVIT, which represents 80% of all problems accepted by the system. It is not only recognised as a successful problem solving tool, but also a model for administrative cooperation between Member States. SOLVIT has demonstrated the capacity to improve public service to citizens and businesses. Moreover, it has promoted a European perspective among national authorities without being forced to do so by formal measures.

The EU PILOT-project launched early 2008 represents a further effort from the Commission to develop complementary instruments to find early solutions in an informal way. This instrument will further encourage Member States to take their own responsibilities to ensure proper application of Community law. Member States participating to the test phase are committed to provide solutions and answers within 10 weeks. DG Internal Market and Services intends to use this Pilot project in cases where SOLVIT cannot help and where the use of this mechanism may provide an early solution to the problem.

### The prioritisation of infringements

The main objective of an infringement procedure is to find appropriate solutions when national measures/practices breach Community law. Its purpose is not to bring a Member State to Court even if the threat of a Court case is an important leverage to find amicable solutions. The prioritisation of infringements is a means to determine which problems have particularly detrimental effects on the good functioning of the Internal Market and to ensure that these problems are solved as quickly as possible. At the same time acting swiftly against Member States in such cases may have a deterrent effect in itself, thus encouraging Member States to find solutions and reducing the risk of future infringements of a similar nature.

Prioritisation of infringements does not mean that non-priority cases are put aside. Many of the problems which would not be regarded as a priority are tackled very efficiently and effectively in SOLVIT. Others will be handled via the formal infringement procedure with a lesser degree of intensity but according to the general rules applicable to infringements. The EU Pilot can be a further complementary mechanism to seek early solutions to some of these problems.

Prioritisation does not mean that only the problems with a substantial economic impact will be given particular attention. There may well be problems which in themselves are economically less significant but which are related to fundamental rights and freedoms, prejudging the overall good functioning of Community legislation, undermining a sectoral market or affecting a category of citizens/business. The criteria established to identify the priority problems are sufficiently flexible to include such problems where appropriate.

The priority criteria

In line with the Commission's Communication "A Europe of results" DG Internal Market and Services has for some time worked on the basis of a set of horizontal criteria to determine priorities specific to its area of work. These criteria complement the categories of priorities identified in the aforesaid Commission Communication (i.e. non-communication of transposition measures and proper execution of judgements of the European Court of Justice). Due to the diversity of sectors and activities, it was decided to define three broad criteria:

Cases relating to one or several DG Internal Market and Services policy priorities;

Cases having a significant legal dimension. This means inter alia cases where fundamental freedoms are violated with a significant impact on citizens rights, breaches threatening the good functioning of sectoral legislation or cases giving rise to important legal questions where a clarification by the Court of Justice is deemed important.

Cases having a significant economic impact on the Internal Market or on a specific sectoral market.

These broad criteria are not cumulative and then applied within each specific sector pursuant to the concrete political, economic and legal framework prevailing there.

The handling of priority cases

There is set of internal guidelines for the handling of priority cases. One of the major components of these guidelines is the introduction of a '6 months benchmark'. For priority cases (including non-communication and 228 EC cases) a decision in the formal infringement procedure (formal notice, reasoned opinion or referral to the Court) should be taken every 6 months. The benchmark is applied in a pragmatic and sensible way. There may be cases where actions within the 6 month benchmark make little sense, e.g. where a solution is identified in a case, is satisfactory and is ready to be implemented by the Member State concerned within a clear and reasonable timeframe. In particular there are cases where the problem can be corrected only by modifying the national legislation.

The objective of this approach is to find a solution to the problem as quickly as possible. Therefore, in parallel with the formal procedure informal negotiations take place with the Member States to assist them in finding appropriate solutions. The efficient use of the formal

procedure to put pressure on Member States to remedy the problem combined with informal negotiations is the most effective way to handle such cases. Informal actions are package meetings in the area of public procurement, bilateral transposition package meetings where we go through the pending infringement cases on late or incorrect transposition with the Member State concerned, bilateral (technical) ad hoc meetings, letters sent at more political level or meetings between national authorities and the Commissioner and his Cabinet etc.

#### *9.1.2 DG internal market and services approach for 2008-2009*

DG Internal Market and Services will pursue and further develop its general approach to enforcement of Community law as outlined above.

The volume of own initiative investigations and cases registered as complaints remains stable in recent years. It is difficult to predict about the future but expectations are that the volume will increase in the medium-term, in particular due to enlargement with EU 12. In areas like public procurement and regulated professions the Community framework is consolidated and well known. However, this has not led to a reduction in the number of infringements of the rules. One reason may be that the legislation is applied on a day-by-day basis by several national authorities at regional and local level or by different bodies linked to the regulated professions. It is clear that those areas will generate a substantial workload also in the foreseeable future.

In addition to this, the short-term the major challenge will be to reduce the transposition deficit and shorten time needed to tackle structural problems either via the Article 226 procedure or with the help of complementary problem-solving mechanisms such as the EU-PILOT. As the Communication "A Europe of Results" indicates, the enforcement of rulings by the Court of Justice confirming a violation of EC law must be pursued vigorously (so called 228 EC cases). Member States will be required to ensure effective and efficient implementation of the rulings and will move quickly to each step of the 228 EC procedure in order to put pressure on national authorities.

DG Internal Market and Services faces a real challenge related to the timely transposition of directives related under its responsibility. The transposition deficit for directives under its responsibility is higher than the overall deficit recorded for all Internal Market legislation. The reasons for this are manifold, ranging from the sheer number of directives in a particular sector to be transposed more or less at the same time (company law and anti-money laundering) to the complexity of transposing the directive (the new Directive on mutual recognition of professional qualifications requires up to a hundred national transposition measures in some MS). In 2008 and 2009 priority will be given to assist Member States in accelerating transposition and vigorous pursuit of infringement procedures for late transposition to remedy current problems. This will require sustained and intensive efforts to accompany Member States in their work to transpose directives both at services level and the political level. Some recently adopted Directives have just become applicable as their transposition was due in 2007.

Moreover, in 2008/2009 efforts will concentrate on preventive actions as outlined above to ensure timely and correct transposition of new important Directives. The timely and correct transposition of the Directives in the area of company law, the Services Directive, the new Directive for Postal Services, the Solvency II Directive in the insurance sector, the Remedies Directive and the Payment Services Directive will be key priorities. One of the most



significant challenges will be to analyse national measures notified in 23 national languages. This challenge is further accentuated by the sheer volume of national transposition measures in some sectors, in particular in the area of company law and professional qualifications (hundreds of texts). To tackle this challenge priority is given to provisions whose correct transposition is essential to achieve the policy objectives and/or ensure the good functioning of the relevant Directive. In some cases it has been decided to outsource a preliminary check of the national legislation, both for linguistic and volume reasons. The Commission will obviously remain in charge of a further and deeper control once a first screening has clarified the national situation. The final objective is to screen all texts in the medium term.

Finally, DG Internal Market and Services will continue to receive a large volume of more general queries from citizens and businesses. They concern the interpretation of EC law in a specific sector, the practice within a Member State or difficulties arising from the behaviour of private entities. All these queries will be treated in conformity with the Code of Good Administrative Conduct and, whenever possible, citizens and business are signposted to competent national authorities or bodies (sectoral association, regulators, national contact points, consumers associations, and in the financial services area to the FIN-NET<sup>227</sup>). Some of these queries, depending on the nature and the Member State involved, will be introduced into the EU-pilot system active from 2008 in order to facilitate or complete the answer to be provided by the Commission.

#### Petitions from the European Parliament

DG Internal Market and Services deals with a considerable number of petitions from the European Parliament. In 2007 around 130 communications were treated and 75 new petitions received. Questions linked to infringements are about a quarter of the overall correspondence

Over half of the petitions concerned two sectors of activity. First was **public procurement**, accounting for around 30% of the petitions. Most of them were about town planning issues in Spain. Some of the questions raised by the petitioners are the subject of infringement proceedings in respect of the legislation of the Valencia region (Spain) that the Commission regards as being in breach of the Community rules on public procurement. However, some other questions raised in these petitions are outside the Community's competence (for example, questions about the right of expropriation).

Recognition of diplomas accounts for around 25% of the answers supplied. The continuation of infringement proceedings and the changes made by the Member States concerned produced solutions to some long-standing petitions, in particular for the provision of services by tourist guides and the question of ski instructors.

The services sector comes next with some 20% of the answers. The petitions concern citizens' rights in respect of what they see as requirements or discrimination. In these cases, examination of the situation reveals that a number of specific requirements are not necessarily in breach of Community law. In others, infringement proceedings are in progress, in particular concerning the chimney-sweep monopoly in Germany and gambling.

---

227

Finally, around 25% of the answers relate to the financial institutions sector plus company law and movement of capital. Some of the petitions concern the costs incurred by consumers for intra-Community payment operations, which in most cases are found to be consistent with European rules. In the banking, insurance and company law areas, some of the petitions concern one-off questions relating to the scope of the petitioners' rights in relation to existing rules, with no infringement of Community law. Other more complex questions have to do with the activities and liability of firms in relation to European rules. In most cases the replies sent refer to the responsibility of the supervisory bodies and national authorities.

In 2007 some ten petitions were submitted to the SOLVIT network, which came up with a solution in half of the cases..

Following a series of petitions, the European Parliament on 19 June 2007 adopted the recommendation of the Temporary Committee of Inquiry into the Crisis of the Equitable Life Assurance Society (EQUI). The EQUI Report contains a bold chapter on the role of the Commission in the implementation of EU legislation, in monitoring of implementation in practice and the need to ensure a comprehensive approach to implementation. It emphasised the need for a more comprehensive approach to ensuring effective implementation of EU legislation and identified a number of necessary elements of such an approach. The committee put forward a number of recommendations on how to improve these perceived weaknesses.

## **9.2 Analysis by sector**

### **9.2.1 Freedom to provide services and freedom of establishment (other than Financial Services)**

#### *9.2.1.1 Current position*

– work in 2007

A key priority in 2007 was the substantial work necessary to assist Member States in the implementation of the Services Directive<sup>228</sup> by end 2009. A detailed handbook was established providing extensive and detailed guidance to Member States on the key elements in the Directive. In addition, regular meetings in expert groups and regular bilateral contacts with Member States took place throughout the year.

Moreover, DG Internal Market and Services continued its action via infringement procedures in various areas concerning the Internal Market. As in previous years, the main sectors were the posting of workers, the mobility of patients and reimbursement of medical costs, the establishment of pharmacies, gambling, authorisation of vehicle inspection organisations and other problems pertaining to the retail sector, such as setting up of shops and petrol stations.

In the area of *posting of workers*, DG Employment is the lead service for the 2006 and 2007 Communications on the posting of workers, but DG Internal Market and Services remains responsible for the infringement procedures dealing with the application of Article 49 of the

---

<sup>228</sup> Directive 2006/123/CE of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36)

Treaty in this area. The elimination of obstacles to the posting of workers is a key aspect in the work to ensure the functioning of the Internal Market for Services. Following a Court judgment of October 2006 the Commission decided to address a letter of formal notice based on article 228 of the Treaty to Austria for not having adapted its legislation concerning the conditions for posting of third-country nationals by EU companies<sup>229</sup>. In another case equally concerning the posting of third-country nationals, the Commission decided to refer Belgium to the Court of Justice for the conditions it imposes on EU employers providing cross-border services who want to post non-EU workers to Belgium, even if the workers are already working and living regularly in another Member State<sup>230</sup>.

Concerning *private security services*, following a judgment against Spain from January 2006 the Commission decided to send a reasoned opinion to Spain for not amending its legislation in line with the Court's judgement<sup>231</sup>. Moreover, the Court adopted on 13 December 2007<sup>232</sup> a judgement against Italy which must now put its legislation on private security services in conformity with Articles 43 and 49 of the Treaty or else risk facing a procedure under Article 228 of the Treaty.

Concerning *health services*, in particular patient mobility and reimbursement of medical costs, a reasoned opinion was sent to France concerning a case in which the costs of medical treatment in another Member State were not reimbursed. According to the case law of the Court of Justice, Member States cannot maintain a requirement of prior authorisation for the reimbursement of non-hospital treatment received in another Member State. At the same time, patients receiving hospital treatment in another Member State should be able to get reimbursement at least identical to what they would have been entitled had they received the service in France<sup>233</sup>. For similar reasons, the Commission has also sent a reasoned opinion to the United Kingdom and France due to the refusal of the authorities of those Member States to allow an additional reimbursement for costs incurred as a result of urgent hospital treatment received in another Member State<sup>234</sup>. The Commission has issued another reasoned opinion to the United Kingdom for failure to recognise medical prescriptions issued by professionals authorised in other Member States but not registered in the United Kingdom. According to the Commission this constitutes a restriction on both the freedom of healthcare professionals to supply services and the patient's right<sup>235</sup>.

Concerning *establishment*, the Commission decided to send formal requests to amend national rules to Portugal regarding conditions for the establishment of shops<sup>236</sup>, to Spain for conditions set to the establishment of large-scale distributors<sup>237</sup>, and to Italy on conditions set for fuel distribution<sup>238</sup>. Moreover, an official request for information was sent to Ireland under

---

<sup>229</sup> Those companies had to obtain a special confirmation the issue of which required, firstly, that the worker must have been employed for at least one year by that undertaking or must have concluded an employment contract of indefinite duration with it and, secondly, evidence that Austrian employment and wage conditions were complied with. See IP/07/354

<sup>230</sup> IP/07/913

<sup>231</sup> IP/07/354

<sup>232</sup> Judgement of 13 December 2007, Case C-465/05 *Commission v. Italy*

<sup>233</sup> IP/07/1515

<sup>234</sup> IP/07/1132

<sup>235</sup> IP/07/354

<sup>236</sup> IP/07/904

<sup>237</sup> IP/07/1518

<sup>238</sup> IP/07/901

the form of a letter of formal notice on discriminatory restrictions on the granting of dwelling authorisations<sup>239</sup>, which may be limited to residents, or to relatives of residents.

In the field of *gambling*, formal request to amend national rules were sent to Denmark, Finland, Hungary<sup>240</sup>, France and Sweden<sup>241</sup>. In addition, the Commission sent an official request for information to Greece<sup>9</sup>. The complaints concern restrictions on the provision of sports betting services, including the requirement for a State concession or licence, even where a provider is lawfully licensed in another Member State. In this field, the preliminary ruling *Placanica* of the Court of justice adopted on 6 March 2007 has also to be mentioned<sup>242</sup>. In this judgement, the Court makes it clear once again that a Member State may not apply a criminal penalty for failure to complete an administrative formality where such completion has been refused or rendered impossible by the Member State concerned, in breach of Community law, as was the case in Italian law for gambling services.

In two other cases<sup>243</sup>, the Commission decided to refer Germany and Austria before the Court of Justice. The German case concerned a bilateral agreement with Poland in the *construction sector* allowing German undertakings to take advantage of the opportunity afforded by that agreement to use Polish subcontractors while EU companies could not benefit from the agreement. The Austrian case concerned legislation on *patent agents*. The Commission considered the obligation of all patent agents legally established in another Member State to register in Austria, to hold insurance for this purpose, to be subject to all disciplinary rules other than those linked to professional qualifications and to work together with a local representative, as unjustified restrictions to Article 49 of the Treaty.

Austria was involved in two other infringement procedures: the Commission decided first to formally request an amendment of Austrian rules relating to *bovine artificial insemination services*. It also sent an information request and a formal request to amend its legislation under Article 228 of the EC Treaty following a Court judgement of December 2006 on *inspection of boilers*<sup>244</sup>. Both activities are restricted to providers established in Austria.

The Commission also had to send a formal request of information under Article 228 of the EC Treaty to Italy following the Court judgement of July 2007<sup>245</sup> on the activity of *extrajudicial debt recovery*, subject to a number of restrictions, notably an obligation to get a authorisation per region of activity, an obligation to have at disposal premises in each region of activity, as well as to display in those premises a list of the services which may be provided to clients.

The Commission also decided to close a number of cases following compliance of national legislation: regarding attribution of *hydroelectric concessions* in Trentino-Alto Adige<sup>246</sup> (which formally provided for preference to out-going concession-holders), the carrying out of

---

<sup>239</sup> IP/07/903

<sup>240</sup> IP/07/360

<sup>241</sup> IP/07/909

<sup>242</sup> Joined cases C-359/04 and C-360/04

<sup>243</sup> IP/07/1132

<sup>244</sup> IP/07/362 and IP/07/1516

<sup>245</sup> Judgement of 18 July 2007, Case C-134/05 *Commission v Italy*

<sup>246</sup> IP/07/912

*cereals-related commercial activities* in France, and the grant of *television broadcasting licences* in Germany<sup>247</sup>.

In the area of *postal services*, the Commission continued its negotiations with the European Parliament (1st and 2<sup>nd</sup> readings) and Council throughout 2007 (Common Position see COM (2007) 695 final<sup>248</sup>).

#### 9.2.1.2 Changes underway (2008-2009)

Work continues in expert groups for the implementation of the *Services Directive* 2006/123/EC on the basis of three strands of work: horizontal questions, administrative cooperation and electronic procedures. In addition to those multilateral expert meetings, bilateral contacts with Member States and interested parties have also been intensified. In order to ease the task of Member States in the screening of their legislation, a common on-line tool (IPM) has been developed which national administrations can use to submit their reports to the Commission. Another means to assist the national administrations is the "*Handbook on the implementation of the Services Directive*" which was published during the summer of 2007. The Commission will equally strive to provide assistance to MS as regards the obligations in the Directive to put in place electronic procedures. An inter-service ad-hoc group has been created and a study has been launched in the framework of the IDABC programme.

A second implementation report of the 98/84/EC Directive on the legal protection of conditional access services<sup>249</sup> was adopted 2008. Simultaneously, an expert group has been created in order to discuss a number of issues linked to a better implementation of the Directive. Additionally, the Commission foresees in the report to propose to the Council to ratify Convention on the Legal Protection of Services based on, or consisting of, Conditional Access<sup>250</sup> adopted by the Council of Europe on 24 January 2001. At the time of its adoption, the Directive mainly aimed at the protection of existing pay-TV services against piracy. However, its definitions already encompassed nascent Information Society services and the directive is very valuable in the new media landscape.

The new *postal services Directive* has been adopted at the beginning of 2008<sup>251</sup>. The new postal service Directive represents an important step forward to enhance competition in the postal market. Specific actions to accompany the transposition and to facilitate its proper application have been planned. The Commission has started to look ahead to accompany and follow-up its implementation. Initiatives for the next two years will include appropriate

---

<sup>247</sup> IP/07/1519

<sup>248</sup> Communication from the Commission to the European Parliament pursuant to the second subparagraph of Article 251 (2) of the EC Treaty concerning the common position of the Council on the adoption of a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services

<sup>249</sup> 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.

<sup>250</sup> <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=178&CM=8&DF=8/12/2008&CL=ENG>.

<sup>251</sup> 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, p. 3–20*

organisation of the conformity assessment, the initiation of enhanced administrative co-operation and the creation of working groups of the Postal Directive Committee to address specific (implementation) issues. A Transposition Plan will assess in detail the risks of incomplete, deficient or late implementation of Directive 2008/06/EC by Member States and envisage a series of specific actions to ensure real market opening, fair competition and a level playing field. In addition to transposition workshops, a high level "Kick-Off Conference" takes place on 24 June 2008 with Member States, national regulatory authorities, key stakeholders and consumers. An Inventory of actual and potential market entry barriers is also under preparation.

#### *9.2.1.3 Evaluation*

The adoption of Directive 2006/123/EC (the Services Directive) will oblige Member States to radically change their perspective and practices. A key priority will be, therefore, the ongoing work to ensure the timely and correct transposition of the *Services Directive*. The implementation process will be monitored by holding further regular expert group meetings as well as bilateral meetings with each Member State and by the increased involvement of stakeholders. Specific actions are being discussed with Member States as regards the obligations in the Directive to put in place electronic procedures. In parallel, specific work to put in place the administrative cooperation obligations in the Directive (on the basis of IMI-the Internal Market Information system) is being undertaken. This intensive programme of work reflects the priority accorded to this wide-ranging instrument and the importance attached to it by the Community legislator.

At the same time the Commission will focus on some aspects which remain outside the scope of the Services Directive. Priority will be given to cases where the violation relates to a major policy priority, e.g. violations of Art. 43 or 49 EC in areas such as health services and private security services. Clear discriminations or cases concerning entire categories of services providers will be treated as priorities as well, in particular sectors like retail services (including e-commerce), pharmacies, gambling, media and certification services.

The volume and variety of issues that arise in the services sector, and at different times, makes it difficult to plan ahead which makes the prioritisation of the work all the more important. Only in this way can the Commission best fulfil its obligations to ensure the correct application of the law and ensure that its resources are deployed in an efficient manner. The situation is considered to be reasonably stable on present conditions.

In the area of *postal services* the transposition, conformity assessment and management work will provide the main focus for the coming years. However, to ensure that that the main policy objective of the new Directive, the full liberalisation of postal services, is achieved, further measures will be taken as appropriate to address barriers/measures which may undermine the achievement of this objective, including the pursuit of infringement proceedings against Member States for violation of Articles 43 and 49 in this sector.

## **9.2.2 Financial Services**

### *9.2.2.1 Current position*

*Work in 2007*

In the area of *securities markets*, the transposition of the Markets in Financial Instruments Directive<sup>252</sup> (MiFID) and its implementing Directive 2006/73/EC<sup>253</sup> were subject to important delays. The deadline for transposition of both measures was the 31<sup>st</sup> January 2007, whereas the date of application was 1<sup>st</sup> of November 2007. Twenty-five Member States had not transposed either of the measures by 31 January 2007, whereas eleven had not transposed MiFID by the 1<sup>st</sup> November 2007 and thirteen had not transposed directive 2006/73/EC by 13 November 2007. The deferred date of application was meant to give investment firms the time to adapt to the new provisions. The late transposition caused problems for firms as far as the adaptation to the new provisions was concerned, but also with regard to their continuation of business where their home Member State had not transposed by the 1<sup>st</sup> November 2007. Further, investment firms from Member States not having transposed could not acquire new passports and provide the new investment services under MiFID in other Member States. Finally, the failure to transpose on time could trigger potential liability issues for Member States.

In April 2007 the Commission launched 47 non-communication infringement cases for late transposition. In June 2007 46 reasoned opinions were addressed to the Member States that still had failed to notify the transposition of the two afore-mentioned directives. The matter was raised in a meetings of the European Securities Committee with a view to accelerating transposition and ensure consistent application of the MiFID. The Transposition deficit was reduced significantly in the following months and 20 of those cases were eventually closed by the end of 2007. In addition, the Commission closed one outstanding infringement case concerning the non-communication of national measures transposing the Prospectus Directive<sup>254</sup> and finalised the quality check of the Prospectus directive 2003/71/EC in 2007.

The conformity assessments of national transposition measures were delayed by late notifications, lacking transposition tables and significant time delays due to translations. Even where explicitly required by the Directives concerned (e.g. Directive 2006/73/EC), many transposition tables were received much later than the legislative transposing measures. This also led to much more work for the translation services who had to translate several complete legislative texts per Member State. Moreover additional translations were needed since the format provided for transposition tables (i.e. the indication of complete provisions) was not respected by the majority of Member States.

In order to get a good overview of whether the directives in the securities' sector had produced the intended effects, several meetings of the European Securities Markets Expert group took place with representatives of the industry. A database with questions and answers, providing stakeholders with non binding advice on issues of interpretation concerning MiFID, was also launched by DG Internal Market and Services. Finally, Commission services published a

---

<sup>252</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1)

<sup>253</sup> Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26)

<sup>254</sup> 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)

series of questionnaires and tables on the progress of implementation as far as MiFID was concerned.

In 2007 work was also conducted on several of the reports required foreseen in Article 65 of MiFID. A report on the continued appropriateness of the requirements for professional indemnity insurance imposed on intermediaries under Community law was published in April 2007. The report on non-equities market transparency, pursuant to Article 65(1) of MiFID, was published in April 2008. On commodity derivatives, the Commission services published a feedback statement with regard to the public call for evidence on commodity and exotic derivatives and related business in August 2007. The Commission services thereafter issued three mandates for advice in December 2007. The first mandate was addressed to the Committee of European Securities Regulators and the Committee of European Banking Supervisors for advice on commodity and exotic derivatives and related business. The second mandate was addressed to the European Securities Markets Experts group. Separately, in the context of the third legislative package for electricity and gas adopted by the Commission on 19 September 2007, a final mandate was issued to the Committee of European Securities Regulators and European Regulators' Group for Electricity and Gas for advice on transparency and record-keeping for energy supply contracts and derivatives. The advice will be received during the second half of 2008. .

In the area of *asset management*, the Commission requested Member States to provide updates on their progress with the transposition of Directive 2007/16/EC<sup>255</sup>. A special questionnaire was sent to the Member States before the European Securities Committee meeting of 8 November 2007. The aim of the questionnaire was also to identify the need for transposition workshops. Responses from Member States did not indicate major problems. In view of the response, there was no need for special workshops to be organised by the Commission. The transposition of the Directive will be verified in the course of 2008.

As far as the *insurance* sector in 2007 is concerned, the Court of Justice ruled on a case referred in 2004 with regard to Spanish legislation allowing policyholders to cancel their insurance contracts in case of a transfer of insurance portfolios where the portfolio transfer has a cross-border dimension<sup>256</sup>. In the judgment delivered on 18 July 2007, the Court of Justice did not follow the Commission's line of reasoning in an infringement case. The Court pointed out that the Directives in question (92/49/EEC<sup>257</sup> and 2002/83/EC<sup>258</sup>) did not impose a specific obligation on Member States as to the modalities of cancellation of insurance contracts and hence do not prohibit discrimination between internal and cross-border transfers of portfolios.

As regards the transposition of Directives by the Member States, non-communication cases had to be launched in the insurance sector against several Member States with regard to the

---

<sup>255</sup> Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions (OJ L 79, 20.3.2007, p. 11)

<sup>256</sup> Judgment of 18 July 2007, Case C-501/04 *Commission v. Kingdom of Spain*

<sup>257</sup> Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ L 228, 11.8.1992, p. 1)

<sup>258</sup> Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ L 345, 19.12.2002, p. 1)



failure to transpose Directive 2005/14/EC (the 5<sup>th</sup> Motor Insurance Directive<sup>259</sup>) by 11 June 2007. Some non-communication cases also had to be launched against Bulgaria and Romania with regard to the failure to transpose some Directives in the field of insurance. An infringement was also launched concerning Directive 2002/92/EC (the insurance mediation Directive<sup>260</sup>).

In the *banking sector*, 30 infringement proceedings were started in 2007 against several (EU 25) Member States for failure to transpose the so-called 'Capital Requirement Directive' (CRD) which lays down the capital requirements for banks and investment firms<sup>261</sup>. They were terminated in the same year following the notification of the implementing measures by the Member States concerned. The proceedings were continued against two Member States as transposition was not complete. An infringement case against one Member State for failure to transpose Commission Directive 2006/29/EC making technical amendments to the CRD<sup>262</sup> was closed. Infringement proceedings were commenced against 7 Member States for non-communication of the measures implementing Commission Directive 2007/18/EC which also amended technical provisions of the CRD<sup>263</sup>. An infringement proceeding was continued against France as a follow-up to a preliminary ruling of the Court of Justice which had regarded the prohibition to pay interest on current accounts as incompatible with the EC Treaty<sup>264</sup>.

In the context of a preventive approach the 'Capital Requirements Directive Transposition Group' (CRDTG), set up in 2006 in order to pre-empt divergences in the transposition of the CRD, continued its work of discussions and clarification. It answered about 100 interpretation/implementation issues raised by national authorities and the banking industry. At the end of 2007, the CRDTG had posted over 300 answers to FAQs on the Commission website<sup>265</sup>.

In the *payment systems sector*, ahead of the transposition deadline for the Payment Services Directive (PSD)<sup>266</sup> set for 1 November 2009, a *Payment Services Directive Transposition Group* (PSDTG) has been set up to discuss and prepare the transposition of the PSD with the task of comparing approaches and choices made by Member States, of highlighting any implementation problem at an early stage and providing a better and consistent understanding of the PSD provisions. Bilateral meetings with national administrations and experts involved

---

<sup>259</sup> Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles (OJ L 149, 11.6.2005, p. 14)

<sup>260</sup> 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)

<sup>261</sup> The CRD consists of two Directives: 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) and Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions (OJ L 177, 30.6.2006, p. 201). The CRD was to be transposed in national law by 31 December 2006

<sup>262</sup> OJ L 70, 9.3.2006, p. 50

<sup>263</sup> OJ L 87, 28.3.2007, p. 9

<sup>264</sup> Judgement of 5 October 2004, Case C-442/02, *Caixa-Bank France v Ministère de l'Économie, des Finances et de l'Industrie*

<sup>265</sup> [http://ec.europa.eu/internal\\_market/bank/regcapital/transposition\\_en.htm](http://ec.europa.eu/internal_market/bank/regcapital/transposition_en.htm)

<sup>266</sup> 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)

in the transposition task at working level have already taken place in order to enable Member States to ensure a timely and consistent transposition.

Toward the end of 2007, the Commission invited Member States to notify the measures which had already been adopted or which they planned to adopt in order to implement the obligation under Article 15(1) of Regulation (EC) 1781/2006 of the European Parliament and of the Council on information on the payer accompanying transfers of funds<sup>267</sup> which provides for the obligation to lay down effective, proportionate and dissuasive penalties in national law for failure to comply with this Regulation. These measures should apply as of 15 December 2007. Following this preventive action, 12 Member States (BE, BG, DE, EE, EL, FR, CY, LV, HU, AT, SK and UK) notified to the Commission the required measures.

Concerning *statutory audits* three transposition workshops were organised in 2007 to assist Member States in the transposition of the Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts<sup>268</sup>. Moreover, several bilateral meetings were organised with Member States in order to discuss individually the problems linked to its transposition. A reasoned opinion, for non conformity with Article 49 of the Treaty, was sent for one case against France. In order to facilitate establishment of public oversight systems by Member States required the Directive 2006/43/EC, (major risk factor for transposition of the Directive 2006/43/EC), an Expert Group, the "European Group of Auditors' Oversight Bodies" (EGAOB) worked on exchanging good practice concerning the establishment these systems.

#### 9.2.2.2 *Changes underway (2008-2009)*

In the area of financial services priority will be given to a thorough, risk-based assessment of the quality of transposition of relevant directives. A completeness check of Directives 2004/39/EC and 2006/73/EC started in 2007 and will be finalised in the first half of 2008 for the twenty-four Member States having completely transposed by that date. Thereupon, a quality check of Directives 2004/39/EC and 2006/73/EC starts in the 1<sup>st</sup> half of 2008. This check is done on the basis of a risk based assessment and with the help of questionnaires addressed to Member States and industry

In the *insurance sector* the key change and challenge ahead is the proposal for a directive called "Solvency II" Directive has been tabled in 2007<sup>269</sup>. The proposal is currently under discussion in Council and Parliament. Formal adoption is only expected in 2009 and transposition by late 2012. The Directive will provide for a transposition period of about 3 and a half 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 will not start before 2009. It follows the Lamfalussy process and will provide for a transposition period of about 3 and a half year. The insurance sector will see important changes with the adoption of the "Solvency II" Directive. It is intended to modernise the evaluation and calculation of risks and therefore will provide for a new, prospective, economic and risk based approach putting much greater emphasis on sound risk management and robust internal controls by insurance undertakings. In addition it 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

---

<sup>267</sup> OJ L 345, 8.12.2006, p. 1

<sup>268</sup> OJ L 157, 9.6.2006, p. 87

<sup>269</sup> Quote missing

too early to anticipate what will be the effects and consequences of the new Directive. The main current challenge (evaluation of the transposition of Directive 2005/68/EC on reinsurance) has already been mentioned and analysed, in depth and in detail.

In addition to this work, 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/1<sup>st</sup> stage approach as regards the conformity assessment of Directive 2005/68/EC on reinsurance.

As to the consequences of the conformity check concerning recently adopted Directives, in relation to Directive 2005/68/EC as well as in relation to Directive 2005/14/EC (5<sup>th</sup> motor insurance Directive) the initial non-communication infringements' phase is still ongoing. As regards Directive 2002/92/EC (insurance mediation) and Directive 2003/41/EC (pension funds), infringement procedures for substantial breaches of those Directives are ongoing. No infringement procedures exist (for non-communication or for substantial breaches of the Directive) as regards Directives 2000/26/EC (4<sup>th</sup> motor insurance directive), 2001/17/EC (winding-up of insurance undertakings), 2002/13/EC (solvency margin) and 2002/83/EC (life assurance recast Directive).

The implementation of the Directive on *Reinsurance* (2005/68/EEC) was due by 10.12.2007, but not all Member States have completed their transposition process. In 2008 and 2009 works will have to focus on pursuing infringements for those countries which have not yet transposed. On the other hand, the conformity check will be structured following consultation with the industry and regulators so as to ascertain the most important provisions of the Directive that need to be especially monitored.

In the *payment system sector* work will continue to support Member States in the transposition of the *Payment Services Directive* (PSD)<sup>270</sup>. Ahead of the transposition deadline for the directive and following a specific transposition plan, a Payment Services Directive Transposition Group (PSDTG) will work to compare approaches and choices made by Member States, highlight any implementation problem at an early stage and providing a better and consistent understanding of the PSD provisions. In parallel, bilateral meetings with national administrations and experts involved in the transposition task at working level should enable Member States a timely and consistent transposition. The payments industry, other stakeholders and the European citizens will play an important role in spotting flaws or distortions during the implementation process and signalling them to the Commission services. To serve this purpose an interactive web page<sup>271</sup>, operated through a question and answer approach, is open to everyone interested in the transposition process of the PSD.

On 23.4.2008 the Commission proposed amendments to the Settlement Finality Directive and the Financial Collateral Arrangements Directive (2002/47/EC). Adoption by the Council and the EP of these amending directives will hopefully take place by the end of 2008.

---

<sup>270</sup> 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 L 319 of 5.12.2007, p. 1).

<sup>271</sup> [http://ec.europa.eu/internal\\_market/payments/framework/transposition\\_en.htm](http://ec.europa.eu/internal_market/payments/framework/transposition_en.htm)

Amendments were justified by the need to realign both directives with evolving market and regulatory practices.

As for the *credit institutions* legislation<sup>272</sup>, the national implementing measures for the Capital Requirements Directives amount to several thousands of pages. Work continues to check the conformity of the national measures. A report is due at the end of 2008. The report should help the Commission to identify cases of non compliance of national laws with the CRD and where will be appropriate follow up.

Furthermore, in the *banking sector* amendments to the Capital Requirements Directives are planned for 2009 in order to refine and update certain provisions. Work to prepare implementation could take place in late 2009-2010 and might include Committee discussions, Committee guidelines and, if necessary, transposition workshops.

In the field of *company law and anti-money laundering* timely transposition is an issue. Taking into account the significant number of directives which have been recently adopted in the field of company law and anti-money laundering, monitoring the transposition of directives in the area of company law requires particular efforts. In the first months of 2008, the late adoption of transposition measures by Member States led to 100 infringement procedures. A high volume of national transposition measures will have to be checked in 2008 and 2009. Some modalities of transposition may render the check complex, as it is the case when the transposition measures are "hidden" in a wider legal instrument which is adjusted to comply with a new EU requirement (i.e. the Code of Commerce is communicated as a transposition measure even if only a few articles have been modified to transpose a given directive). Especially in those cases, concordance tables are essential to facilitate the check of completeness. Unfortunately they are not always compulsory under the directives and many Member States show a big reluctance to communicate them, even on an informal basis. The need of translation into working languages of thousands of pages of national legislation is an added difficulty. In the short term, although burdensome, bilateral contacts with Member States prove to be the most efficient manner to get targeted information to carry out the technical legal analysis. However, more systematic mechanisms need to be looked at for the future. To face these challenges an Action Plan has been established in 2008. It covers both measures to deal with the high number of infringement cases for non communication of national measures and to prevent new infringements. It includes strengthened cooperation with national authorities, straightforward management of infringement cases and, when necessary, increased political pressure. A transposition scoreboard is also published on the internet on a monthly basis. The different initiatives covered by the Action Plan are complementary. Their synergy has already started to bring positive results and 80 non communication cases have been either closed or referred to the Court of Justice in 2008.

Without prejudice to the assessments driven by specific complaints, at a first stage, the conformity checks are done on the basis of a risk-based approach. The risk is assessed taking into account both the nature of the directives (e.g. whether a given directive completes or

---

<sup>272</sup> Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast)

adjusts a well settled regime or creates a new one) and, within each directive, of the provisions concerned (e.g. whether the relevant provisions entail possibilities or obligations for Member States).

Also in the context of *anti-money laundering*, the implementation of Regulation 1781/2006 leaves to Member States the introduction of an appropriate regime of sanctions. National measures will have to be checked. In the absence of notified measures, 15 infringements procedures were opened at the beginning of 2008 in this respect and will need close follow-up.

Concerning *auditing* transposition workshops and bilateral meetings with Member States are organised in order to insure accurate and timely transposition of the Directive 2006/43/EC. In case of further needs, those transposition workshops and meetings could be continued even after the transposition deadline of the Directive. The expert Group, the "European Group of Auditors' Oversight Bodies" (EAOB) will also continue to work on facilitating co-operation between public oversight bodies established by Member States according to the Directive.

In the field of *accounting*, the Directive 2006/46/EC amending in particular some provisions of the 4<sup>th</sup> Company Law Directive and of the 7<sup>th</sup> Company Law Directive shall be transposed by Member States by 5 September 2008. After that date, the Commission Services will need to carry out the check of the transposition measures.

Finally, two important review processes aiming at a better functioning of the respective legislation should be completed in 2008: the E-Money Directive (EMD<sup>273</sup>) and Regulation (EC) No 2560/2001 on cross-border payments in euro<sup>274</sup>. The report on the application of Regulation 2560/2001 on cross-border payments in euro (COM(2008)64 of 11.2.2008) will trigger a revision of the Regulation in order to address the identified implementation problems, to better reflect the changes brought by the Single Euro Payments Area (SEPA), and to align the Regulation with the recently adopted Payment Services Directive (PSD).

### 9.2.2.3 Evaluation

Secondary legislation is in permanent development in the *financial services area*, although the main pillars have been already established following the Financial Services Action Plan launched in 1999. The new *acquis* requires a continuous and close monitoring of national measures to ensure timely and proper transposition. Further, some directives require the Commission to report on a number of key provisions that will allow to better evaluate their impact and to determine possible problems that need to be addressed. In this area the permanent dialogue within the various sectoral committees – including the committees of the supervisors<sup>275</sup> – contributes to avoid significant deviations from the relevant EC law. Convergence in the supervisory practices is also one of the key objectives in this area. Where existing, these inconsistencies are immediately identified and often remedied even before the transposition process is completed. In the banking area some potential infringements could be tackled and solved in 2007 thanks to the dialogue within the sectoral committee. Due to peer pressure and a valuable technical expertise within the committee, Member States concerned

---

<sup>273</sup> Directive 2000/46/EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions (OJ L 275 of 27.10.2000, p. 39).

<sup>274</sup> OJ L 344 of 28.12.2001, p. 13.

<sup>275</sup> CEBS in the banking sector, CEIOPS in the insurance sector and CESR in the securities sector

accepted to modify their legislation. In the financial services area, the Committee of European Securities Regulators helped find a practical transitional solution to ensure business continuity for firms from Member States that were late in transposing Directive 2004/39/EC.

In the financial services sector, such as the *insurance sector*, experience has shown that the main structural problems (apart from the accession of new MS or political crisis) are given by the complexity of the legislation adopted sometimes in several steps 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).

As regards the problem of late transposition, Member states are regularly alerted, in Committee meetings, package meetings and/or specific transposition meetings/seminars of the transposition deadline(s) and on the need to provide concordance tables. If there is no timely transposition despite repeated reminders the infringement procedure is set in motion, and reminders keep being made at meetings like those mentioned above

As for conformity issues, the main problems concern BG and RO and to some extent some of the newer MS (CZ, PL) but overall conformity is globally good. As regards newer Directives (2005/14/EC, 5<sup>th</sup> Motor Insurance, 2005/68/EC, reinsurance), the problems are spread fairly equally between "old" and "new" Member States. When you join both parts, new MS (BG, RO, CZ, PL) will be the lesser performing Member States.

Regarding the work on complaints and infringements the workload is likely to increase in 2008. This does not derive, however, from any persistent or structural problem but rather from the ever greater awareness of citizens of their rights, the increase in legislation and in the number of Member States. This implies a likely increase in flow of work and the corresponding need to define and establish priorities. Priority will be given infringements for non-communication of transposition measures, non-respect of an ECJ judgement and cases that show a breach of a fundamental freedom or principle of the EC Treaty or a breach of a Directive which is either blatant or affects individual persons.

As to the *banking sector* two particular issues can be highlighted in respect of the transposition of the Banking Directives: First, Member States' authorities that are actually in charge of transposition are often unaware about the need to notify the measures electronically to the Commission, leading to major delays when assessing infringement cases. Second, even though required by the Directives, some Member States did not submit transposition tables, making transposition checks burdensome and difficult. It seems worthwhile to consider the pursuit of such cases that, although minor, impede the proper control of implementation. The contractor entrusted with the preliminary check of the transposition of the CRD has been requested to pay particular attention to provisions regarded as a priority either because their breach would result in higher costs for cross-border banking groups or because their interpretation is controversial. Priority will be given to the enforcement of these provisions.

As provided for in Article 31 of the Prospectus Directive (2003/71/EC), the Commission is finalising the assessment of the application of this Directive, which will be presented in a form of a report to the European Parliament and the Council, accompanied where appropriate by proposal for its review. The report will be delivered in the first quarter of 2009.

Notwithstanding the delay in four Member States, the implementation of the Directive 2006/48/EC is potentially satisfactory. In the late four Member States draft laws are under discussion in the parliament and should all be adopted by the second semester of 2008. The preparation of the Commission study to assess correct transposition in Member States, due after 2009, will require close monitoring with the national correspondent group to deeply harmonise national assessment reports

In the field of *company law and anti-money laundering* a significant number of directives have been recently adopted. The deadlines for transposition of Directives 2004/109/EC, 2005/56/EC, 2005/60/EC, 2006/70/EC, 2007/14/EC and 2006/68/EC have recently passed. The deadlines for the transposition of Directives 2007/36/EC, 2007/63/EC and 2006/46 are still pending. The nature of the EU directives in these fields varies from one case to the other. While some recent directives modify slightly or complete former directives (i.e. Directive 2006/70/EC, which includes implementing measures to the Third Anti-Money Laundering Directive), others introduce a set of new rules (i.e. Directive 2007/36/EC on Shareholders' Rights).

### **9.2.3 Free movement of capital (Articles 56 et seq. EC)**

#### *9.2.3.1 Current position*

Work in 2007

2007 has been an active year in the area of capital movements. Prioritisation has permitted DG Internal Market and Services to concentrate its resources on the more important infringement cases without any detrimental impact on the treatment of complaints.

The majority of the infringement cases opened in 2007 was related to different kinds of special rights that governments maintain in private or privatised companies on the basis of framework laws governing privatisation or other laws applicable to particular companies or sectors. An increasing number of these free movement of capital infringement cases concern regulated sectors and in particular the energy sector. Reasoned opinions were sent to Portugal for the special rights regime in place in the main energy companies EDP and GALP, as well as to Poland for its framework law on special powers in companies of special importance for public order or public security. Spain was referred to the ECJ for its legislation defining the functions of the energy regulator in relation to acquisitions of energy companies<sup>276</sup>. Several new cases related to special rights or other restrictions of the free movement of capital in energy companies were further examined in 2007. They concerned Austria, Germany, Greece, Hungary, Romania and Slovakia.

---

<sup>276</sup> C-207/07

Not related to the energy sector, an infringement procedure against the Netherlands was closed after notification of measures to comply with a 2006 ECJ ruling<sup>277</sup>. This ruling had found that the special rights of the Dutch State in Koninklijke KPN N.V. and TNT Post Groep N.V. were incompatible with the free movement of capital. Several other cases were closed as a result of fruitful discussions with Member States and the clarification of, or amendments to contested provisions before the stage of court referral was reached or a reasoned opinion sent. They concerned special rights in a Luxembourg satellite company, restrictions on the acquisition of domestic Italian banks and a non-compete clause in the privatisation agreement of a Polish bank. Discussions with the Member States on cases open some years ago resulted in satisfactory amendments of the contested legal provisions and the closure of the cases. They concerned the French legislation which prevented football and other professional sports clubs from being listed on stock markets, the obligations for joint owners of real estate in France to provide for an address in that Member State and the Swedish legislative provisions on disclosure of foreign bank accounts.

Still in the area of special rights, the ECJ<sup>278</sup> ruled that three provisions of the law on the privatisation of Volkswagen (VW law) attribute unjustified special rights to German public authorities and infringe Article 56 EC. The ruling did not accept any of the economically motivated justifications advanced by Germany.

#### *9.2.3.2 Changes underway (2008-2009)*

Efficient monitoring is the basis for a better policy towards capital markets and for timely and effective action based on a better understanding of market trends and developments. In the area of capital movements several studies or analyses to ascertain the functioning of capital markets or to identify potential barriers have been finalised or launched in 2007. They will trigger for 2008 and 2009 a close follow-up on intra-EU investment, investment restrictions on the basis of national security issues, investment restrictions in some pension schemes, direct investment, mergers and acquisitions, transitional periods concerning agricultural real estate.

The pro-active approach by way of reinforced and systematic monitoring will not necessarily lead to an increase of the number of infringement cases but will allow concentration on the more important ones, to diversify the range of restrictions to the free movement of capital which are being dealt with and to address these restrictions at an early stage. On the basis of recent monitoring the following issues became priorities for 2008-2009: follow up to enlargement and privatisation processes in EU-12; follow up of measures taken by Member States on the basis of national security and involving restrictions on foreign direct investment; further diversification of the range of restrictions to the free movement of capital which are being addressed on the basis of monitoring of important sectors (e.g. pension funds, energy).

### **9.2.4 Public procurement**

#### *9.2.4.1 Current position*

##### *Report on the work done in 2007*

---

<sup>277</sup> Judgment of 28 September 2006, joined cases C-282/04 and C-283/04

<sup>278</sup> Judgment of 23 October 2007, case C-112/05



In the field of public procurement, the Commission carried out its control of the application of Community law by means of infringement procedures, but especially also via complementary means, such as bilateral meetings with the Member States involving the contracting authorities concerned. 344 public procurement infringement files have been handled in 2007. Of these, 142 cases (41%) could be closed; only 12 (approx. 3.5 %) had to be referred to the ECJ. Around 200 of those 344 files were infringement cases. 25% of these infringement cases were priority cases. Among the Commission activities in 2007 in the control of the application of European procurement law the following are in particular worth mentioning:

As regards the *transposition of the public procurement Directives 2004/17/EC and 2004/18/EC*<sup>279</sup> infringement cases against 10 Member States due to non-communication of the national transposition measures before the deadline of 31 January 2006 were still pending at the beginning of the year 2007. Despite important efforts by the Commission to encourage and support Member States in their transposition, these Member States were already considerably late with their national transposition of the Directives. In the course of 2007, it was possible to close the open infringement procedures against 7 of these 10 Member States. By the end of 2007, only 3 Member States, Belgium, Luxemburg and Portugal had still not notified their transposition measures. Since then, Luxemburg has become the only Member State which remains under an infringement procedure for non-communication of national transposition.

As concerns infringement cases launched by the Commission on which the Court issued a judgement in 2007, the following brought interesting precisions or clarifications:

*Impact of the failure of a Member State to fulfil its EC public procurement obligations on related contracts* - In case C-503/04<sup>280</sup>, the Court has clarified that when it has established that a Member State has failed to fulfil its obligations under the EC public procurement law (articles 226/228 EC), the termination of the on-going contract concluded in violation of EC public procurement may be required in order to eliminate the infringement. In this case, the Court ruled that, by having failed to adopt all the necessary measures to comply with a previous judgment on the same issue, Germany had failed to fulfil its obligations under Article 228 EC-Treaty. Inter alia, the Court confirmed that Germany cannot rely on the principles of legal certainty and of the protection of legitimate expectations, the principle *pacta sunt servanda* ('pacts must be respected') and the right to property to justify the non-implementation of a judgment establishing a failure to fulfil obligations under Article 226 EC.

*Transparency principle applicable to non-priority services covered by public procurement directives* – In Case C-507/03<sup>281</sup>, the Court clarified that, since Directive 92/50/EEC<sup>282</sup> is designed to eliminate practices that restrict competition in general, and participation in contracts by other Member States' nationals in particular, by improving the access of service providers to procedures for the award of contracts, it follows that the advertising arrangement,

---

<sup>279</sup> Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1) and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).

<sup>280</sup> Judgement of 18 July 2007, case 503/04 *Commission v. Germany*

<sup>281</sup> Judgement of 13 November 2007, case 507/03 *Commission v. Ireland*

<sup>282</sup> Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ L 209, 24.7.1992, p. 1)

introduced by the Community legislature for contracts relating to non-priority services coming within the ambit of Annex I B, cannot be interpreted as precluding application of the principles resulting from Articles 43 EC and 49 EC, in the event that such contracts nevertheless are of certain cross-border interest. In particular, in so far as a contract relating to these non-priority services are of such interest, the award, in the absence of any transparency, of that contract to an undertaking located in the same Member State as the contracting authority amounts to a difference in treatment to the detriment of undertakings which might be interested in that contract but which are located in other Member States.

*Distinction between public contracts and concessions* - In its judgement of 18 July 2007 in case C-382/05<sup>283</sup>, the ECJ held that a contract in which the concessionaire's remuneration, although based on the demand for the service is paid exclusively by the contracting authority and in circumstances in which a minimum remuneration is guaranteed and the contract provides for price adjustments if that minimum is not reached is not a concession.

#### 9.2.4.2 Changes underway (2008-2009)

In the area of public procurement, in view of the high number of contracting authorities (and entities) and of the high number of contract awards covered by the EU Directives, a key priority will be to handle swiftly cases related to the efficiency of the national review procedures that businesses can use when they consider that a contracting authority has awarded a contract unfairly.

On 11 December 2007, the European Parliament and the Council adopted a Directive modifying the EC Directives on *remedies in the field of public procurement*. The ongoing transposition process of this Directive offers Member States a special opportunity to legislate in order to upgrade the effectiveness of the national review procedures. The key provisions of the new Directive concern 1) the introduction of a mandatory standstill period between the award decision and the conclusion of a public contract and 2) the combating of illegal direct awards of public contracts. The Directive also introduces forceful sanctions, including under certain circumstances the ineffectiveness of contracts. The assistance offered to Member States in the transposition context as described under 5.3.2.1 should further help them to seize this opportunity to improve their legislation in the field. In order to ensure a consistent and timely transposition by 20 December 2009, the Commission services will follow closely the transposition process started in 2008 and will offer their assistance to Member States through bilateral contacts or, where appropriate, meetings of the Advisory Committee for Public Contracts. Explanatory guidance notes on specific points will be issued where necessary. In addition, the standard forms provided for by Directive 2007/66/EC will be tabled and adopted through a comitology procedure in 2009.

To solve recurring problems in the field of *defence procurement*, the Commission tabled in December 2007 a proposal for a Directive. For the procurement of arms, munitions and war materials, and under the condition of the protection of their essential interests of security, there is an exemption from the application of the rules of the internal market (Article 296 EC). This exemption is almost systematically invoked. The Commission proposal aims at creating more flexible rules for defence procurement and related markets pertaining to security. Its provisions will be adapted to the specific features of those markets (e.g. the negotiated

---

<sup>283</sup> Judgement of 18 July 2007, case 382/05 *Commission v. Italy*

procedure with prior publication will become the standard procedure), while complying with the principles of the internal market. The proposal is currently being discussed within the Council and the Parliament. Should the adoption take place during the current EP legislature, a delicate transposition phase will start in 2009.

In the field of public procurement bilateral contacts with Member States at package meetings greatly facilitated the reduction in the volume of infringements in the past. In 2007, the majority of cases discussed at package meetings (between 70 and 100%) have been solved within 6 months after the package meeting. This well established practice will be continued in 2008/2009. The new EU-Pilot will also be used in the field of public procurement to solve cases even before launching an infringement procedure.

#### *9.2.4.3 Evaluation*

The impact of public procurement infringement cases is considerable. Despite the fact, that these concern often individual cases, the economic impact can be substantial. In addition, the legal outcome of cases frequently influences the handling of similar procurement situations by other contracting authorities and thus has an impact well beyond the individual case. In particular, the regular dialogue developed with Member States on cases of misapplication of EC public procurement rules represents an opportunity for Commission services to raise the awareness of the competent national authorities on a number of weaknesses that may often be overcome through national guidance for public purchasers. Furthermore, complaints sometimes reveal transposition problems that were not immediately detected on the basis of the general screening carried out of the transposition measures that had been notified by the Member State concerned. In this context, package meetings during which a number of files are discussed between Commission services and the competent authorities of the Member State concerned offered another opportunity to solve/close almost 80% of the 60 files that were put on the agendas in 2007. The new EU-Pilot will also be used in cases where clarification is needed or where it is possible to close a case before launching an infringement procedure.

### **9.2.5 Regulated professions (qualifications)**

#### *9.2.5.1 Current position*

##### *Report on the work done in 2007*

The volume of complaints and infringements concerning restrictions in breach of Articles 39, 43 and 49 of the EC Treaty and the directives on the mutual recognition of professional qualifications remained broadly stable in 2007.

The Commission started infringement proceedings against almost all Member States for non-communication of national implementing measures of 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 Union<sup>284</sup>, which came into force on 1st January 2007, and Directive 2005/36/EC on the recognition of professional qualifications which had

---

<sup>284</sup> OJ L 363, 20.12.2006, p. 141

to be transposed by 20 October 2007<sup>285</sup>. For Directive 2006/100/EC, reasoned opinions have been sent to 21 Member States.

The Commission decided to take action against Greece before the Court of Justice on the basis of Article 228 over Greek legislation on the ownership, opening and operation of opticians' shops<sup>286</sup>, which restricts the freedom of establishment of companies from other Member States in Greece.

The Commission decided to refer to the Court of Justice also Germany, Austria, Belgium, France, Greece and Luxembourg on the grounds that these Member States allow only nationals of their own country to practise as notaries. In the view of the Commission, this nationality condition is contrary to the freedom of establishment provided for in Article 43 of the EC Treaty and cannot be justified by reference to Article 45, which exempts activities related to the exercise of official authority. On the same grounds, the Commission issued reasoned opinions against the Czech Republic, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, and sent letters of formal notice to Bulgaria and Romania. Spain, Italy and Portugal have abolished the nationality condition previously in force for notaries. Estonia and the Netherlands are abolishing it.

As regards the infringement proceedings opened against France in relation to unwarranted restrictions on the freedom to provide services for doctors, dentists and midwives established in other Member States and eligible for automatic recognition of their qualifications in France under Community Directives (infringement mentioned in previous report), the Commission decided to close it due to the new legislation adopted by France in order to comply with EU law.

#### 9.2.5.2 *Changes underway (2008-2009)*

Directives 2005/36/EC on the recognition of *professional qualifications*<sup>287</sup> came into force on 20 October 2007. It replaces 15 directives covering hundreds of professions. From the information received so far from Member States the Directive should be fully implemented by all Member States by the end of 2008/beginning of 2009, with one year delay.

The main challenge is the substantial number of national measures needed to transpose it (hundreds of texts). The conformity check will take place after having received and translated all national implementing measures. In a first phase the analysis will concentrate in particular on the new rights granted to EU citizens, namely the new regime for the free provision of services (Title II of the directive) and the subsidiary application of the general system to cases which previously would have fallen under the Treaty provisions (Article 10 of the directive).

The absence of concordance tables for many Member States, despite repeated requests, makes the examination more difficult. In order to monitor the appropriate and smooth application of this Directive, a Code of Good Conduct which specifies the good national administrative practices will be established with the Group of Coordinators of Directive 2005/36/EC. A key role for a smooth implementation is the IMI System; it is currently in place in its pilot phase for four professions only (doctors, pharmacists, physiotherapists, accountants).

---

<sup>285</sup> OJ L 255, 30.9.2005, p. 22

<sup>286</sup> Judgment of 21 April 2005, Case C-140/03 *Commission v. Greece*

<sup>287</sup> OJEU L 255 of 30.9.2005, p. 22

### 9.2.5.3 Evaluation

The volume of complaints and infringements concerning restrictions in breach of Articles 39, 43 and 49 of the EC Treaty and the directives on the mutual recognition of professional qualifications remains broadly stable.

One of the main priorities in this area is currently 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 text is the first step, which may take some time. A pilot project for translation of national transposition measures is being used to overcome some of the difficulties encountered. The main challenge related to this directive is represented by the enormous number of national measures needed to transpose it (hundreds of texts). The absence of concordance tables for many Member States, despite repeated requests, makes the examination even more difficult.

Regulated professions represent another field where the proper application and transposition of Community law has a major impact on citizens' rights on a daily basis..

Following the recent experience, the results of the conformity check of the national legislation transposing directive 2005/36/EC and own initiative monitoring, the following issues will be targeted for priority action in 2008-2009: the new regime for providing services and the subsidiary application of the general regime as well as principle questions under the Treaty and significant issues such as a same profession affected in several Member States or several professions in one Member State.

## 9.2.6 The business environment

### 9.2.6.1 Current position

#### *Report on the work done in 2007*

In the area of *industrial property*, the final report of a study on the implementation of the Directive 98/71/EC on the legal protection of design<sup>288</sup> in the 10 New Member States (commissioned in 2005) could be concluded and accepted in March 2007. A pending infringement procedure against Italy could be closed after considering the modified Italian IP code in line with the Directive.

A study on the implementation of Directive 98/44/EC on the legal protection of biotechnological inventions<sup>289</sup> in the 10 New Member States (launched at the end of 2006) was carried out in 2007. The final report was terminated and accepted in November 2007.

Further monitoring and conclusion of the notification process with regard to Member States' obligation to designate their Community trade mark courts pursuant to Art. 91 of the Regulation (EC) 40/94 on the Community trade mark<sup>290</sup> were made. The Commission also monitored further the notification process with regard to Member States' obligation to designate their Community design courts pursuant to Art. 80 of the Regulation (EC) 6/2002

---

<sup>288</sup> OJ L 289, 28.10.1998, p. 28

<sup>289</sup> OJ L 213, 30.7.1998, p. 13

<sup>290</sup> OJ L 11, 14.1.1994, p. 1

on Community design<sup>291</sup>. Two Member States (France and Luxembourg) were referred to the European Court of Justice under Art. 226 EC over their failure to do so.

Directive 2004/48/EC<sup>292</sup> on the enforcement of intellectual property rights had to be implemented in the Member States by 29 April 2006. Further pursuing of infringement procedures against 10 Member States over their failure to notify their implementing measures. At the end of 2007 infringement procedures against 4 Member States were still open and pending with the ECJ (Germany, Luxembourg, Portugal and Sweden).

#### 9.2.6.2 *Changes underway (2008-2009)*

Regulation 816/2006 of 17 May 2006 (*compulsory licensing of patents relating to pharmaceutical products*)<sup>293</sup> requires Member States to notify the Commission of the designated competent authority. The process of notification is still ongoing and needs further monitoring.

In 2009, Member States will submit to the Commission a report on the implementation of Directive 2004/48/EC. On the basis of those reports, the Commission shall draw up a report on the application of this Directive, including an assessment of the effectiveness of the measures taken, as well as an evaluation of its impact on innovation and the development of the information society. That report shall then be transmitted to the European Parliament, the Council and the European Economic and Social Committee. It shall be accompanied, if necessary and in the light of developments in the Community legal order, by proposals for amendments to this Directive. Therefore the Commission is planning to organize correspondent group meetings in view of harmonizing Member States assessment report.

In addition the Commission is planning to promote administrative cooperation, including the exchange of information on the enforcement of intellectual property rights, among Member States and between Member States and the Commission. This will be done through a network of national correspondents.

In the field of *auditing*, the transposition deadline of the Directive 2006/43/EC expires in 2008. The commission services will need to check a high number of the national transposing measures. The commission services have asked Member States to provide full transposition tables and in principle, all Member States agreed to provide such tables. DG Internal Market intends to publish, in 2008, a scoreboard on the implementation of the Directive 2006/43/EC.

---

<sup>291</sup> OJ L 3, 5.1.2002, p. 1

<sup>292</sup> OJ L 157, 30.4.2004, p. 45

<sup>293</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, *OJ L 255, 30.9.2005, p. 22–142*

## 10 REGIONAL POLICY

### 10.1 Current position

#### 10.1.1 Existing measures in force

Relevant Treaty provisions: Articles 158 to 162 of the EC Treaty

Number of Council & Parliament or Commission regulations in force: 12 covering interventions for the 2000-2006 programming period

#### 10.1.2 Work in 2007

- DG REGIO has no infringement proceedings under way at present. 29 complaints have been dealt with during the year 2007.
- 22 cases were closed during the reporting period.
- 4 petitions related with complaints were received.
- 33% of the complaints were against Polish Managing Authorities and 8% against Bulgarian and Romanian Managing Authorities.

A first category of complaint concerns the selection process of individual projects under the different programmes co-financed by Community Structural Funds. The principal motivation for complaints was the rejection of the complainant's cofinancing application, however, in a context of shared management, selection of individual projects lies in the competence of the national / regional authorities. Consequently, where the selection is made in accordance with the programming documents (i.e., the Commission decision approving the operational programme granting the assistance, the programme complement and the project selection criteria), and where the project implementation does not infringe any provision of Community law, in principle the monitoring of the programme and project implementation is primarily the responsibility of the programme's managing authority. Even in such cases, the Commission usually contacts the national authorities ascertain their position on the complaint. It should be noted, that such complaints could be examined by the competent national administrative or judicial authorities.

A second category of complaint concerns alleged non-compliance of Community law on environment policy or public procurement law.

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. Consequently, the normal sanction for lack of respect of Community law when implementing Community Structural Funds is a financial correction, i.e., requiring reimbursement of grants unduly received, rather than an infringement procedure.

A third category of complaint concerns the advisability of given project selection, claiming that a particular infrastructure project is not in the right place (e.g. roads), does not work properly (water sewage treatment plants) or allegedly gives rise to a waste of the European budget. In such cases, there is often no allegation of a breach of Community law.

## **10.2 Changes underway**

### *10.2.1 Recently adopted measures due to enter into force which may require additional work:*

For the new programming period 2007-2013, 6 new regulations have entered into force.

### *10.2.2 New measures due to be adopted which may require specific implementation / transposition work:*

Regulation (EC) No 1082/2006 of the European Parliament and of the Council on a European Grouping of territorial cooperation<sup>294</sup> entered into force on 1 August 2006; however, it has applied only from 1 August 2007, as the Member States had to make provisions as are appropriate to ensure the effective application of that Regulation and to inform the Commission of these provisions. The non respect of these obligations may lead in 2008 to infringement procedures against Member States not making such provisions or not informing the Commission about them.

### *10.2.3 Volume of enquiries, complaints, infringements work and petitions, and prioritization among them:*

Priority will be given to those cases that expose - with conclusive evidence - a fraud or a systematic violation of the Structural Funds Regulations or EC law by the Managing Authorities (important irregularities, non isolated cases).

Managing Authorities should be more involved in the treatment of complaints where it appears that the issue is of their competence following the Structural Funds Regulations: e.g. selection of projects. The Commission's role is to ensure that management and control systems are in place and work properly. The Commission cannot intervene when there is no infringement of Community law and when the Managing Authorities comply with the programming documents.

## **10.3 Evaluation**

From one year to another the number of complaints dealt by DG REGIO is quite stable, but priority will be given in 2008 to those cases described in B.II.

## **11 TAXATION AND CUSTOMS UNION**

### **11.1 Customs**

#### 11.1.1 Current position

##### *11.1.1.1 Existing measures in force (situation on 31/12/2007)*

For a list of the measures in force please refer to Annex I paragraph 3.1

---

<sup>294</sup> OJ L 210, 31.7.2006, p. 19.



### 11.1.1.2 Work in 2007

Regarding the **petitions** treated in the customs area, one petition was received, concerning the compatibility of UK law with Community Customs Code provisions regarding the possibility to challenge customs administrative decisions.

- **In the area of customs, in** line with the Communication<sup>295</sup> on a strategic review of better regulation in the European Union, and the Communication<sup>296</sup> on better monitoring of the application of Community law, the Commission has paid attention to a better and simpler legal environment. In principle, these objectives may only be reached with a commitment from Member States to apply Community rules in a correct and uniform way. Therefore, measures have been taken in order to enhance closer cooperation between the Commission and Member States in the field of prevention. The outlook is oriented towards the creation of new tools enabling better monitoring of a correct and uniform application of Community Customs law. With this end in view, a global approach has been adopted through a multi-annual programme aiming to monitor the compliance of Customs legislations in different Member States.

Furthermore, amongst the decisions taken by the ECJ and the TFI in 2007 within this area, the following cases were of particular relevance :

In *Road Air*<sup>297</sup> the Court held that Article 236(1), first subparagraph, of the Customs Code should be interpreted to mean that the failure of the national customs authorities to determine the place where the customs debt was incurred does not have the effect of rendering the amount of customs duties not legally owed. However, the Member State to which the office of departure belongs can proceed to recovery of import duties only if it has first informed the principal that it has a period of three months in which to furnish proof of the place where the infringement or the irregularity was actually committed and such proof has not been provided within that period.

In *Agrover*<sup>298</sup> the Court declared that Article 216 of the Customs Code applies to the inward processing operations referred to in Article 115(1)(b) of that regulation in which the compensating products have been exported outside the European Community prior to importation of import goods.

In *Zefeser*<sup>299</sup> the Court ruled that the classification of an act as ‘an act that could give rise to criminal court proceedings’ falls within the competence of the customs authorities required to determine the exact amount of the import duties or export duties in question.

In *Euro Tex*<sup>300</sup> the Court held that, since Article 7(1)(b) of Protocol 4 to the Europe Agreement establishing an association between the European Communities and their Member States, 1 of the one part, and the Republic of Poland, of the other part, as amended by Decision No 1/97 of the Association Council, Association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, of 30 June

---

<sup>295</sup> COM(2006)689 of 14.11.2006

<sup>296</sup> COM(2002)725 of 16.05.2003

<sup>297</sup> Judgment of 13.12.2007, case C-526/06

<sup>298</sup> Judgment of 18.10.2007, case C-173/06

<sup>299</sup> Judgment of 18.12.2007, case C-62/06

<sup>300</sup> Judgment of 14.06.2007, case C-56/06

1997 does not make it possible to draw a distinction between simple and more complex matching operations, matching operations such as those described in the order for reference are covered by the concept of simple operations of matching for the purposes of that provision.

In *Commission v Italy*<sup>301</sup> the Court declared that, by introducing an environmental tax on methane gas from Algeria, Italy has failed to fulfil its obligations under Articles 23 EC, 25 EC and 133 EC.

#### 11.1.2 Changes underway

##### *Recently adopted measures requiring additional work*

- **'Security amendments' to the Community Customs Code for security and safety purposes adopted in 2005-2006,**

Customs have a general role to play in combating the security threat associated with international trade movements (security of the supply chain) while ensuring security and safety of the Community and its residents, including customs officials carry out their duties in a safe way, and protection of the environment. The 'security amendments' and the implementing provisions of the Community Customs Code concern notably prior arrival/departure information, Authorised Economic Operator (AEO) status, risk management. The work ahead consists in ensuring the implementation of new rules, procedures and controls for security and safety purpose on import and exports, including a monitoring of the application of the AEO status.

##### **Adoption by the European Parliament in February 2008 of the Modernised Customs Code (and further adoption of its Implementing Provisions).**

The Modernised Community Customs Code will simplify legislation and streamline customs process procedures to the benefit of both consumers and traders. It introduces the electronic exchange of declarations, documents and information to allow speedier and more efficient exchange of electronic information between the national customs and other competent authorities;

It will in particular promote the concept of "centralised clearance", under which authorised traders will be able to declare goods electronically and pay their customs duties at the place where they are established, irrespective of the Member State through which the goods will be brought in or out of the EU customs territory or in which they will be consumed.

Besides, it will offer bases for the development of the 'Single Window' and 'One-Stop-Shop' concepts, under which economic operators give information on goods to only one contact point ('Single Window' concept), even if the data should reach different administrations/agencies, so that controls on them for various purposes (customs, sanitary,...) are performed at the same time and at the same place ('one-stop-shop' concept).

---

<sup>301</sup> Judgment of 21.06.2007, case C-173/05

Nonetheless, the implementation of the Modernised Customs Code (mCC) is not limited to its Implementation provisions, but includes also a package of coherent actions aimed at ensuring a legal environment and an efficient and uniform application. In this respect, the implementation of the Modernized Customs Code also implies:

- Preparation of the dispositions of application of the mCC
- IT aspects of the implementation
- Developing a coherent set of 'soft law' (explanatory notes and guidelines)
- Follow-up of the application of the customs legislation
- Developing issues related to Infringements and customs penalties
- Setting up new internal rules of procedure of the customs code committee

It is important to stress that the drafting and finalisation of the MCCIP faces three major challenges:

- the need to produce, from various parts prepared by different units and groups, a single text, which has to be legally coherent in itself and with the mCC;
- the need to reshape all customs procedures from an IT perspective, with the related constraints in terms of developments of systems and timing for this development.
- the need for these provisions to be applicable at the latest on 24/06/2013, as required by the mCC, which implies an adoption by the Commission around mid 2010.

*Volume of enquiries, complaints, infringements work and petitions, and ad hoc prioritization*

**In the area of customs law, priority is given to those cases which reveal clear and serious infringements of Community Customs law.**

The number of infringement cases (total of 26 complaints, a little bit less than in 2006) and of reasoned opinions (11 in 2007) remained stable.

Amongst these complaints, regarding the EU-10 and EU-2 enlargement follow-up: 14 concerned EU-10 and 3 for EU-2.

DG TAXUD opened its own investigations regarding presumed infringements. This resulted in a number of 2 presumed infringements and 9 identified ones, amongst whose 4 cases were filed.

The majority of enquiries (30 in 2007) and complaints in this area (a total volume of 26 in 2007) concerned specific aspects of application of the provision of the Community Customs Code and Common Customs Tariff (charges of an equivalent effect to customs duties, Art. 23 & 25 CET).

Regarding "Action under Art.228", none was reported.

In terms of Court cases, DG TAXUD dealt with 19 references for a preliminary ruling and 9 Actions against the Commission (1 action for non-contractual liability, 5 actions for annulment and 3 appeals).

The volume of petitions in the different sectors falling within the competences of DG TAXUD is relatively moderate and stable (16 new petitions have been introduced in 2007).

### 11.1.3 Evaluation

In the **customs area**, the situation has significantly not changed regarding as infringements and the number of references to the Court. It is premature to estimate if this trend of stability will continue.

The situation has globally been stable and does not require urgent attention neither improvement measures for problematic situations. However, a deliberate and clear priority will be allotted to a preventive and pro-active approach, aiming at improving the current community legal environment. With the adoption of a new legal instrument, the modernised customs code, a significant milestone will be reached and will strengthen a correct and uniform application of the customs legislation. Fully conscious of the necessity of the enhancement of a generalized culture of monitoring, DG TAXUD took the initiative of launching a monitoring programme in cooperation with Member States, that will be developed in the year 2008. This will allow both Member States and the Commission to identify room for improvement in areas such as legislation and procedure harmonization, harmonization of rules interpretation, controls and practices, or customs penalty rules.

## 11.2 Indirect taxation

### 11.2.1 Current position

For a list of the measures in force please refer to Annex I paragraph 3.2

#### *11.2.1.1 Work in 2007*

- Although the legislation has already evolved towards a more harmonised system within the area of **indirect taxation**, the requirement of unanimous agreement for the adoption of legislation reduces progress made and requires increased recourse to infringements proceedings to clarify legal rights. Moreover, the legislative tools have a wide scope of application with the VAT directive applying to the entire economy which requires prioritisation in the verification of the correct application of all provisions.

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.

In particular, the action concentrated on the non-communication of national measures transposing Directive 2003/96/EC regarding Energy taxation (3 Member States are referred to the Court of Justice).

In addition, priority was given to infringements that undermine the foundations of the rule of law and that undermine the smooth functioning of the community legal system. DG TAXUD consequently opened proceedings related to the VAT application of postal services (infringements interfere with freedom of movement of services in a postal services liberalized market), travel agents (infringements affecting the own resources) and the respect of the correct application of reduced VAT rates (infringements concerning a too broad application of a derogatory provision which is interpreted in a restrictive way). A considerable number of *ex officio* cases have in this way been initiated.

The application of prioritisation was also focused on the non-communication of national measures transposing Directive 2003/96/EC regarding Energy taxation (3 Member States are referred to the Court of Justice).

Factual disputes on the other hand were in most cases successfully referred to the SOLVIT system as value added network for problem solving.

Within the area of indirect taxation, both the enlargement and the strategic objectives adopted by the Commission for the period 2005-2009, were for another successive year reflected in an increasing number of infringement cases and a considerable input related to new Court cases. The following cases merit extra attention :

In the judgment in the case *Teleos*<sup>302</sup>, the Court ruled that the competent authorities of the Member State of supply should not require a supplier, who acted in good faith and submitted evidence establishing his right to the exemption of an intra-Community supply of goods, subsequently to account for value added tax on those goods where that evidence is found to be false, without, however, the supplier's involvement in the tax evasion being established, provided that the supplier took every reasonable measure in his power to ensure that the intra-Community supply he was effecting did not lead to his participation in such evasion.

In the joined cases *T-Mobile/Hutchison*<sup>303</sup>, the Court considered that within the domain of mobile telecommunications services, the allocation, by auction by the national regulatory authority responsible for spectrum assignment, of rights to use radio-frequencies in the electro-magnetic spectrum does not constitute an 'economic activity' within the meaning of the VAT Directive. That activity does thus not fall within the scope of that Directive.

In the case *Commission v. France*<sup>304</sup>, the Court declared that the French Republic has failed to fulfil its obligation, within the prescribed period, to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.

Finally some cases *Commission v. Greece*<sup>305</sup> regard the failure of the Hellenic Republic to fulfil obligations on the one hand on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another and on the other hand on the correct determination of the taxable value on imported second-hand cars.

---

<sup>302</sup> Judgment of 27.09.2007, case C-409/04

<sup>303</sup> Judgment of 26.06.2007, joined cases C-284/04 and C-369/04

<sup>304</sup> Judgment of 29.03.2007, case C-388/06

<sup>305</sup> Judgments of 07.06.2007 and 20.09.2007, cases C-156/04 and C-74/06

- Regarding the **petitions treated in the area of indirect taxation, the most recurrent issues concerned various aspects of taxation of cars.**

### 11.2.2 Changes underway

#### *Recently adopted measures requiring additional work*

- Directive 2008/7 of 12.02.2008 concerning indirect taxes on the raising of capital (Recast version) – conformity assessment planned.
- On 4 December 2007, the Council reached political agreement on two draft Directives and a draft Regulation aimed at changing the rules on VAT so as to ensure that VAT on services accrues to the country where consumption occurs, and to prevent distortions of competition between Member States due to differences in VAT rates applied.

The so-called "VAT package", formally adopted by the Council on 12 February 2008, contains:

1. a Directive on the place of supply of services (which will be applied from 1 January 2010, with further changes introduced as from 1 January 2011, 1 January 2013 and 1 January 2015), including a mini one stop shop for telecom, broadcasting and e-commerce services (for which the application will be deferred until 1 January 2015);
2. a Directive with a new procedure for VAT refunds to non-established EU businesses;
3. a Regulation on the exchange of information between Member States which is necessary to underpin the new arrangements for taxation of services.

Most of these measures will as a general rule enter into force on 1 January 2010.

To facilitate implementation of the various elements of the VAT package, DG TAXUD will, before the deadline for transposition, meet with Member States, both within the VAT Committee and in Fiscalis seminars, and discuss any outstanding issues. The objective would be to ensure uniform application and avoid misunderstandings on the part of Member States when implementing these two Directives. This should contribute to reduce the potential for infringement cases once an assessment of the conformity of national legislations has taken place which will be after 1 January 2010.

#### *New measures requiring transposition work*

Regarding **indirect taxation**, in the short term a proposal amending the VAT Directive and Council regulation 1798/2003 on administrative cooperation in the field of VAT has been adopted by the Commission<sup>306</sup> with the aim of reducing the time frames for submitting the intra-community recapitulative statement to 1 month has been adopted by the Commission and is envisaged to enter into force on 1 January 2010.

---

<sup>306</sup> COM(2008)147 of 17.03.2008

In the medium term, some further proposals are foreseen with a view of introducing anti-fraud measures in order to enable EU tax administrations to efficiently combat fraud. Amending proposals are in preparation regarding the VAT Directive 2006/112/EC, the Directives on mutual assistance and recovery of claims 77/799/EEC and 76/308/EEC and finally a revision is planned of Directive 92/12/EEC related to excise goods.

Another package of legislative proposals for excise duties laid on manufactured tobacco are foreseen to modernise and harmonise tax systems for national administrations, business and final consumers.

Finally, a review of the Energy Taxation Directive 2003/96/EC is planned with the objective to create a fiscal framework in order to influence sound behaviour of consumers. The implementation of this new Community Law by the Member States will thus require extra attention related to the assessment of transposition and conformity of their national legislation.

#### *Volume of enquiries, complaints, infringements work and petitions, and ad hoc prioritization*

For **indirect taxation** issues, DG TAXUD opened 96 new infringement cases 91 of which related to VAT, 2 related to excise duties and 3 regarding car, energy and environmental taxation.

During 2007, 79 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.

Within the area of **indirect taxation**, both the enlargement and the strategic objectives adopted by the Commission for the period 2005-2009, were for another successive year reflected both in a considerable number of infringement cases and a considerable input related to new Court cases. During the year 2007, the Court of justice has delivered 36 judgments related to indirect taxation, mostly judgments in consequence of a preliminary question in pursuance of which the Commission has given its advice.

Although 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 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 complaints year after year.

The volume of petitions in the different sectors falling within the competences of DG TAXUD is relatively moderate and stable (16 new petitions have been introduced in 2007).

#### 11.2.3 Evaluation

The situation in the **area of indirect taxation** is changing as the infringement action and the number of references to the Court have increased in recent years and this trend is likely to continue. The key challenges will be to manage this increase in activity with the available resources and to achieve correct application of Community law in this area. The position will continue to need to be monitored.

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.

Finally, it is welcomed that during 2007, 79 infringement cases have been closed because the Member States concerned decided to bring their legislation into conformity with Community Law. 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.

### 11.3 Direct taxation

#### 11.3.1 Current position

##### 11.3.1.1 Existing measures in force (situation on 31/12/2007)

For a list of the measures in force please refer to Annex I paragraph 3.3

##### 11.3.1.2 Work in 2007

- Regarding the **petitions** treated in the direct tax area, most petitions relate to possible infringements of Treaty freedoms and instances of double taxation due to the simultaneous application of different Member State tax laws.

- In the area of **direct taxation**, the objectives adopted by the Commission for the period 2005 and 2009, were reflected in an increasing number of infringement cases (almost 30% more than in 2006) and increased input into new Court cases.

As in previous years, the main focus in 2007 within the area of **direct taxation** 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. Recent ECJ case-law and in particular the judgment in *Cadbury Schweppes*<sup>307</sup> prompted the Commission to adopt in December 2007 a Communication on the application of anti-abuse rules in the area of direct taxation<sup>308</sup> inviting Member States to carry out a general review of their anti-abuse rules in the direct tax area, in the light of the principles flowing from relevant ECJ case law, and to explore possible coordinated solutions in this field.

In 2007 and compared with 2006, the Court of Justice delivered a marked increased number of judgments related to direct taxation. Most of the Court's judgments in this area (23) concerned references for preliminary rulings. The following cases were of particular relevance:

---

<sup>307</sup> Judgment of 12.09.2006, case C-194/06

<sup>308</sup> COM(2007)785 of 10.12.2007



In *Commission v. Denmark*<sup>309</sup> and *Commission v. Belgium*<sup>310</sup> the Court confirmed the need to provide for tax deductibility of foreign insurance premiums and contributions to foreign pension schemes respectively if such deductions are granted in domestic situations.

In *Oy AA*<sup>311</sup> the Court held that the Finnish group contribution system, which makes the deductibility of a group contribution subject to the condition that the transferee parent company is a domestic and not a foreign company, poses a restriction on the freedom of establishment, but that such a restriction is justified by the need to prevent tax avoidance and safeguard the balanced allocation of taxing powers between the Member States.

In *Amurta*<sup>312</sup> the Court held that a Dutch dividend withholding tax exemption which applied to resident shareholders holding a qualifying shareholding in a resident subsidiary should also be extended to non-resident shareholders with a similar shareholding. The Netherlands could not rely on unilateral relief provided by the shareholder's state of residence (Portugal) to neutralise its unfavourable treatment of the shareholder.

In *Columbus Containers Services*<sup>313</sup> the Court ruled that German provisions, which – contrary to the relevant tax treaty - provide for a switch-over from the exemption method to the credit method in respect of low-taxed passive income of foreign permanent establishments, are compatible with EC law.

### 11.3.2 Changes underway

#### *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**, none are envisaged for 2008.

#### *Volume of enquiries, complaints, infringements work and petitions, and ad hoc prioritization*

For **direct taxation** issues, DG TAXUD opened 55 new infringement cases.

During 2007, 37 opened infringement cases were closed after Member States modified their legislation and therefore complied with Community Law.

In view of the unanimity requirement in taxation, there is limited secondary Community legislation in the **direct tax area**. As a result, the majority of enquiries and complaints in this area (a total volume of 270 in 2007) relate to the application of the fundamental Treaty freedoms in respect of differential treatment of domestic and cross-border situations. They

---

<sup>309</sup> Judgment of 15.01.2007, case C-150/04

<sup>310</sup> Judgment of 05.07.2007, case C-522/04

<sup>311</sup> Judgment of 18.07.2007, case C-231/05

<sup>312</sup> Judgment of 08.11.2007, case C-379/05

<sup>313</sup> Judgment of 06.12.2007, case C-298/05

therefore mainly fall into the second priority category of the Communication<sup>314</sup> 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 (..)'.

In 2007 the Court of Justice delivered 27 judgments related to direct taxation, a marked increase from 2006.

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 will be paid to 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<sup>315</sup> 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, cross-border pensions and R&D tax incentives) will continue.

The volume of petitions in the different sectors falling within the competences of DG TAXUD is relatively moderate and stable (16 new petitions have been introduced in 2007).

### 11.3.3 Evaluation

The situation in the **area of direct taxation** is changing as the infringement action and the number of references to the Court have increased in recent years and this trend is likely to continue. The key challenges will be to manage this increase in activity with the available resources and to achieve correct application of Community law in this area. The position will continue to need to be monitored.

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 Member States' direct tax systems. As outlined in the 2006 Communication on Co-ordinating Member States' direct tax systems in the Internal Market<sup>316</sup>, 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

---

<sup>314</sup> COM(2007)502 of 05.09.2007

<sup>315</sup> COM(2006)823 of 19.12.2006

<sup>316</sup> COM(2006)823 of 19.12.2006

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. The discussions with Member States have been encouraging so far and the Commission should be able to identify whether real progress has been made by early 2009.

Finally, it is welcomed that during 2007, 37 infringement cases have been closed because the Member States concerned decided to bring their legislation into conformity with Community Law. 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.

## **12 EDUCATION AND CULTURE**

### **12.1 Education**

In 2007: two infringement cases concerned the introduction of quotas for the access of EU students to higher education by two Member States which are faced with a influx of high numbers of students from other Member States. The introduction of quotas restricts the access of such students to the higher education systems of the Member States concerned. It introduces differential treatment to the detriment of EU students other than the nationals. The differential treatment in question, according to ECJ case law, could be justified only if it were based on objective considerations independent of the nationality of the persons concerned and were proportionate to the legitimate aim of the national provisions. Following the Commission decision in November 2007 to suspend the cases, the two Member States will provide the Commission, over the next few years, with evidence to support their contention that their measures are justified and proportionate.

In the area of academic recognition of qualifications, a significant development took place in a case concerning excessive sums required by Portugal for the recognition of foreign diplomas. As a result of the reasoned opinion of the Commission, notified in April 2007, the Portuguese administration announced to be ready to follow the Commission's position and consequently to reduce by 50% the amount required for the recognition of a study diploma obtained in another Member State. Contacts were started in order to give concrete expression to this declaration and to close the file. The imposition of excessive sums for the academic recognition of foreign diplomas hinders trans-national mobility of students and is, therefore, incompatible with the Treaty principles.

In 2007 EAC examined a number of complaints concerning several Member States related to the transport tariffs applied to students. The question is whether reductions of transport tariffs are social advantages which are covered by the principle of equal treatment for the benefit of EU students who pursue studies in the host Member State, in the same way as they apply to migrant workers and their families. These complaints are currently at the stage of investigation.

## 12.2 Sport

In the area of amateur sport, the Commission's action ended successfully in the case concerning the practice of amateur football competitions in Spain. The Spanish Parliament adopted in July 2007 the law against violence, racism, xenophobia and intolerance in sport, which requires that all sports federations remove from their regulations any provisions that would lead to discrimination on grounds of nationality. The infringement case was therefore closed in September 2007 and this outcome was reported to the European Parliament's Petitions Committee in December 2007.

## 13 HEALTH AND CONSUMER PROTECTION

### 13.1 Introduction

The policies and laws for which DG SANCO is responsible touch the daily lives of most European citizens. DG SANCO ensures that our acquis is applied and enforced in a way that benefits citizens, empowers consumers and makes the benefits of the internal market a reality.

DG SANCO (Health and Consumers) is responsible for three policy areas - consumer affairs, public health, and food and feed safety that includes veterinary and phytosanitary matters.

Annex I paragraph 4 provides a comprehensive listing of the legislative acquis for each key policy area.

For each of these three policy areas, a description of work done in 2007 is provided to show how DG SANCO promotes the correct application of its acquis. This part also describes how DG SANCO has evaluated its acquis in key policy areas to ensure coherence and stability in achieving the policy goals. It also described how DG SANCO proposes to improve the situation in the future through a new strategic approach conceived during 2007 and largely being implemented in 2008.

### 13.2 Public Health

#### 13.2.1 Current position

The EU has a small but important body of public health legislation covering matters such as the safety and quality of blood, blood derivatives, human tissues and human cells used in medical treatments. It also includes laws restricting tobacco advertising and regulating other aspects of how cigarettes are manufactured and placed on the market.

##### *13.2.1.1 Work Done in 2007*

##### **Tobacco Control**

Directive 2001/37/EC contains provisions concerning the manufacture, presentation and sale of tobacco products. It is an effective tool for tobacco control in this area. The functioning of the Directive appears stable as the Commission has received one complaint justifying the launching of an infringement case. In the framework of that infringement, the Commission decided on 23 October 2007 to refer Finland to the Court of Justice for failure to comply with the judgment of the Court in case C- 343/05. Subsequently, the Court of Justice condemned Finland for allowing the Åland Islands not to transpose the obligation to prohibit the placing on the market of oral tobacco as provided for in Article 8 of Directive 2001/37/EC. In reaction to that decision, Finland took the necessary measures to comply.

Directive 2003/33/EC regulates tobacco advertising and sponsorship with cross-border implications in the media other than television. On 12 December 2006 the Court of Justice confirmed the validity of the Directive. The Court held that the conditions warranting the choice of Article 95 of the EC Treaty as the legal basis were met thus creating legal certainty as to the legal basis of the policy tool as an internal market measure.

The deadline for bringing into force the laws, regulations and administrative provisions to comply with the Directive was 31 July 2005. Although most Member States met this deadline around 12 Member States did not transpose the Directive in time and the Commission was obliged to open infringement proceedings against them. The Member States in question subsequently communicated their transposing measures and the Commission was able to close these cases.

Subsequent scrutiny of the transposition measures revealed that a few Member States (Spain, Hungary, Italy and the Czech Republic) originally introduced exemptions from the sponsorship ban for certain big events of great economic interest (such as Formula One and motor cycle GP). The Commission therefore launched as a matter of urgency infringement cases against all four Member States. As a result, all the Member States concerned rapidly changed their legislation and the Commission was able to close all the infringement cases during the course of 2007. On the basis of the information available to the Commission, it can be concluded that the laws to transpose the Directive are in place and the legislation is now stable achieving implementation of the policy goals.

### **Blood and tissues**

The Community's legislative framework (Directives 2002/98/EC, 2004/33/EC, 2005/61/EC and 2005/62/EC) addresses the quality, safety and efficacy requirements related to blood and blood component donations whether they are for transfusion, the starting material for manufacturing plasma-derived medicinal products or as essentials in some in vitro diagnostic medical devices. It puts in place requirements for the collection, testing, processing, storage, and distribution of human blood and blood components, quality and safety standards, as well as traceability procedures.

During the third meeting of competent authorities (foreseen by Directive 2002/98/EC) that was convened by the Commission on 18 October 2007, Member States were briefed on the latest status of transposition of the Blood Directive. The Commission urged Member States that were late in communicating their transposing measures for directives 2002/98, 2004/33, 2005/61 and 2005/62 without further delay as infringement procedures were being processed against them.

One Member State did not cooperate in the process of transposing the Blood Directive 2004/33/EC. On 8 November 2007 the Court, in its judgment in case C-60/07, declared that the Czech Republic has failed to fulfil its obligations to transpose the directive. During the period of 2007 the Czech Republic continued to show consistent unwillingness to transpose this Directive triggering extensive consultations with the Member State for resolution of the problem.

The Commission sent on 29 June 2007 reasoned opinions to the Member states that did not communicate transposition measures for Directives 2005/61/EC and 2005/62/EC. Greece and the Czech Republic have failed to comply with the reasoned opinion issued against them. DG SANCO intends to refer both Member States to the Court of Justice in the near future.

On the use of tissues and cells the Commission legislation (Directives 2004/23/EC, 2006/17/EC and 2006/86/EC) contains a regulatory framework that puts in place both quality and safety standards.

The Commission organised on 8 February 2007 a first meeting with the competent authorities of the Member State in order to discuss the progress and the difficulties encountered in the transposition of Directives 2004/23/EC, 2006/17/EC and 2006/86/EC. During this meeting many Member States indicated that institutional re-organisation would be necessary to fully enforce these directives and that such efforts would begin during the notification period.

On 20 April 2007 the Commission launched 19 letters of formal notice for Directive 2004/23 and on the same day the Commission also launched a further 21 letters of formal notice in respect of Directive 2006/86. Although the *acquis* has not achieved stability in this area through timely transposition we have not received any complaints or petitions in this area. The reasons for non-communication by Member States of their transposing measures remain somewhat vague during the notification period. The Commission will continue to exert pressure on competent authorities to transpose these directives in a timely and orderly fashion.

- Stability of the public health *acquis* and program

All nine public health directives had deadlines requiring Member States to communicate their transposition measure before the 31 December 2007. During 2007 the Commission has been encouraging Member States to notify their transpositions through meetings with competent authorities where progress up-dates have been requested.

As regards the quality of the transposition, DG SANCO is reviewing national laws systematically with the aid of external support. Also, in order to assist in practical ways DG SANCO has also organised regular exchanges of best practice amongst Member States from the adoption of new legislation onwards. Partly as a result of this latter initiative there are currently no infringement cases relating to non-conformity or incorrect application of the above mentioned nine public health directives at this time. However this does not exclude the possibility that infringement cases may need to be opened in future as transposition advances and is finalised.

The overall assessment is that the application of the *acquis* in this sector is encountering some difficulties in relation to legislation concerning tissues and cells, which may correspond to a certain lack of maturity in this policy sector within some Member States. That is why the exchange of best practice between Member States at different levels of policy development is

a key driver for completing good transposition, and thereafter good application of the legislation.

The Public Health Programme underwent an external evaluation during the course of 2006. This evaluation was foreseen in the Decision No 1786/2002/EC of the European Parliament and of the Council of 23 September 2002. The purpose of the evaluation was to obtain independent, evidence based information on the implementation and achievement of the programme during its first three years (2003 - 2005). According to the findings of the evaluation, the overall picture is of a Programme that has pulled together a more disparate set of activities and established a recognised position for public health at the European level.

### **13.3 Consumer Affairs**

#### 13.3.1 Current position

##### *13.3.1.1 Work done in 2007*

##### Infringements proceedings

The deadline for transposition of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market expired on 12 June 2007. Twenty-two Member States failed to notify transposition measures to the Commission by that date and as a result letters of formal notice were sent to each of those Member States. Subsequently, six Member States notified transposition measures before the end of 2007.

Furthermore, in the area of consumer related infringements, the Commission sent a reasoned opinion to Italy for having limited in time the possibility to obtain, in the event of insolvency of travel organization, the refund of payments made. Italy responded that it will amend its legislation in 2008 in order to achieve full compliance with Directive 90/314/EEC on package travel, package holidays or package tours. However, overall the Directive appears to be operating well as few other problems were brought to the attention of the Commission during 2007, with only one complaint being registered during that year.

##### Legislative proposals

Considerable work was carried out during 2007 on the Review of the Consumer acquis through a thorough evaluation. In February 2007, the Commission adopted the Green Paper on the Review of the Consumer Acquis. This Green Paper concluded the diagnostic phase of the review, summing up the Commission's initial findings and initiating a public consultation. It identified a number of problems with the current legislation in the area of consumer protection and presents the main options for a reform as well as a number of specific questions. With this Green Paper, the Commission called on all interested parties to express their views on the issues identified in the context of the Review of the Consumer Acquis. The consultation period lasted until 15 May 2007.

Directive 94/47/EC of the European Parliament and the Council on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis was adopted in 1994. However, since the adoption

of the Directive new products and contracts have been developed, which are not covered by the legislation. These new products include those which can be called "timeshare-like products" as well as the so-called "holiday discount clubs". Resale and exchange of timeshare schemes are not covered either by the existing legislation. Some of the new products and some transactions related to timeshare, in particular resale, cause large detriment to consumers, as witnessed by a significant number of complaints, and unfair competition to honest traders, since they are not covered by the Directive.

Recognising the problems that timeshare consumers are facing, and carrying on its work from 2006, the Commission adopted a proposal for a new directive on 7 June 2007. The proposal aims at closing these regulatory gaps, by replacing the Timeshare Directive with a set of clear, modern and simplified rules. It is hoped that the new rules will enhance consumer protection by extending the scope of the current rules to also include the new products which have emerged in the market, such as holiday clubs. Resale and exchange will also be covered. The new rules should ensure that consumers are equally well protected across the EU and will create a level playing field in the market for timeshare and other holiday-related products.

#### Transposition checks

During 2007, DG SANCO has also been active in pursuing compliance checks for several consumer related directives. It has verified the transpositions by the new Member States (EU-10) of Directive 93/13/EC on unfair consumer contracts. Varying degrees of transposition problems were identified in nine of those Member States and pre-infringement letters sent. Furthermore, the Commission registered nine complaints regarding the implementation of this Directive by the Member States. The Unfair Contract Terms Directive is one of 8 directives being analysed during 2007 in the context of the Review of the consumer acquis.

Checks were also carried out on the transpositions by all Member States of Directive 2002/65/EC of the European Parliament and of the Council concerning the distance marketing of consumer financial services and Directive 98/27/EC of the European Parliament and of the Council on injunctions on the protection of consumers' interests. With regards to Directive 2002/65/EC a number of potential transposition problems were identified and pre-infringement letters were sent to nine Member States. However, with regards to those two Directives no complaints were registered by the Commission during 2007 as a result of citizens' complaints regarding their implementation.

Further such work on the transposition of the abovementioned consumer Directives and follow up to some of the problems identified in 2007 is planned to be continued in 2008.

In 2007, the Commission addressed a Communication to the Council and the European Parliament on the implementation of Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees including analysis of the case for introducing direct producers' liability. The Communication, which also is a part of the review of the acquis, concluded that the transposition of the Directive in the Member States raises a number of problems. Many of these may be due to regulatory gaps in the Directive, but others can already at this stage be considered as incorrect transposition of the Directive. The transposition checks have revealed significant divergences between national laws as a result of the use of the minimum clause and the various regulatory options provided by the Directive. It is unclear at present to what extent these divergences affect the proper functioning of the Internal Market and consumer confidence. However, requests for further



information were sent to the majority of the Member States concerning their national transpositions at the end of 2007.

### Scams of Directory Companies

In 2007 the Commission responded to 37 letters from businesses and MEPs, 2 written questions and 4 Parliamentary petitions on the problems created by certain directory companies. Since this problem concerns business-to-business relationships much of the European Union consumer protection legislation does not apply. An exception is Directive 2006/114/EC of the European Parliament and of the Council concerning misleading and comparative advertising. Correspondents were encouraged to attempt to resolve the issue through the competent national authorities who are responsible for enforcement of that Directive. However, at the end of 2007 Commissioner Kuneva wrote to several Member States to raise awareness of the complaints received so far and request information on how national authorities are addressing such issues. In the Commission's opinion, however, this issue has not indicated any need to amend the Directive or extend other consumer protection legislation to cover business-to-business scenarios.

### EU-Sweeps

In 2007, the first EU "Sweep" was carried out. It is new kind of enforcement action which involves a systematic check carried out simultaneously and in a co-ordinated fashion in different Member States to investigate breaches of consumer protection law.

The first such investigation concerned 15 Member States and involved an analysis of misleading advertising and unfair practices on airline ticket selling websites. The investigation was launched and co-ordinated by the Commission under the Consumer Co-operation Regulation. The results of the investigation, which scrutinised over 400 websites, revealed that over 50% of all websites contained irregularities, in particular relating to price indications, contract terms and clarity of proposed conditions. Following the sweeps, companies were contacted by the national authorities and asked, where necessary, to change or correct their practices.

### Training

Preventing infringements through a better understanding of the consumer acquis has been undertaken by DG SANCO within 2007. DG SANCO has set up a series of training courses designed to help build the capacity of **European consumer organisations**.

### Consumer Protection Cooperation

Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) ensures adequate protection for consumers in cross-border situations. National public enforcement authorities are linked together in an EU-wide Enforcement Network which has been given the means to exchange information and to work together to stop rogue traders or any other cross-border breaches to consumer laws. It tackles breaches in a variety of areas such as misleading advertising, package holidays, timeshares and distance selling.

All the authorities in the Network have similar investigation and enforcement powers which include the possibility of carrying out on-site inspections. Each one of them is able to call on any other member in the network for assistance in their investigations and enforcement actions. Simultaneous investigations and common enforcement actions, such as internet sweeps, can be coordinated through the Network.

The Regulation provides a wider framework for general administrative cooperation between Member States and the Commission. It sets out supporting measures to foster expertise and cooperation between enforcement authorities. This includes, for instance, the setting up in 2007 of a scheme for the exchange of enforcement officials and of common projects to strengthen the ability of authorities to work together on subjects of EU-wide relevance.

The Enforcement Network started its operations at the end of 2006 and was officially launched on 28 February 2007. A first assessment of the start up of this network however is not entirely positive. Of the 256 requests for action created in 2007, only 95 were closed by the relevant national authorities in the same year. The backlog is still growing and the average time taken to handle a case is increasing. The pressure on this network is likely to increase still further as a result of EU wide initiatives such as "sweeps" for airline tickets, designed to make evident irregularities that ought to be tackled by Member States in co-operation with each other and with the Commission.

DG SANCO intends to raise at the political level the need for Member States to give adequate priority and resources to the management of these issues. It may also be necessary to consider launching infringement proceedings in the coming years, if there are persistent patterns of non-compliance by certain Member States with the obligations imposed by this Regulation.

Alongside this action, DG SANCO is developing a capacity to monitor markets - "market watch" - to identify situations meriting further and deeper examination, eventually leading to legal proceedings. It is also developing regulatory co-operation with other enforcement agencies, particularly in the US and China.

## RAPEX

Directive 2001/95/EC on general product safety (GPSD) provides the legal framework for RAPEX. The RAPEX system is used to exchange information on dangerous non-food consumer products, including those covered by "sectoral" Directives (e.g. toys, cosmetics, electrical appliances, personal protective equipment, machinery and motor vehicles). The RAPEX system sets up a rapid exchange of information on dangerous products in order to protect the health and safety of consumers.

The number of dangerous products removed from the EU market rose by 53% in 2007 compared to in 2006. The assumption should not be made that an increase of the number of notifications transmitted through the RAPEX system reflects somehow on more dangerous goods being brought onto the European market. It is precisely because the market surveillance system works effectively that we are able to follow carefully the trends. In fact, the steady growth in RAPEX alerts can be attributed to more effective product safety enforcement by national authorities, greater awareness amongst businesses of their obligations, enhanced cooperation with third countries, and network-building actions coordinated by the Commission.

Toys were by far the most notified product category in 2007, confirming that child safety is a top-ranking priority for market surveillance authorities, although motor vehicles, electrical goods and cosmetics also featured prominently in the RAPEX system.

Once again, China was the country of origin for more than half of all risky products found (700 notifications). This can be partly explained by the high number of products imported into the EU from China (for example 80% of all toys) and the intensified focus of market surveillance authorities on Chinese products following the "summer of recalls". Cooperation with China on product safety has also shown positive trends and considerable efforts have been made by the Chinese and EU authorities to improve the safety of EU products reaching the EU market. The increase can also be attributed to the fact that the number of *unknown* origin notifications fell in 2007 and it is likely that certain products which had been identified as being of unknown origin before were identified in 2007 as being of Chinese origin.

#### The European Consumer Centres Network (ECC-Net)

In 2007, the European Consumer Centres Network (ECC-Net) helped more than 55.000 consumers with information and advice on cross-border shopping, both in person and online, ensuring that they are aware of their rights, and providing support in handling complaints. This is an increase of 5000 contacts since 2006. In 2007, most complaints tackled by the ECCs concerned contract terms (25%), product and service (22,4%), and delivery (20%). The sectors mostly concerned were air transport and car rentals, internet scams and fake lotteries, and non delivery of audiovisual products. More than half of complaints concerned on-line transactions (55%).

Apart from information to consumers on both EU and national rules as well as advice to individuals facing consumer related cross-border problems, they have also helped consumers to reach agreements on complaints with traders using out-of-court dispute resolution mechanisms. Contacts are increasing yearly – 19% in 2006 and a further 10% in 2007. With the help of latest technology in the form of a new database launched in January 2007, co-operation between centres will be even more efficient in the future. The ECCs also provide valuable input for the European Commission on significant consumer policy issues.

Apart from handling information requests and complaints, ECCs have been running joint projects, such as a review on complaints regarding air passenger rights (project carried out by ECC Belgium, Ireland and Sweden), "Howard" the on-line shopping assistant (ECC Denmark and Ireland), an information campaign with leaflets on tourism (fifteen Centers including ECC Spain, Germany, Cyprus and France as co-coordinators). They were key organizers of other awareness-raising initiatives such as the campaign on the EU Timeshare Directive, the "You choose!" campaign on the opening of national energy markets, the new "Eurotariff" GSM roaming legislation, and other information actions.

#### Stability of the consumer acquis and strategy

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.

## 13.4 Food & Feed Safety

### 13.4.1 Current position

A review of the way SANCO applies the food safety acquis was conducted during 2007. The decision-making process has been improved to better coordinate and structure safeguard measures in relation to imminent risks to public health. There has also been a concerted effort to modernise and rationalise European legislation governing the marketing of seeds and plant propagating material.

The effective enforcement of food safety legislation is primarily dependent on control activities carried out by Member States competent authorities. Regulation (EC) 882/2004 on official controls establishes the parameters of how Member States are to monitor and verify that the relevant requirements of food and feed law, of animal and plant health and of animal welfare are fulfilled by business operators at all stages of production, processing and distribution.

#### 13.4.1.1 Work done in 2007

In three cases the Commission decided to pursue infringement proceedings against Greece because that Member State persistently fails to comply with a range of important components of Community food safety legislation.

The Food and Veterinary Office (FVO) missions have been highlighting 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 partly attributable to the scarcity of human resources in the Greek veterinary services and partly to a failure to ensure that decentralised authorities comply with central instructions. As the Commission concluded that the results of the efforts made by the Greek authorities to solve these problems were unsatisfactory, the Commission referred the case to the Court.

In September 2005, the FVO unravelled further evidence of systemic deficiencies in the management of animal by-products. The Commission decided to send a reasoned opinion for these shortcomings and consider how to consolidate a prior infringement case with these new elements for joint referral to the Court of Justice within 2008.

Also following inspections of the FVO, the Community referred Greece to the Court of Justice for failure to apply in a satisfactory way the Community legislation relating to the protection of animals during transport and in slaughterhouses.

Poland prohibits the inclusion of genetically modified varieties of seeds in the national catalogue of seed varieties and the placing on the market of those varieties. It also prohibits the placing on the market of feed containing genetically modified organisms. As Poland did not provide an acceptable justification for this major deviation from the Community legislation applicable to seed and feed, reasoned opinions were sent to that Member State for both cases.

Germany imposes, in addition to the fees established by the Community for veterinary inspections and controls, a fee for bacteriological tests. As case law has established that such additional fees are not lawful, the Commission decided to refer this case to the Court of Justice.

The Commission does not accept that Member States create trade barriers by invoking safety issues that have already been addressed by the Community in a uniform and evidence-based approach. The Commission considers that as the Community legislation sufficiently addresses the problem of avian influenza, Italy is not entitled to impose additional measures by making it compulsory to indicate the origin of the product on the labelling of poultry. Therefore, the Commission addressed a reasoned opinion to that Member State.

- Avian Influenza

Following a comprehensive evaluation of EU legislation on avian influenza, this has now been updated to respond to the challenges that Europe faces today. A new Council Directive on avian influenza was adopted by the Member States in the Council in December 2005 and aims at better prevention and control of outbreaks. It takes into account the most recent scientific knowledge on avian influenza and repeals the old Directive (92/40/EC). The new legislation has entered into force, but Member States are obliged to implement it only as of 1 July 2007. All Member States have transposed the Directive into their national systems, with the exception of Italy. A letter of formal notice was prepared and transmitted to Italy within 2007 and the infringement process will continue until compliance is achieved.

The Commission has not received any complaints about inadequate transposition of the new legislation the key element of which is the ability of a Member State to adequately respond to an outbreak through a contingency plan.

- Bluetongue

Climate change has increased the risk of bluetongue, a vector borne disease, spreading from south to north in Europe. Council Directive 2000/75/EC was evaluated to see whether there was a need for detailed implementing measures and control rules and measures to combat the spread of bluetongue within the Community. It was found that demarcation of protection and surveillance zones should take into account geographical, administrative, ecological and epizootiological factors connected with control arrangements regarding bluetongue. It was deemed necessary, in particular, to lay down rules as regards the minimum harmonised requirements for monitoring and surveillance of bluetongue in the Community and on the exemptions for the exit ban provided for in directive 2000/75/EC.

As a result, Commission Regulation (EC) No 1266/2007 of 26 October 2007 on implementing rules for Council Directive 2000/75/EC was adopted to address these issues. Recent experience has shown that under certain conditions the effectiveness of the measures provided for in Regulation (EC) No 1266/2007 to ensure the protection of animals against attacks by vectors might be undermined by a combination of factors, including the new vector species, new route of transmission of the disease, climate conditions and the type of husbandry of the susceptible ruminants.

In view of those circumstances and pending their further scientific assessment Commission Regulation (EC) No 394/2008 lays down some transitional measures. These new rules provide that animals that are moved from restricted zones into bluetongue-free areas are either vaccinated or shown to be naturally immunised.

The acquis in this area is stabilising and we have not received any complaints, inquiries or petition that would lead the Commission to believe that control measures to combat bluetongue were inadequate or disproportionate.

- Labelling

In the EU, there are many rules affecting labels, and there is much debate about the proper use of labels and the best parameters for labelling. A number of aspects of labelling legislation were reviewed in 2006-2007 in order to identify a coherent overall approach to labelling.

A crucial change envisaged in this area is the shift towards a system of directly enforceable Community rules to replace Directive 2000/13. In 2008 a proposal for a Regulation on Food information was adopted by the Commission to make food labels clearer and more relevant to the needs of EU consumers. The aim of the draft Regulation is to modernise and improve EU food labelling rules, so that consumers have, in a legible and understandable manner, the essential information they need to make informed choices. The draft Regulation also provides that most processed food will have to display key nutritional information on the front of the package. General requirements on how nutrition information should be displayed on food labels are also set out, although there is room for Member States to promote additional national schemes provided they do not undermine the EU rules.

For public health reasons, the draft Regulation extends the current requirements for allergen labelling to cover non pre-packed food, including food sold in restaurants and other catering establishments.

Industry should also benefit from the proposed new rules, as they set up a clearer, more harmonised legislative framework for food labelling and create a level playing field for all operators. The draft Regulation was drawn up following extensive consultations with consumer organisations, industry and other stakeholders.

With respect to labelling of feed, the Commission has adopted a proposal for a Regulation which considerably simplifies the existing procedures for labelling and marketing animal feed and pet food, while making the overall system more efficient and maintaining the same high level of protection of animal health, animal welfare and public health.

Industry should also benefit from the proposed new rules, as they set up a clearer, more harmonised legislative framework for food labelling and create a level playing field for all operators. The draft Regulation was drawn up during the course of 2007 following extensive consultations with consumer organisations, industry and other stakeholders

- Health & Nutritional Claims

As consumers have become increasingly concerned about what they eat and how this affects their health, the food industry has responded by providing more detailed nutrition labelling and often making claims about the beneficial effects of certain foods. The previous EU rules on labelling and nutrition labelling that did not define conditions for the use of nutrition claims and did not permit health claims to be made. As a result, many consumers were often misled by claims that had not been properly substantiated.

Regulation (EC) N° 1924/2006 of the European Parliament and of the Council on nutrition and health claims made on foods was adopted to resolve the situation. This Regulation aims at

laying down harmonised rules for the use of nutrition and health claims and contributes to a high level of consumer protection.

It ensures that any claim made on a food label in the EU is clear, accurate and substantiated, enabling consumers to make informed and meaningful choices. The Regulation also aims to ensure fair competition and promote and protect innovation in the food sector area.

To promote better application of this new Regulation, DG SANCO has set up a Working Group with experts from Member States in order to examine a series of issues concerning the implementation of this Regulation.

The Standing Committee on the Food Chain and Animal Health has approved a guidance document on the implementation of this Regulation at its meeting on the 14 December 2007. This guidance documents seeks to assist interested stakeholders to better understand and to apply correctly and in a uniform way the new Regulation.

- Animal Health Strategy

In the area of animal health, one of the key elements of the efforts to rationalise the acquis in this domain involves an extensive evaluation and a large stakeholder consultation of all animal health legislation.

The existing legislation on animal health covers many different policy areas: intra-community trade, imports, animal disease control, animal nutrition and animal welfare. This series of linked and interrelated policy actions will be replaced by a single regulatory framework that is as aligned as possible with international standards and guidelines.

The aim is to have simpler, more modern and more relevant animal health rules, which are flexible enough to be adapted to new situations as they arise. It would also significantly reduce the number of SANCO directives converting most of them into detailed regulations that would have direct effect in Member States and would not need resources to check conformity with directives.

The Commission considered it imperative to re-think our animal health strategy given enlargement, new challenges resulting from the emergence of new diseases, climate change, changes in trade and new developments in science, including technological advances.

- GMO Food and Feed

In 2007, the legal framework for the authorisation of genetically modified food and feed was carefully applied to achieve the required high safety standards for consumers.

In total nine applications for authorisations were submitted to the relevant regulatory committee. However, a qualified majority was never achieved, neither in the regulatory committee nor in the Council. As a consequence, the proposals were processed through the whole comitology procedure with the adoption by the Commission at the end. In addition, the Commission took measures in relation to five GM products, which are no longer on the market allowing a proper phasing out of the products in the following years.

In order to increase the support from Member States in the authorisation process, DG SANCO started work in 2007 to establish a legal framework for the EFSA risk assessment to be endorsed by MS, aiming at an improved confidence in the risk assessment process.

Moreover, 7 Decisions on the confidentiality status of GM application dossiers have been assessed in 2007 (notified early 2008 to the applicant). Furthermore, given that no Decision-making procedures were set for confidentiality, DG SANCO started in collaboration with EFSA a reflection on the possibility to establish a common code of good practices aiming at harmonising the procedures and policies as regards confidentiality and public access to GM application dossiers.

As regards Community emergency measures against the placing on the EU market of non authorised GMOs, 2 different actions were undergone :1/ the emergency measure in relation to adventitious presence of the non authorised GM event Bt10 in US maize products was withdrawn in 2007 when it became clear that there were no risk of further contamination of the maize products exported to the EU; 2/ the emergency measure taken in 2006 in relation to the adventitious presence of GM LL RICE 601 in US long grain rice was closely monitored and reviewed in 2007. Following implementation of preventive measures in the US and the publication of an official investigation report, intensive discussions with US authorities took place which resulted in a protocol on sampling and testing.

As regards safeguard clauses applied by Member States against the placing on the market of authorised GMOs, Greece extended in 2007 for another 24 months its national prohibition to place on the market varieties derived from genetically modified maize MON 810 and new scientific elements were provided. These elements were sent by the Commission to the European Food Safety Authorities for assessment.

As regards the monitoring by the Commission of the implementation of the legislation on GM food and feed in the MS, the Food and Veterinary Office (FVO) of DG SANCO carried out in 2007 inspection missions to Greece, Austria, the Netherlands and to Brazil. Inspection missions to Member States formed part of a series, the purpose of which is an ongoing evaluation of Member State official control systems concerning implementation of Regulations 1829/2003 and 1830/2003. In general, implementation of Community legislation in the area of GMOs in the Member States inspected was found to be satisfactory with some minor issues around laboratory accreditation. The mission to Brazil (a major supplier of soya and derivatives) was to evaluate the system of export of these products to the EU. The mission report underlines that Brazil controls of products to the EU are industry based, and the findings indicated that 'identity preserved' programs worked well. In addition, to the inspection work of the FVO, the Commission decided to continue infringement procedures against Poland which adopted laws against the placing on the Polish market of authorised GM seeds and GM feed.

Finally, in November 2006, the WTO Dispute Settlement Body adopted the Panel report on GMOs which found the EC in violation of the SPS agreement. Since then and during the whole year 2007 a dialogue has been opened with the complainants (USA, Argentina and Canada) to find a solution to the dispute thus avoiding sanctions.

- Novel Foods



DG SANCO has also been evaluating the effectiveness of novel food legislation that was in need of responding to new market realities. A revision of the Novel Food Regulation was deemed necessary in order to reflect the fact that genetically modified (GM) food no longer falls within the scope of novel food legislation. The revision is also motivated from the need to avoid stifling innovation by creating a more favourable legislative environment for food industry, and to better facilitate both internal and external trade in foodstuffs. The consumer would also benefit from a wider choice of safe novel foods.

The proposal adopted by the Commission seeks to improve access of new and innovative foods to the EU market, while maintaining a high level of consumer protection and ensuring food safety. Under the draft Regulation, novel foods would be subject to centralised Community authorisation procedure.

In the future, the Commission will receive the application for authorisation and the European Food Safety Authority will carry out the scientific assessment on the product. The "*one door – one key*" approach to approval of novel foods will align the process to that taken on food additives, food enzymes and food flavourings. This means that the applicant may make one application for approval covering all these possible uses of the substance in question.

The proposal also sets out data protection rules, which aim to protect newly developed foodstuffs once, authorised, and encourage companies to invest in developing new types of foods and food production techniques. Moreover, a notification procedure is introduced for foods which have not been traditionally sold in the EU but which have a safe history of use in third countries.

There have been no complaints or petitions in relation to this proposal given that stakeholders were mostly in favour of having more general and therefore more flexible requirements.

- Plant Protection – Pesticide Residues

The use of plant protection products may constitute a risk for human and animal health and the environment. The Commission services responsible for this area take those risks very seriously. Regulation (EC) No 396/2005 ensures that the level of plant protection products contained in and on food is safe for consumers. Directive 91/414/EEC concerning the placing of plant protection products on the market regulates the use of plant protection products.

Prior to Regulation (EC) No 396/2005, each Member State applied its own maximum residue levels for pesticides. Previous European legislation set different levels for different kinds of product: some fruit and vegetables (Directive 76/895/EEC), cereals ( Directive 86/362/EEC), foodstuffs of animal origin ( Directive 86/363/EEC) and plant products, including fruit and vegetables ( Directive 90/642/EEC).

With the evaluation of the effectiveness and efficiency of this body of legislation, it was seen that establishing maximum residue levels (MRLs) of pesticides permitted in products of animal or vegetable origin that are intended for human or animal consumption was the way forward. As a result Regulation 396/2005 now ensures that pesticide residues in foodstuffs do not constitute an unacceptable risk for consumer and animal health.

In accordance with Article 8 of Directive 91/414/EEC concerning the placing of plant protection products on the market the Commission has to assess within a certain timeframe the active substances contained in plant protection products that were already on the market at the date of the application of that Directive.

In 1992, the Commission launched an ambitious review programme. Regulation (EEC) No 3600/92 laid down detailed rules for the first stage of that programme. The procedures for the three further stages of the programme have been laid down in 2000 (Regulation (EC) No 451/2000), 2002 (Regulation (EC) No 1490/2002) and in 2004 (Regulation No 2229/2004).

The rules laid down in those Regulations 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.

The first and second stages of the work programme have been finalised. Until 31.12.2007 the Commission took decisions on 144 of the 416 dossiers submitted in the framework of the programme. The Commission has to take decisions on the remaining dossiers before the end of 2008.

On the basis of its evaluation of the submitted dossier the Commission decided not to include 50 active substances in Annex I of the Directive. These decisions are based on the strict application of Directive 91/414/EEC and of the procedural rules contained in the implementing Regulations. In order to obtain that the plant protection products containing those active substances can remain on the market, certain companies that notified the dossiers, seek the annulment by the Court of those Commission decisions by invoking errors during the assessment or with regard to the procedural rules.

The Commission received only few complaints on the bad application by the Member States of Directive 91/414/EEC. Most concern issues relating to the provisions on data protection. Only in one of those cases an infringement procedure is ongoing. It has to be stressed that in this policy area numerous guidance documents and strong cooperation between Member States and the Commission through expert groups contribute to a correct application of the Community legislation.

After an intensive consultation of stakeholders, the Commission proposed on 12 July 2006 a Regulation concerning the placing of plant protection products that will replace Directive 91/414/EEC. The draft Regulation contains measures for shorter and clearer authorisation criteria, streamlined procedures, simplified data protection rules, provisions for the substitution of active substances with safer alternatives and a reduction in testing on vertebrate animals.

- Seeds and Plant Propagating Material

During the course of 2007 an evaluation of the European legislation governing the marketing of seeds and plant propagating material (S&PM) was conducted that covered 12 directives.

Many stakeholders were dissatisfied with the fact that most of these directives had undergone many amendments often making it difficult to ascertain the rules in this area. The evaluation in 2007 has shown a need to modernise and simplify the legislation in this area.

The final conclusions to this evaluation are expected in 2008 and an action plan will be drafted in 2009 in respect of 12 directives (66/401/EEC - fodder plants seed, 66/402/EEC - cereals seed, 68/193/EEC - material for the vegetative propagation of vine, 92/33/EEC - vegetable propagating and planting material other than seed, 92/34/EEC - fruit plant propagating material and fruit plants intended for fruit production, 98/56/EEC - propagating material of ornamental plants, 99/105/EC - forest reproductive material, 2002/53/EC - common catalogue of varieties of agricultural plant species, 2002/54/EC - beet seed, 2002/55/EC - vegetable seed, 2002/56/EC - seed potatoes, and 2002/57/EC - seed of oil and fibre plants.)

- Animal By-Products

The use of certain animal by-products (ABPs) in animal feed can spread BSE and other animal diseases or spread chemical contaminants such as dioxins. ABPs can also pose a threat to animal and human health via the environment, if not properly disposed of.

Member States and operators have indicated that they have made generally good progress in applying the ABPs Regulation No EC 1774/2002. There is broad support for the principles of the Regulation, and the controls are proportionate in most cases. In particular, the increase in the number of outlets for ABPs and the potential for increasing the amount of material recycled is welcome. The vast majority of ABPs produced including all risk materials are now being handled in accordance with the Regulation and consigned to the permitted outlets.

However, Greece through a series of FVO mission has been shown to lack the necessary human and institutional capacity to properly apply the Regulation and as a result a reasoned opinion was issued against Greece in relation to this matter.

The FVO during the course of 2007 has also uncovered evidence that the ABP Regulation is not being applied in Malta. As a result, the Commission services responsible for enforcement have registered an inquiry against the Maltese competent authorities who have been requested to present an action plan to remedy the situation. The matter is being closely monitored to ensure proper application of the legislation.

With respect to Poland, an outstanding concern about the proper application of the legislation on ABPs has led to a series of high-level exchanges in order to help call upon the Polish authorities to take effective steps to remedy the situation.

Further consultations are being carried out with Member States and stakeholders in order to prepare the ground for a comprehensive revision of the ABP legislation to achieve further simplification and bolster enforcement capabilities.

- Animal Welfare during Transport

Council Regulation (EC) No. 1/2005 became applicable in January 2007 and amounts to a radical overhaul of the existing EU rules on animal transport and it identifies the chain of all those involved in animal transport, defining "who is responsible for what" thus facilitating more effective application of the new rules.

The Regulation provides for more efficient monitoring tools such as checks on vehicles via a satellite navigation system from 2007. It also has much stricter rules for journeys of more than 8 hours, including a substantial upgrading and official approval of vehicle standards.

The Regulation does not include new measures on travelling times or stocking densities. Some of the applicable rules suffer from imprecision which contributes to legal uncertainty. The Commission is considering the way forward on how to amend this legislation to achieve further legal certainty and higher animal welfare protection.

### Further reinforcing the Application of Acquis by DG SANCO

DG SANCO exploits a combination of methods to achieve compliance. Formal legal proceedings against a Member State are used only where it is apparent that there is a blatant violation or where a Member State is exhibiting lack of cooperation to resolve an issue.

This is because, as a general trend and despite the best of efforts by the Commission, with some notable exceptions, infringement procedures are slow to achieve results. Prevention of infringements through strong relationships with Member States may often resolve an enforcement issue more effectively. Often Member States are not fully aware of the scope and nature of their legal obligations. Guidance documents on specific and complex pieces of legislation have been particularly conducive to enhancing better application of the acquis on the ground. Other times, Member States fail to put in place adequate capacity to properly apply legislation for which the pressure exerted by the Commission to show a plan of action to resolve the matter achieves acceptable results.

- 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 their food safety legislation. In this context, a guidance document on the implementation of specific provisions of the General Food Law under Regulation (EC) No 178/2002 was published. In addition, in the interest of transparency, the Commission has encouraged all parties concerned to openly discuss the implementation and application of the Regulation in forums where Member States can be consulted and where different socio-economic interests can be adequately expressed.

Another example of proactive prevention by the Commission is the publication of a guidance document in relation to Regulation (EC) No 882/2004 concerning microbiological sampling and testing of foodstuffs. This document, which is directed at competent authorities carrying out official controls, aims to advise on how to engage in official sampling, the requirements of

official laboratories, analysis methods to be used for official samples and microbiological criteria applied to official samples.

Moreover, since the adoption of the new rules on the hygiene of foodstuffs (Regulations (EC) Nos 852/2004, 853/2004 and 854/2004), and of the rules on official controls (Regulation (EC) No 882/2004), the Commission held a series of meetings with experts from the Member States in order to examine and reach a consensus on a number of implementation issues concerning the new Regulations. As a result a guidance document was issued for the benefit of competent authorities and food businesses in the Member States and in third countries on certain key questions with regard to the implementation of the new food hygiene import requirements and on related subjects.

Also for the implementation and consistent application of Directive 91/414/EEC concerning the placing of plant protection products on the market, the Commission has adopted 38 guidelines. 3 additional guidelines were adopted in 2007 and 1 existing guideline was revised.

The Commission launched in 2006 a training programme "**Better Training for Safer Food**" aimed at organising a Community training strategy in the areas of food law, feed law, animal health and animal welfare rules, as well as plant health rules. Training is designed for all staff of competent authorities of Member States involved in official control activities so as to keep them up-to-date with all aspects of Community law in the areas specified above and to ensure that controls are carried out in a more uniform, objective and adequate manner in all Member States. For 2007 the Commission programmed 62 training events involving about 3000 officials of Member States and third countries.

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 2007 the Commission services responsible for health and consumers commented on 224 notifications of draft legislations in order to avoid that Member States adopt legislations which would be incompatible with Community law.

Discussions with Member States either bi-laterally or multilaterally 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.

- Audits and Inspections

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 Food and Veterinary Office (FVO) was not able to examine whether Member States 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 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. The

inspection reports deliver valuable feedback on compliance in practice, on the ground, with EU legislation and identify specific transposition issues when they arise, in each of the Member States. The work of the FVO enables DG SANCO to target legal transposition checks on areas and in Member States where a reasonable assurance of compliance is not fully achieved.

As a result of recent inspections in Member States, around 46 cases have been identified where there are apparent failings in the transposition of EU law have been identified, and these are being followed up with a view to launching infringement cases as appropriate, if satisfactory resolution cannot be achieved in other ways.

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 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.

- **Prioritisation of Infringements**

DG SANCO opened 428 new cases (including the 333 cases for non communication; 55 new complaints, 40 cases on our own initiative). 350 letters of formal notice were sent (333 for non communication, 17 for substantive cases). In total we closed 334 cases (264 for non communication, 70 for substantive cases).

DG SANCO will be improving the prioritisation of cases in line with the strategic priorities that the Commission has established and which DG SANCO has applied in its domain.

DG SANCO continues to treat non-communication of national measures transposing directives or other notification requirements as a top priority. Late notifications in the field of food and feed safety especially by Romania, Portugal and Italy account for the bulk of the shortfall, and attention will be focussed therefore on these countries.

Compliance of transpositions by Member States is being facilitated by insisting on the obligation to have a concordance tables to facilitate such verification. The programme of positive action to facilitate the exchange of experience between Member States between the adoption of the new legislation and its transposition will be extended beyond consumer and health policies, to the food safety sector.

Special attention will be given to verifying the transposition of provisions which are crucial to the effectiveness of food safety, animal health and animal welfare, which are in the remit of Member States. Accordingly, infringements will be launched where appropriate.

Finally, for other low priority cases, attempts will be made in the first instance to find non-judicial consensual solutions with the Member State concerned through partnership channels available to DG SANCO.

## 13.5 General Evaluation

DG SANCO is in the forefront of evolving to address the challenges posed by the need to use resources for better application of EC law more effectively and on issues that are important for EU citizens and for the credibility of the European Commission.

In order to manage better the resources needed to assess compliance of SANCO directives with transposing measures of Member States, sectoral directives are being consolidated into regulations where appropriate following evaluation of such directives.

The most difficult challenge for the application of EU law in the policy fields for which DG SANCO is responsible, is the rapidity of technological progress in particular in the fields of the genetic modification and cloning of plants and animals, emerging nanotechnologies and emerging issues of the consumer's right to privacy as well as fair commercial practice in a digital market. This puts constant pressure on the regulators to strike the balance between evidence and science and public concerns and perceptions.

Lastly, as part of its ongoing programme of simplification and modernisation of its legislation, DG SANCO is consolidating sectoral directives into regulations, thus facilitating the control of legal compliance by Member States.

## 14 JUSTICE FREEDOM AND SECURITY

*Current position* A comprehensive list of JLS acquis in force is publicly available on the JLS EUROPA website<sup>317</sup>. For a detailed list of the existing measures in force by sector please refer to Annex I paragraph 5

As a follow-up of the Hague Programme, it has become customary to adopt a yearly Scoreboard Plus, the last one published on 28 June 2007<sup>318</sup>. In addition to the monitoring of the adoption process, this communication examines national implementation of policies in the Justice, Freedom and Security fields.

### 14.1 Fundamental rights

#### 14.1.1 Work in 2007

In 2007 the Commission received a number of individual letters and parliamentary questions as well as petitions concerning alleged violations of fundamental rights by Member States: approximately 800 letters and more than 120 parliamentary questions and petitions. Most of the individual cases do not involve Community law and fall outside the powers of the Commission to control the application of Community law.

---

<sup>317</sup> [http://ec.europa.eu/justice\\_home/doc\\_centre/intro/doc\\_intro\\_en.htm](http://ec.europa.eu/justice_home/doc_centre/intro/doc_intro_en.htm).

<sup>318</sup> Communication of 28 June 2006 from the Council to the Council and the European Parliament– Report on the implementation of the Hague programme for 2006 – COM(2007) 373 final. Available on JLS EUROPA website. The next Scoreboard Plus is expected to be published by June 2008.

The important number of letters received by the Commission reveals a strong interest and expectation from citizens on fundamental rights in Member States. It also reveals that more information is needed to explain that the European 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 European Community law is involved.

## 14.2 Citizenship

### 14.2.1 Work in 2007

As for the two Directives on the right of the Union citizens to vote and stand as a candidate in elections to the European Parliament and in municipal elections (Directives 93/109<sup>319</sup> and 94/80<sup>320</sup> respectively), communication of national transposition measures can be considered completed, with exception of Bulgaria and Romania. All Commission reports make the general point that on the whole the provisions of Part Two of the EC Treaty related to the rights of Union citizens are being applied correctly and without serious problems.

### 14.2.2 Changes underway

*Volume of enquiries, complaints, infringements work and petitions, and prioritisation among them:*

In 2007 the Commission received 152 complaints relating to citizens' rights, such as the right to vote in the European Parliament and municipal elections. Concerning free movement and residence rights of citizens of the Union and their family members, more than 770 complaints were received by the Commission in 2007. In the fields of citizenship and free movement of persons, the combined number of European Parliament questions was of 45 and the number of petitions 12.

The *acquis* in these fields is giving rise to a large volume of complaints from citizens, which is expected to continue increasing in the future. Priority has been given in 2007 to cases of non communication of Directives 93/109 and 94/80, and to cases under Article 228 of the Treaty establishing the European Community.

### 14.2.3 Evaluation

#### *Priorities for 2007*

Current and future priorities, as so far defined, cover:

---

<sup>319</sup> Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, OJ L 329, 30.12.1993, p. 34.

<sup>320</sup> Council Directive 94/80 of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, OJ L 368, 31.12.1994, p. 38. Directive as last amended by Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, OJ L 236, 23.9.2003, p. 33.



- Violations of the principle of non-discrimination enshrined in Article 12 EC Treaty are another source of complaints in this area.
- Infringements in the area of citizenship produce the most widespread impact.
- In 2007 DG JLS launched a study on the compatibility of Member States transposition measures of the above instruments with Community law which will serve as basis for the Commission's action where necessary.

### 14.3 Data Protection

#### 14.3.1 Work in 2007

The Commission has continued the structured dialogue with Member States on the implementation of the data protection Directive. Even though all Member States have now transposed the data protection Directive<sup>321</sup>, some of them have failed to incorporate a number of provisions of the Directive. In other cases, transposition or practice has not been conducted in line with the Directive or has fallen outside the margin of manoeuvre left to Member States. This has resulted in a number of infringement proceedings<sup>322</sup>.

In 2007, 2 petitions, 35 complaints and 32 enquiries were received .

#### 14.3.2 Changes underway

*Volume of enquiries, complaints, infringements work and petitions, and prioritisation among them:*

A limited number of infringement cases were opened in 2007, based on complaints received. Due to a relatively small number, no prioritisation was applied to them. In 2007 the number of petitions was 2, the volume of complaints was 35, and the number of enquiries that were not considered as complaints was around 32. This volume is expected to remain stable.

#### 14.3.3 Evaluation

##### *Priorities for 2008 - 2009*

Directive 95/46/EC on data protection is a priority legal instrument. The types of resulting infringements are, for a slight majority, cases of incorrect application and, for the rest, of non-conformity. Some infringements tend to be quite political. Due to a small number of infringements in the field of data protection, no further prioritisation is applied to them.

---

<sup>321</sup> Council Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31.

<sup>322</sup> In two cases concerning incorrect implementation and application of the Directive, Germany was sent a reasoned opinion on 29 June 2007 in one case and referred to the Court on 22 November 2007 (case C-518/07, still pending) in another case.

## 14.4 Asylum and immigration

### 14.4.1 Work in 2007

In 2007, the deadlines for transposition by the Member States have expired for three Council Directives: Directive 2005/85<sup>323</sup>, Directive 2005/71<sup>324</sup> and Directive 2004/114<sup>325</sup>. Concerning all these Directives, a small number of Member States have initially failed to comply with the transposition deadline, resulting in infringement procedures opened against them. Regarding Directive 2004/114, transposition efforts have picked up, with only Greece and Luxemburg having reached the stage of reasoned opinion. In case of Directives 2005/85 and 2005/71, only a few Member States have transposed, or partially transposed these Directives.

Concerning Directive 2004/83<sup>326</sup>, a number of Member States were sent reasoned opinions on 29 June 2007 for non-communication, and nine Member States<sup>327</sup> still fail to fulfil their obligation.

As for Directive 2004/81<sup>328</sup>, majority of the initially failing Member States have since then complied with their obligation, and by now only Spain and Luxemburg have infringement proceedings open against them<sup>329</sup>. Similarly, only Belgium and Spain<sup>330</sup> are still failing to communicate national measures transposing Directive 2003/110<sup>331</sup>.

Considerable efforts have been made in transposing Directive 2003/109<sup>332</sup>, although Spain and Luxemburg have still not fulfilled their obligation<sup>333</sup>. As regards the Directive 2003/86<sup>334</sup>, Luxemburg is the only Member State failing to comply<sup>335</sup>.

---

<sup>323</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326 of 13 December 2005, p. 13.

<sup>324</sup> 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 of 3 November 2005, p. 15.

<sup>325</sup> 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 December 2004 of p. 12).

<sup>326</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304, 30.9.2004, p. 12.

<sup>327</sup> Greece, Spain, Malta, Netherlands, Poland, Portugal, Finland, Sweden and UK.

<sup>328</sup> Council Directive 2004/81 of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ L 261, 6.8.2004, p. 19.

<sup>329</sup> Reasoned opinions were sent to Spain and Luxemburg on 29 June 2007.

<sup>330</sup> Belgium and Spain were referred to Court on respectively 11 January 2007 and 12 February 2007 (cases respectively C-2007/003 and C-2007/058).

<sup>331</sup> Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air, OJ L 321, 6.12.2003, p. 26.

<sup>332</sup> 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.

<sup>333</sup> Spain was ruled against by the Court of Justice on 15 November 2007 and Luxemburg – on 29 November 2007 (cases respectively C-2007/059 and C-2007/034) for failure to notify measures transposing the Directive and neither still has complied.

<sup>334</sup> Council Directive 2003/86 of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003, p. 12.

<sup>335</sup> Luxemburg was ruled against by the Court on 6 December 2007 (Case C-2007/057) for failure to notify measures transposing the Directive and still has not complied.

In 2007 communication of national transposition measures has been completed for the Directives 2003/9<sup>336</sup>, 2002/90<sup>337</sup>, 2001/55<sup>338</sup>, 2001/51<sup>339</sup> and 2001/40<sup>340</sup>.

On substance, a legal action against Greece for not complying with Community law on asylum, specifically with the Regulation establishing the criteria and mechanisms for determining which Member State is responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II Regulation<sup>341</sup>) was taken in 2007<sup>342</sup>.

#### *14.4.2 Changes underway*

*Volume of enquiries, complaints, infringements work and petitions, and prioritisation among them:*

In the field of immigration and asylum, the volume of enquiries, complaints and petitions may increase as third-country nationals seek to assert their rights under in particular the long-term residents directive and family reunification directive.

#### *14.4.3 Evaluation*

##### *Priorities for 2007*

- Most of the legal instruments in this field are relatively recent. As a consequence, non-communication cases and follow-up of some complaints has been the main priority, with no further prioritisation possible yet.
- At the end of 2006 a study into the quality of transposition of the 10 immigration and asylum directives then in force was commissioned. The resulting report of the study is expected to be finalised by mid-2008.

##### *Priorities for 2008 - 2009*

- DG JLS will continue to deal with non-communication cases and the most important suspected infringements disclosed by complaints.

---

<sup>336</sup> Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L 31, 6.2.2003, p. 18.

<sup>337</sup> 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.

<sup>338</sup> Council Directive 2001/55 of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212, 7.8.2001, p. 12.

<sup>339</sup> 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.

<sup>340</sup> Council Directive 2001/40 of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals, OJ L 149, 2.6.2001, p. 34.

<sup>341</sup> Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 50 of 25 of February 2003, p.1.

<sup>342</sup> A reasoned opinion to that end was sent to Greece on 29 June 2007.

The reflection on which legal instruments will be focused on is on-going, depending on the results of the study, which is planned to be finalised by mid-2008.

## 14.5 Borders and visas

### 14.5.1 Work in 2007

Few cases of incorrect application of instruments of Community legislation related to aspects of visa procedures and biometrics in passports have been detected, resulting in early stage of infringement proceeding in 2007. As concerns Directive 2004/82/EC<sup>343</sup>, all Member States have completed transposition, except Greece and Poland<sup>344</sup>.

The volume of enquiries has been about 300 enquiries per domain, whereas a number of petitions is very low.

### 14.5.2 Changes underway

*Recently adopted measures due to enter into force which may require additional work:*

The Regulation 1931/2006 laying down rules on local border traffic<sup>345</sup> provides the legal framework within which Member States can conclude bilateral agreements on local border traffic with their neighbours. Several Member States are currently negotiating bilateral agreements with third countries. The analysis of the compatibility of such agreements might lead to additional infringement procedures.

*New measures due to be adopted which may require specific implementation / transposition work:*

It is expected that before the end of 2008, the Council and the Parliament will adopt a Community code on visas recasting and further harmonising the provisions in the field of the issuance of visas to third country nationals. The entry into force is foreseen six months after adoption.

*Volume of enquiries, complaints, infringements work and petitions, and prioritisation among them:*

Priority will be given to complaints received by individuals in relation with checks carried out in internal border zones, to suspected infringements related to the issuance of visas as well as to security of travel documents. It is expected that the current volume of enquiries of about 300 enquiries per domain remains stable, whereas the previously very low number of petitions might increase, as the sensitivity of the border and visa acquis increases.

---

<sup>343</sup> Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data, OJ L 261, 6.8.2004, p. 24.

<sup>344</sup> Greece was sent a letter of formal notice on 27 November 2006 and Poland was sent a reasoned opinion on 28 March 2007.

<sup>345</sup> Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (OJ L 405 of 30 December 2006, p.1).

### 14.5.3 Evaluation

#### *Priorities for 2007*

In 2007, priorities concerned the follow up of complaints received by citizens in the field of visa issuances as well as the follow up of infringements related to the security of travel documents.

#### *Priorities for 2008 - 2009*

- The analysis of the transposition of Directive 2004/82 will be finalised.
- DG JLS will continue the deal with the suspected infringements disclosed by complaints.

## **14.6 Judicial cooperation in civil matters**

### *14.6.1 Work in 2007*

By the end of 2007, all Member States notified their national legislation implementing Directive 2003/8 on legal aid<sup>346</sup>, except Romania.

Greece is the only Member State which has failed to transpose Directive 2004/80<sup>347</sup>.

A report on application of the Regulation 1206/2001 on taking evidence in civil or commercial matters<sup>348</sup> was adopted on 5 December 2007<sup>349</sup>. The report concludes that the application of the Regulation has generally improved, simplified and accelerated the cooperation between the courts on the taking of evidence in civil or commercial matters. The Regulation has achieved its two main objectives, namely to simplify the cooperation between Member States and to accelerate the performance of the taking of evidence, to a relatively satisfactory extent.

Around 12 petitions were received in this field in 2007.

### *14.6.2 Changes underway*

*Recently adopted measures due to enter into force which may require additional work:*

---

<sup>346</sup> Council Directive 2003/8 of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, OJ L 26, 31.1.2003, p. 41.

<sup>347</sup> Council Directive 2004/80 of 29 April 2004 relating to compensation to crime victims, OJ L 261, 6.8.2004, p. 15.

<sup>348</sup> Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, OJ L 174, 27.6.2001, p. 1.

<sup>349</sup> Report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of the Council Regulation (EC) 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters - COM(2007) 769 final.

The correct implementation of the Regulation 2201/2003 (the 'Brussels II a Regulation') concerning jurisdiction and the recognition and the enforcement of judgements in matrimonial matters and the matters of parental responsibility will remain a priority.

In 2008 – 2009 two important Regulations will enter into force: Regulation 1896/2006 establishing a European Payment Order Procedure<sup>350</sup> and Regulation 861/2007 establishing a European Small Claims Procedure<sup>351</sup>. The Commission will take all necessary measures to support the implementation of both Regulations, particularly by publishing the references of assisting authorities to be communicated by Member States.

*New measures due to be adopted which may require specific implementation / transposition work:*

A Directive of the European Parliament and the Council on certain aspects of mediation in civil and commercial matters was adopted on 23 April 2008. The Directive provides in particular that Member States shall notify the names of competent authorities for the progressive implementation of the Directive on a three-year period.

*Volume of enquiries, complaints, infringements work and petitions, and prioritisation among them:*

Because of the limited number of formal complaints in civil justice that are received annually (less than 10), there is no need to set specific priorities. However, family law issues are very sensitive and they should be considered carefully.

Around 12 petitions per year are received in this field.

### 14.6.3 Evaluation

#### *Priorities for 2007*

- In 2007 a special attention was paid to the correct application of the Regulation 2201/2003 (the 'Brussels II a Regulation') concerning jurisdiction and the recognition and the enforcement of judgements in matrimonial matters and the matters of parental responsibility. Indeed, the prevention of parental child abduction is a priority for further EU action and an important part of the overall Commission strategy to promote the rights of the child.
- Several initiatives were taken to inform and train judges, lawyers, notaries and central authorities on the application of the Brussels II a. A Practice Guide has been published in all Community languages. The Commission also funds training seminars on the application of the Regulation in several Member States under the Framework Programme for Judicial Cooperation in Civil Matters (2002 – 2006) and from 2007 to 2013 under the Specific Programme 'Civil Justice' as part of the General Programme 'Fundamental Rights and Justice'.

---

<sup>350</sup> (OJ L 399 of 30 December 2006, p.1).

<sup>351</sup> (OJ L 199 of 31 July 2007, p. 1).

- The proper application of existing legislation was one of the priorities in 2007. On 5 December 2007, the Commission adopted its report on the application of the Regulation 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. The report concludes that the application of the Regulation has generally improved, simplified and accelerated the cooperation between the courts on the taking of evidence in civil or commercial matters.
- In 2007 a preliminary study for preparing the report on the application of Regulation 44/2001 (Brussels I) was started. The report will evaluate the application of Brussels I in order to highlight problems in the application and ways in which the operation of the Regulation may be improved.
- The European Judicial Network in civil and commercial matters (EJN) is equally an important tool in supporting the correct application of Community Law. Managing the EJN continued in 2007, including information and communication activities foreseen, despite the late adoption of the Civil Justice financial programme and the consequent lack of financial resources. However, the Network confirms itself as a useful tool to strengthen judicial cooperation in civil matters as demonstrated by the number of hits on the website of the Network (on average 276.000 per month).
- As for infringement cases, their limited number did not require prioritization of their treatment. The most common are non-communication cases concerning Directive 2004/80 relating to compensation to crime victims and Directive 2002/8 on legal aid in cross-border disputes. Other types of infringements concern incorrect application of the Regulations in the civil justice field.

Besides infringements cases, the Commission is contributing to assessment of preliminary questions. In 2007 the Court of Justice has contributed to around five questions on civil judicial cooperation issues.

#### *Priorities for 2008 - 2009*

- The adoption of the Report on the application of Regulation 44/2001 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters will be the priority in 2008.
- In 2008 the Commission will also adopt a Report on the application of the Directive 2004/80/EC relating to compensation to crime victims. The report will assess the application of the Directive and evaluate it as an instrument to facilitate the access to justice.
- As a third report, the application of the Legal Aid Directive will be examined in 2009.
- The correct implementation of the Regulation Brussels II a will remain a priority also in 2008-2009.
- In the framework of the activities of the European Judicial Network in civil and commercial matters the second meeting of the Central Authorities designated under the Brussels II a Regulation will take place in Brussels on 19 June 2008.

- The update of the 'Practice Guide for the application of the new Brussels II Regulation' (target audience: specialists (judges, lawyers) and Central Authorities) and also the publication of a 'First-aid' booklet 'The international family in crises' (target audience: citizens) has been planned.
- In 2008 the development of Websites of the European Judicial Network in civil and commercial matter and of the Atlas will continue in order to ensure the continuity of our action and to comply with the new policy set in 2007: E-Justice. Taking into account the further results of the feasibility study on the electronic implementation of the Regulation on the European payment order procedure, it is likely to foresee in 2009 the establishment of the relevant system.
- In 2008-2009 two important Regulations will enter into force –respectively Regulation 1896/2006 establishing a European Payment Order Procedure and Regulation 861/2007 establishing a European Small Claims Procedure. The Commission will take all necessary measures to support the implementation of both Regulations, particularly by publishing the references of assisting Authorities to be communicated by Member States.

Because of the limited number of infringements cases in civil justice, there is no need to set specific priorities. However, in view of the forthcoming entry into force of the Lisbon Treaty in 2009, the preliminary questions will gain more importance in the civil justice area.

## 14.7 Free movement of persons

### 14.7.1 Work in 2007

According to the third and last Commission's report<sup>352</sup>, the application of the Directives 90/364<sup>353</sup>, 90/365<sup>354</sup> and 93/96<sup>355</sup> on the right of residence for students, economically inactive and retired Union citizens is basically satisfactory as the declining number of infringements shows. Nevertheless, there are still individual cases of non-compliance or incorrect application, some reaching an advanced stage in 2007<sup>356</sup>.

Application of Directives 64/221<sup>357</sup>, 72/194<sup>358</sup>, 73/148<sup>359</sup>, 75/34<sup>360</sup> and 75/35<sup>361</sup> relating to the movement and residence of foreign nationals is also considered satisfactory, and the number

---

<sup>352</sup> Third Commission report to the Council and Parliament on the application of Directives 93/96, 90/364, 90/365 on the right of residence for students, economically inactive and retired Union citizens – COM(2006) 156 final.

<sup>353</sup> OJ L 180, 13.7.1990, p. 26.

<sup>354</sup> OJ L 180, 13.7.1990, p. 28.

<sup>355</sup> OJ L 317, 18.12.1993, p. 59.

<sup>356</sup> On 17 October 2007 the Commission decided to refer France to the Court for non-compliance with Directives 90/364, 90/365 and 93/96. On 23 October 2007 the Commission sent a reasoned opinion under Article 228 EC Treaty to Belgium for non-compliance with the judgement of the Court.

<sup>357</sup> Directive 64/221 of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, OJ 56, 4.4.1964, p. 850, English special edition Series I Chapter 1963-1964, p. 117.

<sup>358</sup> Directive 72/194 of 18 May 1972 extending to workers exercising the right to remain in the territory of a Member State after having been employed in that State the scope of the Directive of 25 February 1964, OJ L 121, 26.5.1972, p. 32, English special edition Series I Chapter 1972(II), p. 474.



of complaints received by the Commission is declining. Nevertheless, there were still individual cases of non-compliance or incorrect application, some reaching an advanced stage in 2007<sup>362</sup>.

As concerns the implementation of Directive 2004/38, which marks an important step forward in the rights of free movement of persons, a number of Member States still had not fulfilled their transposition and communication obligation by the end of 2007. Belgium, Czech Republic and United Kingdom have only partially fulfilled their obligation<sup>363</sup>. The Commission is examining national transposition measures communicated by Italy, Luxemburg and Malta<sup>364</sup>.

More than 770 complaints were received in this field by the Commission in 2007. The number of parliamentary questions amounted to 45 and the number of petitions – to 12 in 2007 in the areas of free movement of persons and citizenship combined.

#### 14.7.2 Changes underway

*Volume of enquiries, complaints, infringements work and petitions, and prioritisation among them:*

Concerning free movement and residence rights of citizens of the Union and their family members, more than 770 complaints were received by the Commission in 2007. In the fields of citizenship and free movement of persons, the combined number of European Parliament questions was of 45 and the number of petitions 12.

The acquis in these fields is giving rise to a large volume of complaints from citizens, which is expected to continue increasing in the future. Priority has been given in 2007 to cases of non communication of Directive 2004/38 and to cases under Article 228 of the Treaty establishing the European Community.

---

<sup>359</sup> Directive 73/148 of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, OJ L 172, 28.6.1973, p. 14.

<sup>360</sup> Directive 75/34 of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity, OJ L 14, 20.1.1975, p. 10.

<sup>361</sup> Directive 75/35 of 17 December 1974 extending the scope of Directive 64/221 to include nationals of a Member State who exercise the right to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity, OJ L 14, 20.1.1975, p. 14.

<sup>362</sup> Netherlands was ruled against by the Court in two cases of incorrect application of Directive 64/221 in expulsion cases, on 7 June 2007 (joint cases C-2006/050). The Commission is examining the measures adopted by the Netherlands to comply with the judgement. Belgium was ruled against by the Court for non-compliance with Directive 64/221 and Directive 90/364 on 23 March 2006 (case C-2003/408). On 23 October 2007 the Commission sent a reasoned opinion under Article 228 EC Treaty for non-compliance with the judgement of the Court. On 17 October 2007 the Commission decided to refer France to the Court for non-compliance with the Directive 73/148.

<sup>363</sup> The Commission decided to refer Belgium to the Court for non-communication on 17 October 2007 and United Kingdom – on 27 June 2007.

<sup>364</sup> National transposition measures were communicated following the Commission's decision to refer Malta to the Court for non-communication on 27 June 2007. Similarly, Luxemburg communicated national transposition measures after it was ruled against by the Court for non-communication on 13 December 2007 (case C-2007/294).

### 14.7.3 Evaluation

#### *Priorities for 2007*

- Article 228 cases and non-communication cases for Directive 2004/38 on the rights of free movement of the Union's citizens and their family members, which consolidates and updates a number of legal instruments in the area of free movement of persons, is a priority legal instrument.

#### *Priorities for 2008 - 2009*

- Non-communication concerning Directive 2004/38, Article 228 cases and non conformity Priority will also be given to cases raising issues of principle or having particularly far reaching negative impact for citizens.
- The priorities in dealing with infringements will also depend on the results of the study launched in in December 2007 on the conformity of transposition measures of Directive 2004/38 which are expected for the second half of 2008 and on the report on the application of the Directive 2004/38 due in 2008..

## **14.8 Security**

### *14.8.1 Work in 2007:*

In 2007, the deadline for transposition by the Member States expired for the Directive 2006/24<sup>365</sup>. A disappointing number of twenty Member States have failed to comply with the transposition deadline, resulting in infringement procedures opened against them.

### *14.8.2 Changes underway*

*Recently adopted measures due to enter into force which may require additional work:*

On 25 March 2008 the Commission adopted a decision on the setting up of the formal data retention experts group. This group will bring together, inter alia, relevant experts from law enforcement services, the electronic communications sector and the data protection community. Its focus will be to encourage and facilitate a common orientation on the application of Directive 2006/24/EC. Over time its focus is likely to move from industry issues to law enforcement issue and address questions about whether the Directive is achieving its objectives, particularly in the light of developing technologies.

*New measures due to be adopted which may require specific implementation / transposition work:*

---

<sup>365</sup> 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 of 13 April 2006, p. 54.

Two proposals for two Directives of the European Parliament and of the Council are being negotiated: one on the protection of the environment through criminal law and another on pollution ship-source pollution. None of the two are likely to have to be transposed before 2010.

### *14.8.3 Evaluation*

#### *Priorities for 2007*

As the deadline of transposition of the only Directive 2006/24 on data retention is relatively recent, the resulting non-communication cases have not been considered to be a priority

## **15 TRADE**

Trade policy is governed by Article 133 of the EC Treaty. There is limited Community legislation in this field and 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 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. In 2007 the only relevant issue was the transposition of these directives by the Bulgaria and Romania. The transposition measures have been communicated correctly to the Commission.

It is not expected that there will be any significant work required on the transposition of these directives or other potential infringements in 2008/2009.

## **16 ENLARGEMENT**

### **16.1 Current position**

#### *16.1.1 Existing measures in force*

Enlargement policy is based on Article 49 EU Treaty. EC agreements with third countries may contain certain provisions which are directly applicable under EU law. Violation of such provisions by one or more Member States 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. The Stabilisation and Association Agreements with the former Yugoslav Republic of Macedonia (2004) and with Croatia (2005) fall also into the same category of EC 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 Albania, Montenegro, Serbia and Bosnia and Herzegovina have not yet entered into force.

#### *1.6.1.2 Report of work done in 2007*

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 concern mainly alleged violation of obligations by the third country or other matters not directly related to the application of EC law by Member States. Recourse to infringement proceedings is therefore very limited in the area of enlargement.

The case concerning workers' rights on access to the labour market of Member States under Decision 1/80 related to the EEC/Turkey Association Agreement, which was referred to the Court in 2006, is still pending. Several Member States intervened in 2007. The EEC/Turkey Association Agreement is also subject to a number of references for preliminary rulings, most of them still pending with the Court. In one case the Court confirmed in its judgement the application of the standstill clause to immigration requirements.

The Commission received in 2007 two new complaints related to standstill clauses under the EEC/Turkey Association Agreement. One case concerns the compatibility of mandatory integration exams for Turkish nationals working in a Member State. This case raises a number of complex legal questions requiring careful analysis. The other case is related to the fact that the minimum age of Turkish citizens for issuing residence permits has been increased by one Member State.

#### *1.6.1.3 Changes underway*

Volume of enquiries, complaints, infringements work and petitions, and prioritisation among them:

The number of complaints which may lead to infringement cases is very limited and therefore does not require prioritisation among them. This situation is not likely to change in future.

## **16.2 Evaluation**

Since EU enlargement in 2004 and 2007 the few complaints received 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.

## 17 EUROSTAT

### 17.1 Current position

The objective of having statistics of quality is both an operational and a legal requirement insofar as Community statistics production must respect the principles set out in Article 285 of the EC Treaty and in Regulation (EC) No 322/97<sup>366</sup>, and in the various sectoral legislative instruments.

The majority of the basic acts governing Community statistics are regulations/decisions (approximately 280 among basic acts and implementing measures) there being only 8 Directives<sup>367</sup>. In order to "test" the possible difficulties in the application, the preparation of any legislative proposal is always the result of close cooperation with the Member States.

It is useful to stress that the obligations of the Member States in the field of Community statistics are recurring and therefore need constant follow-up. Thanks to continuous collaboration with the Member States, Eurostat is in a position to know beforehand the possible difficulties that a Member State could encounter and able to address them.

#### *17.1.1 Report of work done in 2007*

The infringement procedure initiated in 2004 against Greece for failure to submit statistics on excessive deficits, in accordance with Regulations (EC) No 3605/93<sup>368</sup> and 2223/96<sup>369</sup> and for infringement of Article 10 of the EC Treaty and Article 3 of the Protocol on the excessive deficit procedure to the Commission, has been finally closed. The Greek authorities have taken the necessary measures to fully comply with this legislation.

In the area of agricultural and tourism statistics, four formal letters of notice were sent to Finland, Sweden, Slovak Republic and Portugal concerning failure to notify national measures transposing Directive 2006/110/EC<sup>370</sup>.

All Member States concerned replied to the letter of formal notice and communicated their national measures and, therefore, the Commission closed the cases.

In the statistics area, in 2007, Eurostat continued the implementation of the principles of the Commission Communication on better monitoring of the application of Community law<sup>371</sup>, and promoted dialogue and cooperation with the Member States in order to ensure the respect of the statistical legislation.

---

<sup>366</sup> Council Regulation (EC) No 322/97 of 17 February 1997 on Community statistics (OJ L 52, 22.2.1997, p.1).

<sup>367</sup> COM (2007) 129 will replace 3 directives in the statistics area.

<sup>368</sup> Council Regulation (EC) No 3605/93 of 22 November 1993 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community

<sup>369</sup> Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community.

<sup>370</sup> JO L 363, 20.12.2006, p. 418.

<sup>371</sup> COM(2002)725

Since 2005, a consistent and systematic strategy for monitoring compliance with the statistical "acquis communautaire" has been implemented by Eurostat. An internal procedure has been set-up to monitor conformity of the application of the entire body of Statistical legislation and policy measures have been put in place to ensure internal co-ordination. Monitoring reports are presented twice per year and discussed at Senior Management level. The follow-up of the cases is assured according to standard Commission procedures (e.g. pre- and infringement procedure).

## **18 PERSONNEL AND ADMINISTRATION**

### **18.1 Current position**

#### *18.1.1 Existing measures in force*

In the Personnel and Administration matters, the Commission must guarantee that Community law is correctly applied to the staff of the Communities. To this end it must ensure that legislation and implementing provisions are adopted by Member States in compliance with the Protocol on Privileges and Immunities of the European Communities and the Regulations and Rules applicable to officials and other servants of the European Communities.

In particular, the following legal texts are applicable:

Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 and further modifications,

The Protocol on the Privileges and Immunities of EC (PPI), annexed to the Merger Treaty 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 2007*

In 2007, only one infringement proceeding was launched against a Member State. It concerns the application of the Headquarters Agreement between the Commission and Belgium regarding European Schools in Belgium and their operation.

### **18.2 Changes underway**

#### *Recent changes in the staff policy which may require additional implementation/transposition work*

The adhesion of new Member States will require new agreements for the transfer of pension rights of staff who had originally worked in those countries. The particularity of Admin's activity in relation to possible infringement proceedings is that there are constant contacts between the institution's administration and the competent authorities in Belgium and

Luxembourg which serve to anticipate and alleviate questions which could otherwise lead to such proceedings

## **19 BUDGET**

### **19.1 Current position**

#### *19.1.1 Existing measures in force*

The existing legal measures in the budgetary area relate to the procedure for the financing of the EU budget through three main 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 269 EC,
- Council Decision 2000/597/EC, Euratom on the system of the Communities' own resources,
- Council Regulation (EC, Euratom) No 1150/2000 implementing the above decision,
- Council Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax.

Additionally, budgetary receipts are obtained under Articles 3 and 4 of the Protocol on the Privileges and Immunities of EC (PPI), annexed to the Merger Treaty of 1965.

#### *19.1.2 Report of work done in 2007*

##### *Main 2007 activities*

DG BUDG does not manage a particular Community policy. Its role in the control of the application of the Community law is to ensure the correct functioning of the Community own resources system and the PPI. Related actions consist in control activities made by the Commission inspectors and their legal and accounting follow-up.

In 2007, DG BUDG detected 114 anomalies in the area of traditional own resources and set 53 reservations in the area of VAT/GNI. Correspondingly, 272 and respectively 85 accounting documents were generated for potential corrective payments (principal amounts and belated interest) by Member States. As in previous years, only a very limited number of detected anomalies had to be treated as infringements, as they are regularly discussed bilaterally with Member States and presented to the Advisory Committee on Own Resources. Therefore, such anomalies could be usually solved at these initial stages. As far as the PPI is concerned, its application was closely monitored and all issues could be solved bilaterally without starting infringement proceedings.

Assistance was given to new EU-2 Member States in a view of a smooth implementation of the PPI provisions to their national legislative environment.

In 2007, DG BUDG managed rather a limited number of infringement files, all of them in the area of traditional own resources: 31 active files were open on 1 January 2007. During the year 2007 DG BUDG proposed and obtained 13 decisions of the Commission consisting of 5 letters of formal notice (including one 228), 3 reasoned opinions, 2 referrals to the ECJ and closure of 3 files. Two of the new pre-litigation procedures concerned an erroneous application of customs rules to the importation of bananas resulting in an important impact on the Communities' own resources. One case concerned Portugal's refusal to make available an amount of own resources relating to unexported sugar stocks dating back before Portugal's membership in the EC and, finally, one new case was started against Germany following its erroneous interpretation of the own resources legislation in relation to the customs optional guarantee instrument. The Commission also decided to refer jointly to the ECJ two cases relating to the interpretation of the belated interest mechanism applicable to the Communities' own resources (C-275/07 against Italy). Among three closed files, in one case (A2005/2314) the Netherlands managed to prove the lack of infringement to the EC law and for another two cases (A2005/2350 and A2006/2036), Germany decided to accept the Commission's claims.

Beside the above actions, DG BUDG focused on securing the follow-up and appropriate assistance to the Legal Service on a group of 9 infringement procedures lodged to ECJ (duty-free military importations cases). Other activities concerned the follow-up of cases already decided by the Court (C-546/03, C-377/03, C-378/03, C-105/02). In respect of the latter cases DG BUDG opened only one 228 infringement file (C-546/03) since the execution of ECJ decisions in the budgetary area involve important data research work to be executed by Member States so as to identify the exact principal amounts of own resources at stake and, finally, the amounts of belated interest related thereto.

In 2007 the ECJ took one substantial decision concerning DG BUDG's competence (case C-19/05 against Denmark) in which it shared the Commission's standpoint. Moreover, in two other cases (T-177/05 and T-350/05), the ECJ rejected Finland's appeals against TFI decisions where the Member State aimed at obliging the Commission to negotiate an agreement on special conditions under which Finland would make a conditional payment of the amounts at stake and the Commission would be obliged to refer its military importation case against Finland to the Court.

*Taking into account the 2002 Communication on improving the control of Community law*

The principle of sound financial management is applied (as expressed in article 73 of the Financial Regulation). This means in practice that infringements are evaluated under the aspects of their gravity and their impact on the budget and treated correspondingly. Legal actions were only taken if preliminary correspondence and/or discussions with Member States in the Advisory Committee for Own Resources did not solve the controversy.

*Petitions of EP in relation to budget infringements*

No petitions received

## **19.2 Changes underway**

*Recently adopted measures due to enter into force which may require additional work*



In 2007 there was one new legal act related to the own resources area: The Council Decision 2007/436/CE, Euratom of 7.06.2007, which is still under ratification in Member States. In order to assure immediate application of that decision DG BUDG has already started preparing a proposal for a Council Regulation that will align current Regulation 1150/2000 to the new rules once they enter into force.

*New measures due to be adopted which may require specific implementation / transposition work*

The area of own resources and PPI consists of the measures that are directly applicable (Regulations, Council Decision). Therefore no implementation and transposition work is necessary.

*Volume of enquiries, complaints, infringements work and petitions, and prioritization among them*

The relatively small number of infringement files in the budgetary area in general relate to the relations between the Member States and the Community in the context of financing of the EU budget. So far, DG BUDG has been dealing with only one complaint file, transferred from another DG. All other cases had been detected by the Commission inspectors or communicated by other DGs.

All BUDG files relate to recovery of established amounts receivable on the base of the Financial Regulation provisions and its implementing rules. Owing to the principle of budget equilibrium, the budgetary infringement files have to be treated in a particular manner due to their specific nature – any infringement to financing rules by one Member State results in a proportional increase of own resources to be made available by the other Member States. Due to this mechanism, the Commission has almost no discretion either in starting, or in closing infringement proceedings. So far, the Commission has never decided on waiving recovery of debts attributed to Member States, and such situations seem unlikely in the context of the equal treatment of Member States and the principle of sound financial management.

DG BUDG has very limited discretion in the treatment of budgetary infringement cases, what leaves little room for prioritization between the files. Though, more attention is made to files where large amounts of own resources are at stake and/or where the infringements relate to systemic irregularities.

### **19.3 Evaluation**

All in all, Member States respect the legislation concerning the Communities' own resources and PPI. Few particular infringement cases detected by the Commission controllers do not change the general picture of timely and prompt financing of the EU budget by Member States. The current infringement outlook in the sector is stable and reflects the solidity of the legislative framework. For the area of traditional own resources, beside two groups of infringement cases (9 military cases, 6 post-clearance recovery cases), detected anomalies refer to particular customs operations in the past and principally do not reflect current systemic problems in application of the EU law.

DG BUDG will continue the recovery of amounts due by Member States, in accordance with the principle of sound financial management.

## ANNEX I

### LIST OF MEASURES IN FORCE AND OTHER RELEVANT INSTRUMENTS REFERRED TO IN THE TEXT OF THE DOCUMENT

#### **1. EMPLOYMENT, SOCIAL AFFAIRS AND EQUAL OPPORTUNITIES**

##### **List of measures in force**

##### **1.1 Free movement of workers and coordination of social security schemes**

- Regulation (EEC) No 1612/68<sup>372</sup> on freedom of movement for workers within the Community
- Regulation (EEC) No 1408/71<sup>373</sup> on the coordination of social security schemes
- Directive 2004/38/EC<sup>374</sup> in relation to the monitoring of its application to the residence rights of workers and their family members
- Directive 98/49/EC<sup>375</sup> in relation to the monitoring of its application on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community

##### **1.2 Labour Law**

###### *1.2.1 Working conditions*

- Directive 96/71/EC<sup>376</sup> 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/EC<sup>377</sup> 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;

---

<sup>372</sup> Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, OJ L 257, 19.10.1968

<sup>373</sup> Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, OJ L 148, 5.6.1974

<sup>374</sup> JLS is in charge of the control of transposition; EMPL is associated to that work in relation to workers and their family members.

<sup>375</sup> Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community, OJ L 209, 25.7.1998

<sup>376</sup> OJ L 18, 21.1.1997, p. 1–6

<sup>377</sup> OJ L 14, 20.1.1998, p. 9–14

- Council Directive 98/23/EC<sup>378</sup> 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/EC<sup>379</sup> of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP;
- Council Directive 1999/63/EC<sup>380</sup> 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/EC<sup>381</sup> 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/EC<sup>382</sup> 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/EC<sup>383</sup> 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;

### 1.2.2 *Information and consultation of workers*

- Council Directive 94/45/EC<sup>384</sup> 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/EC<sup>385</sup> 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/EC<sup>386</sup> 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;

---

<sup>378</sup> OJ L 131, 5.5.1998, p. 10–10  
<sup>379</sup> OJ L 244, 16.9.1999, p. 64–64  
<sup>380</sup> OJ L 167, 2.7.1999, p. 33–37  
<sup>381</sup> OJ L 302, 1.12.2000, p. 57–60  
<sup>382</sup> OJ L 299, 18.11.2003, p. 9–19  
<sup>383</sup> OJ L 195, 27.7.2005, p. 15–17  
<sup>384</sup> OJ L 254, 30.9.1994, p. 64–72  
<sup>385</sup> OJ L 365, 31.12.1994, p. 46–51  
<sup>386</sup> OJ L 363, 20.12.2006, p. 416–417

- Council Directive 2001/86/EC<sup>387</sup> of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees;
- Council Directive 2003/72/EC<sup>388</sup> of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees;
- Directive 2002/14/EC<sup>389</sup> 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;

### 1.2.3 *Protection of workers*

- Council Directive 91/383/EEC<sup>390</sup> 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;
- Council Directive 91/533/EEC<sup>391</sup> 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/EC<sup>392</sup> of 22 June 1994 on the protection of young people at work;
- Council Directive 98/59/EC<sup>393</sup> of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies;
- Council Directive 80/987/EEC<sup>394</sup> of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer;
- Directive 2002/74/EC<sup>395</sup> of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer;
- Council Directive 2001/23/EC<sup>396</sup> 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;

---

<sup>387</sup> OJ L 294, 10.11.2001, p. 22–32

<sup>388</sup> OJ L 207, 18.8.2003, p. 25–36

<sup>389</sup> OJ L 80, 23.3.2002, p. 29–34

<sup>390</sup> OJ L 206, 29.7.1991, p. 19–21

<sup>391</sup> OJ L 288, 18.10.1991, p. 32–35

<sup>392</sup> OJ L 216, 20.8.1994, p. 12–20

<sup>393</sup> OJ L 225, 12.8.1998, p. 16–21

<sup>394</sup> OJ L 283, 28.10.1980, p. 23–27

<sup>395</sup> OJ L 270, 8.10.2002, p. 10–13

<sup>396</sup> OJ L 82, 22.3.2001, p. 16–20

#### 1.2.4 *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

### 1.3 **Health and safety at work**

At present, the following health and safety at work directives are in force, adopted under Article 137 EC:

**Council Directive 89/391/EEC**<sup>397</sup> 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**<sup>398</sup> 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);

**Council Directive 89/655/EEC**<sup>399</sup> of 30 November 1989, 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), as amended by :

- **Council Directive 95/63/EC**<sup>400</sup> of 5 December 1995 amending Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work;
- Directive **2001/45/EC**<sup>401</sup> of the European Parliament and of the Council of 27 June 2001 amending Council Directive 89/655/EEC concerning the minimum

---

<sup>397</sup> OJ L 183, 29.6.1989, p.1.

<sup>398</sup> OJ L 393, 30.12.1989, p.1.

<sup>399</sup> OJ L 393, 30.12.1989, p.13.

<sup>400</sup> OJ L 335, 30.12.1995, p.28.

safety and health requirements for the use of work equipment by workers at work;

**Council Directive 89/656/EEC**<sup>402</sup> 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**<sup>403</sup> 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**<sup>404</sup> 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**<sup>405</sup> 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**<sup>406</sup> 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;

**Council Directive 92/57/EEC**<sup>407</sup> 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**<sup>408</sup> 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**<sup>409</sup> 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 );

---

<sup>401</sup> OJ L 195, 19.7.2001, p.46.

<sup>402</sup> OJ L 393, 30.12.1989, p.18.

<sup>403</sup> OJ L 156, 21.6.1990, p.9.

<sup>404</sup> OJ L 156,21.6.1990, p.14.

<sup>405</sup> OJ L 229, 29.6.2004, p.23.

<sup>406</sup> OJ L 262, 17.10.2000, p.21.

<sup>407</sup> OJ L 245, 26.8.1992, p.6.

<sup>408</sup> OJ L 245, 26.8.1992, p.23.

<sup>409</sup> OJ L 348, 28.11.1992, p.9.

**Council Directive 92/104/EEC**<sup>410</sup> 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**<sup>411</sup> 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**<sup>412</sup> 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**<sup>413</sup> 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**<sup>414</sup> of 8 June 2000 establishing a first list of indicative occupational exposure limit values in implementation of Council Directive 98/24/E on the protection of the health and safety of workers from the risks related to chemical agents at work,
- **Commission Directive 2006/15/EC**<sup>415</sup> 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;

**Directive 1999/92/EC**<sup>416</sup> 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**<sup>417</sup> 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);

---

<sup>410</sup> OJ L 404, 31.12.1992, p.10.

<sup>411</sup> OJ L 307, 13.12.1993, p.1.

<sup>412</sup> OJ L131, 5.5. 1998, p.11.

<sup>413</sup> OJ L177, 5.7. 1991, p.22.

<sup>414</sup> OJ L 142, 16.6.2000, p.47.

<sup>415</sup> OJ L 38, 9.2.2006, p.36.

<sup>416</sup> OJ L 23, 28.1.2000, p.57.

<sup>417</sup> OJ L 177, 6.7.2002, p.13.

**Directive 2003/10/EC<sup>418</sup>** 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<sup>419</sup>** 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<sup>420</sup>**

**Directive 2006/25/EC<sup>421</sup>** 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 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<sup>422</sup>** of 31 March 1992 on the minimum safety and health requirements for improved **medical treatment on board vessels**;

**Council Directive 83/477/EEC<sup>423</sup>** 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<sup>424</sup>** 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<sup>425</sup>**, 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<sup>426</sup>** 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**.

---

<sup>418</sup> OJ L 42, 15.2.2003, p.38.

<sup>419</sup> OJ L 184, 24.5.2004, p.1.

<sup>420</sup> OJ L 114, 26.4.2008, p. 88

<sup>421</sup> OJ L 114, 27.4.2006, p.38.

<sup>422</sup> OJ L 113, 30.4.1992, p.19.

<sup>423</sup> OJ L 263, 24.9.1983, p.25.

<sup>424</sup> OJ L 206, 29.7.1991, p.16.

<sup>425</sup> OJ L 97, 15.4.2003, p.48.

<sup>426</sup> OJ L 165, 27.6.2007, p.21.



## 1.4 Anti-discrimination and gender equality

### 1.4.1 Gender equality

- Directive 2006/54/EC<sup>427</sup> 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/EC<sup>428</sup> of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services
- Directive 2002/73/EC<sup>429</sup> of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions
- Council Directive 97/80/EC<sup>430</sup> of 15 December 1997 on the burden of proof in cases of discrimination based on sex
- Council Directive 96/97/EC<sup>431</sup> of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes
- Council Directive 96/34/EC<sup>432</sup> of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC
- Council Directive 92/85/EEC<sup>433</sup> 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/EEC<sup>434</sup> 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 86/378/EEC<sup>435</sup> of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes
- Council Directive 79/7/EEC<sup>436</sup> of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security

---

<sup>427</sup> OJ L 204, 26.7.2006  
<sup>428</sup> OJ L 373, 21.12.2004  
<sup>429</sup> OJ L 269, 5.10.2002  
<sup>430</sup> OJ L 14, 20.1.1998  
<sup>431</sup> OJ L 151, 18.6.1999  
<sup>432</sup> OJ L 145, 19.6.1996  
<sup>433</sup> OJ L 348, 28.11.1992  
<sup>434</sup> OJ L 359, 19.12.1986  
<sup>435</sup> OJ L 241, 3.9.1997

- Council Directive 76/207/EEC<sup>437</sup> of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions
- Council Directive 75/117/EEC<sup>438</sup> of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.

#### *1.4.2 Anti-discrimination*

- Council Directive 2000/78/EC<sup>439</sup> of 27 November 2000 establishing a general framework for equal treatment in employment and occupation
- Council Directive 2000/43/EC<sup>440</sup> of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

## **2 ENERGY AND TRANSPORT**

### **2.1 List of measures in force**

#### **EC Treaty, Part Three**

- Title III – Free movement of persons, services and capitals (in connection with energy and transport)
- Title V – Transport
- Title VI – Common rules on competition, taxation and approximation of laws
- Title XV – Transeuropean networks
- Title XIX – Environment (in connection with energy and transport)

#### **Euratom Treaty, Title II**

- Chapter 3 – Health and Safety
- Chapter 4 – Investment
- Chapter 6 – Supplies
- Chapter 7 – Safeguards

---

<sup>436</sup> OJ L 6, 10.1.1979  
<sup>437</sup> OJ L 39, 14.2.1976  
<sup>438</sup> OJ L 45, 19.2.1975  
<sup>439</sup> OJ L 303, 2.12.2000  
<sup>440</sup> OJ L 180, 19.7.2000

- Chapter 8 – Property Ownership
- Chapter 9 – The Nuclear Common Market
- Chapter 10 – External relations

The secondary law derived from these provisions represents a total of 174 directives, 40 regulations and a considerable number of decisions and recommendations.

A list of the Community *acquis* managed by DG TREN (status 31st December 2004) is available at

[http://ec.europa.eu/dgs/energy\\_transport/regulation/index\\_en.htm](http://ec.europa.eu/dgs/energy_transport/regulation/index_en.htm)

The texts of current Community legislation on energy and transport are available, respectively, in section 12 and section 07 of the EUR-Lex database

<http://eur-lex.europa.eu/en/repert/index.htm>

Concerning in particular the Euratom Treaty, a list of *acquis* and case-law can be consulted in the annexe to the Commission's 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>

## **2.2 Legal basis for controlling the application of the Community acquis on energy and transport**

DG TREN contributes to the Commission's duties as a Guardian of the Treaties by using all means granted by the Treaties and secondary legislation, which are the following:

### **Primary law**

A number of provisions of the Treaties vest the Commission with specific powers that are relevant for DG TREN activities:

- Articles 226 / 228 EC + 141 / 143 Euratom : so called "infringement procedures".
- Article 73
- Article 76 EC – examination of transport rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries.
- Article 77 EC – The Commission may issue recommendations on the charges or dues in respect of the crossing of frontiers which are charged in addition to the transport rates.
- Article 88 EC – State aids (transport). If the State concerned does not comply with the Commission's decision within the prescribed time, it may, in derogation from the provisions of Article 226 EC, refer the matter to the Court of Justice direct.

- Article 33 Euratom – verification of conformity of draft legislation in the field of radiation protection and education and training (the Commission may issue recommendations).
- Article 37 Euratom – assessment of national plans for the release of radioactive waste into the environment, before approval by the national authorities.
- Article 38 Euratom – 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. Possible direct referral to the Court, in derogation from the provisions of Article 141 Euratom.
- Title II, Chapter 7 Euratom: inspections on nuclear safeguards, and in particular:
  - Article 77: 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: 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: 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 – 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 to the Court, in derogation from the provisions of Article 141 Euratom.
  - Article 83 Euratom – 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 – assessment of draft international agreements in the fields of the Euratom Treaty.

- Article 145 Euratom – 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**

- Maritime security. Inspections carried out by DG TREN staff, based on Article 9(4) of Regulation (EC) no 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security.
- Aviation security. Inspections carried out by DG TREN staff on the basis of Commission Regulation (EC) No 1486/2003 of 22 August 2003 laying down procedures for conducting Commission inspections in the field of civil aviation security.
- Inspections by executive agencies. Through secondary legislation, a number of Agencies have been created with inspecting powers. These Agencies have the duty to report to the Commission (DG TREN) on the outcome of the inspections. Based on Articles 211 EC and 124 Euratom, the Commission has a duty to carefully examine the inspection reports in order to identify possible breaches (not necessarily highlighted in the report). This concerns the following agencies:
  - (1) European Aviation Safety Agency, created by Regulation (EC) No 1592/2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (EASA); and
  - (2) European Maritime Safety Agency (EMSA) (Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency).

## **2.3 List of communication aiming at reporting on tasks related to the implementation of community law in energy and transport**

### **Energy**

- Commission staff working document - Accompanying document to the Communication from the Commission to the Council and the European Parliament - Prospects for the internal gas and electricity market - Implementation report (COM(2006) 841 final).
- Communication from the Commission to the Council and the European Parliament - Biofuels Progress Report - Report on the progress made in the use of biofuels and other renewable fuels in the Member States of the European Union (COM(2006) 845 final)
- Communication from the Commission to the Council and the European Parliament Green Paper follow-up action Report on progress in renewable electricity (COM(2006) 849 final)
- Commission staff working document on the principles and modalities of the implementation of the European Commission's nuclear safeguards tasks - "Implementing Euratom Treaty Safeguards" (SEC(2007)293; not published).

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: Commission Report on the Application of Council Regulation (EC) N° 1407/2002 on State Aid to the Coal Industry (COM(2007) 253 final)
- Communication from the Commission to the Council and the European Parliament - Report on the experience gained in the application of the Regulation (EC) No 1228/2003 "Regulation on Cross-Border Exchanges in Electricity" Industry (COM(2007) 531 final)
- Commission Decision concerning the adoption of the Report of the European Atomic Energy Community for the 4th Review meeting of Contracting Parties to the Convention on Nuclear Safety (CNS) to be held in Vienna, starting 14 April 2008 (C(2007) 4492 final).
- Communication from the Commission - Summary of Commission (DG TREN) activities carried out during 2006 in implementation of Title II, Chapters 3 to 10, of the Euratom Treaty (COM(2007) 646 final)
- Communication from the Commission to the European Parliament and the Council - Second Report on the use of financial resources earmarked for the decommissioning of nuclear installations, spent fuel and radioactive waste (COM(2007) 794 final; accompanied by Commission Staff Working Document SEC(2007) 1654).
- Communication from the Commission - Application of Article 35 of the Euratom Treaty - Verification of the operation and efficiency of facilities for continuous monitoring of the level of radioactivity in the air, water and soil - Report 1990-2007 (COM(2007) 847 final).

## **Transport**

- Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Trans-European transport network Report on the implementation of the guidelines 2002-2003 pursuant to article 18 of Decision 1692/96/EC (COM(2007) 094 final).
- Communication from the Commission to the Council and the European Parliament: Building the Single European Sky through functional airspace blocks: A mid-term status report (COM(2007) 101 final).
- Communication from the Commission to the European Parliament and the Council pursuant to Article 17 of Regulation [EC]261/2004 on the operation and the results of this Regulation establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights (COM(2007) 168 final).
- Rapport de la Commission au Conseil et au Parlement européen sur les conséquences de l'exclusion des conducteurs indépendants du champ d'application de la directive 2002/15/CE du Parlement européen et du Conseil du 11 mars 2002 relative à l'aménagement du temps de travail des personnes exécutant des activités mobiles de transport routier; - à transmettre au Parlement européen, au Conseil, au Comité économique et social européen et au Comité des régions, ainsi qu'aux parlements nationaux (COM(2007) 266 final).

- Report from the Commission to the European Parliament and the Council on the application by the Member States of 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 (COM(2007) 270 final).
- Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Second report on the implementation of Regulation (EC) no 2320/2002 on civil aviation security (COM(2007) 542 final).
- Report from the Commission to the European Parliament and the Council on the application by the Member States of Council Directive 95/50/EC on uniform procedures for checks on the transport of dangerous goods by road (COM(2007) 795 final).
- Communication from the Commission - First Report on the implementation of the Single Sky Legislation achievements and the way forward (COM(2007) 845 final).

Report from the Commission on the European Community SAFA Programme (Safety Assessment of Foreign Aircraft) (Aggregated Information — Report — 30 April to 31 December 2006(C(2008) 295)

## 2.4 Recently adopted measures due to enter into force which may require additional work

### Energy

Control of conformity is ongoing and / or guidance is expected for the following directives:

Title	Date of publication	Transposition date
Directive 2006/117/EURATOM du Conseil du 20 novembre 2006 relative à la surveillance et au contrôle des transferts de déchets radioactifs et de combustible nucléaire usé	05/12/2006	25/12/2008
Directive 2006/108/CE du Conseil du 20 novembre 2006 portant adaptation des directives 90/377/CEE et 2001/77/CE dans le domaine de l'énergie en raison de l'adhésion de la Bulgarie et de la Roumanie	20/12/2006	01/01/2007
Directive 2006/80/CE de la Commission du 23 octobre 2006 portant adaptation de certaines directives dans le domaine de l'énergie, en raison de l'adhésion de la Bulgarie et de la Roumanie	20/12/2006	01/01/2007
Directive 2006/32/CE du Parlement européen et du Conseil du 5 avril 2006 relative à l'efficacité énergétique dans les utilisations finales et aux services énergétiques et abrogeant la directive 93/76/CEE du Conseil	27/04/2006	17/05/2006 17/05/2008
Directive 2005/89/CE du Parlement européen et du Conseil du 18	04/02/2006	01/12/2007

janvier 2006 concernant des mesures visant à garantir la sécurité de l’approvisionnement en électricité et les investissements dans les infrastructures (Texte présentant de l’intérêt pour l’EEE)		
Directive 2005/32/CE du Parlement européen et du Conseil du 6 juillet 2005 établissant un cadre pour la fixation d’exigences en matière d’écoconception applicables aux produits consommateurs d’énergie et modifiant la directive 92/42/CEE du Conseil et les directives 96/57/CE et 2000/55/CE du Parlement européen et du Conseil	22/07/2005	10/08/2007
Directive 2004/67/CE du Conseil du 26 avril 2004 concernant des mesures visant à garantir la sécurité de l’approvisionnement en gaz naturel	29/04/2004	19/05/2006
Directive 2004/8/CE du Parlement européen et du Conseil du 11 février 2004 concernant la promotion de la cogénération sur la base de la demande de chaleur utile dans le marché intérieur de l’énergie et modifiant la directive 92/42/CEE	21/02/2004	21/02/2006
Directive 2003/122/EURATOM du Conseil du 22 décembre 2003 relative au contrôle des sources radioactives scellées de haute activité et des sources orphelines	31/12/2003	31/12/2005
Directive 2002/91/CE du Parlement européen et du Conseil du 16 décembre 2002 sur la performance énergétique des bâtiments.	04/01/2003	04/01/2006

In-deep analysis is ongoing of the application of following Regulations:

- Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks (OJ L 289, 3.11.2005, p. 1–13)
- Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity (Text with EEA (OJ L 176, 15.7.2003, p. 1–10)
- Council Regulation (Euratom) No 1493/93 on shipments of radioactive substances between Member States.

## Transports

Control of conformity is ongoing and / or guidance is expected for the following directives:

Titres	Date of publication	Transposition date
Directive 2007/32/CE de la Commission du 1 <sup>er</sup> juin 2007 modifiant l’annexe VI de la directive 96/48/CE du Conseil sur l’interopérabilité du système ferroviaire transeuropéen à grande vitesse et l’annexe VI de la directive 2001/16/CE du Parlement européen et du Conseil sur l’interopérabilité du système ferroviaire transeuropéen conventionnel	02/06/2007	31/12/2007



Directive 2006/137/CE du Parlement européen et du Conseil du 18 décembre 2006 modifiant la directive 2006/87/CE établissant les prescriptions techniques des bateaux de la navigation intérieure	30/12/2006	30/12/2008
Directive 2006/90/CE de la Commission du 3 novembre 2006 portant septième adaptation au progrès technique de la directive 96/49/CE du Conseil relative au rapprochement des législations des États membres concernant le transport de marchandises dangereuses par chemin de fer	04/11/2006	01/07/2007
Directive 2006/89/CE de la Commission du 3 novembre 2006 portant sixième adaptation au progrès technique de la directive 94/55/CE du Conseil relative au rapprochement des législations des États membres concernant le transport des marchandises dangereuses par route	04/11/2006	01/07/2007
Directive 2006/87/CE du Parlement européen et du Conseil du 12 décembre 2006 établissant les prescriptions techniques des bateaux de la navigation intérieure et abrogeant la directive 82/714/CEE du Conseil	30/12/2006	30/12/2008
DIRECTIVE 2006/38/CE du Parlement européen et du Conseil du 17 mai 2006 modifiant la directive 1999/62/CE relative à la taxation des poids lourds pour l'utilisation de certaines infrastructures	09/06/2006	10/06/2008
DIRECTIVE 2006/23/CE du Parlement européen et du 5 avril 2006 concernant une licence communautaire de contrôleur de la circulation aérienne	27/04/2006	17/05/2008 17/05/2010
Directive 2006/22/CE du Parlement européen et du Conseil du 15 mars 2006 établissant les conditions minimales à respecter pour la mise en œuvre des règlements du Conseil (CEE) n o 3820/85 et (CEE) n o 3821/85 concernant la législation sociale relative aux activités de transport routier et abrogeant la directive 88/599/CEE du Conseil	11/04/2006	01/04/2007
Directive 2005/65/CE du Parlement européen et du Conseil du 26 octobre 2005 relative à l'amélioration de la sûreté des ports	25/11/2005	15/07/2007
Directive 2005/45/CE du Parlement européen et du Conseil du 7 septembre 2005 concernant la reconnaissance mutuelle des brevets des gens de mer délivrés par les États membres et modifiant la directive 2001/25/CE	30/09/2005	20/10/2007
Directive 2005/44/CE du Parlement européen et du Conseil du 7 septembre 2005 relative à des services d'information fluviale (SIF) harmonisés sur les voies navigables communautaires	30/09/2005	20/10/2007
Directive 2005/35/CE du Parlement européen et du Conseil du 7 septembre 2005 relative à la pollution causée par les navires et à l'introduction de sanctions en cas d'infractions	30/09/2005	01/04/2007
Directive 2005/23/CE de la Commission du 8 mars 2005 modifiant la directive 2001/25/CE du Parlement européen et du Conseil concernant le niveau minimal de formation des gens de mer	09/03/2005	29/09/2005
Directive 2005/12/CE de la Commission du 18 février 2005 modifiant les	19/02/2005	12/03/2006

annexes I et II de la directive 2003/25/CE du Parlement européen et du Conseil relative aux prescriptions spécifiques de stabilité applicables aux navires rouliers à passagers		
Directive 2004/54/CE du Parlement européen et du Conseil du 29 avril 2004 modifiant la décision n° 1692/96/CE sur les orientations communautaires pour le développement du réseau transeuropéen de transport	30/04/2004	30/04/2006
Directive 2004/51/CE du Parlement européen et du Conseil du 29 avril 2004 modifiant la directive 91/440/CEE du Conseil relative au développement de chemins de fer communautaires	30/04/2004	31/12/2005
Directive 2004/50/CE du Parlement européen et du Conseil du 29 avril 2004 modifiant la directive 96/48/CE du Conseil relative à l'interopérabilité du système ferroviaire transeuropéen à grande vitesse et la directive 2001/16/CE du Parlement européen et du Conseil relative à l'interopérabilité du système ferroviaire transeuropéen conventionnel	30/04/2004	30/04/2006
Directive 2004/49/CE du Parlement européen et du Conseil du 29 avril 2004 concernant la sécurité des chemins de fer communautaires et modifiant la directive 95/18/CE du Conseil concernant les licences des entreprises ferroviaires, ainsi que la directive 2001/14/CE concernant la répartition des capacités d'infrastructure ferroviaire, la tarification de l'infrastructure ferroviaire et la certification en matière de sécurité (directive sur la sécurité ferroviaire)	30/04/2004	30/04/2006
Directive 2004/36/CE du Parlement européen et du Conseil du 21 avril 2004 concernant la sécurité des aéronefs des pays tiers empruntant les aéroports communautaires	30/04/2004	30/04/2006
Directive 2003/59/CE du Parlement européen et du Conseil du 15 juillet 2003 relative à la qualification initiale et à la formation continue des conducteurs de certains véhicules routiers affectés aux transports de marchandises ou de voyageurs, modifiant le règlement (CEE) n° 3820/85 du Conseil ainsi que la directive 91/439/CEE du Conseil et abrogeant la directive 76/914/CEE du Conseil	10/09/2003	10/09/2006

In deep analysis is ongoing of the application of following Regulations:

- Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation)
- Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation)
- Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation)

- Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the interoperability Regulation)
- Commission Regulation (EC) N° 2096/2005 of 20 December 2005 laying down common requirements for the provision of air navigation services
- Commission Regulation (EC) N° 2150/2005 of 23 December 2005 laying down common rules for the flexible use of airspace
- Directive 2006/23/EC of the European Parliament and of the Council of 5 April 2006 on a Community air traffic controller licence
- Commission Regulation (EC) N° 730/2006 of 11 May 2006 on airspace classification and access of flights operated under visual flight rules above flight level
- Commission Regulation (EC) N° 1032/2006 of 6 July 2006 laying down requirements for automatic systems for the exchange of flight data for the purpose of notification, coordination and transfer of flights between air traffic control units
- Commission Regulation (EC) N° 1033/2006 of 4 July 2006 laying down the requirements on procedures for flight plans in the pre-flight phase for the single European sky
- Commission Regulation (EC) N° 1794/2006 of 6 December 2006 laying down a common charging scheme for air navigation services
- Council Regulation (EC) N° 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR)
- Commission Regulation (EC) N° 633/2007 of 7 June 2007 laying down requirements for the application of a flight message transfer protocol used for the purpose of notification, coordination and transfer of flights between air traffic control units
- Commission Regulation (EC) N° 1265/2007 of 26 October 2007 laying down requirements on air-ground voice channel spacing for the single European sky
- Commission Regulation (EC) N° 1315/2007 of 8 November 2007 on safety oversight in air traffic management and amending Regulation (EC) N° 2096/2005
- Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98
- Council Regulation (EC) No 2135/98 of 24 September 1998 amending Regulation (EEC) No 3821/85 on recording equipment in road transport and Directive 88/599/EEC concerning the application of Regulations (EEC) No 3820/84 and (EEC) No 3821/85
- Regulations (EC) 1899/2006 and 8/2008 of the European Parliament and of the Council of 12 December 2006 amending Council Regulation (EEC) 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation

- Règlement (CE) n o 375/2007 de la Commission du 30 mars 2007 modifiant le règlement (CE) n o 1702/2003 de la Commission établissant des règles d'application pour la certification de navigabilité et environnementale des aéronefs et des produits, des pièces et des équipements associés, ainsi que pour la certification des organismes de conception et de production
- Règlement (CE) n o 376/2007 de la Commission du 30 mars 2007 modifiant le règlement (CE) n o 2042/2003 relatif au maintien de la navigabilité des aéronefs et des produits, pièces et équipements aéronautiques, et relatif à l'agrément des organismes et des personnels participant à ces tâches
- Règlement (CE) n°1321/2007 de la Commission du 12 novembre 2007 fixant les modalités d'application pour l'enregistrement, dans un répertoire central, d'informations relatives aux événements de l'aviation civile échangées conformément à la directive 2003/42/CE du Parlement européen et du Conseil

Règlement (CE) n°1330/2007 de la Commission du 24 septembre 2007 fixant les modalités d'application pour la diffusion, auprès des parties intéressées, des événements de l'aviation civile visés à l'article 7, paragraphe 2, de la directive 2003/42/CE du Parlement européen et du Conseil

## **2.5 New measures due to be adopted which may require specific implementation / transposition work**

### **Energy**

- Proposal for a Directive amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and the introduction of a mechanism to monitor and reduce greenhouse gas emissions from the use of road transport fuels and amending Council Directive 1999/32/EC, as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC (COM(2007)18 final)
- 3rd package on internal market for energy (2 directives and 3 regulations) including: Proposal for a Directive amending Directive 2003/54/EC concerning common rules for the internal market in electricity (COM(2007)528 final)
- Proposal for a Directive amending Directive 2003/55/EC concerning common rules for the internal market in natural gas (COM(2007)529 final)
- Proposal for a Regulation establishing an Agency for the Cooperation of Energy Regulators (COM(2007)530 final)
- Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity (COM(2007)531 final)
- Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1775/2005 on conditions for access to the natural gas transmission networks (COM(2007)532 final)

- Proposal for a Directive on the promotion of the use of energy from renewable sources. (COM(2008)19 final)

## **Transports**

- Proposal for a Regulation of the European Parliament and of the Council on common rules for the air transport operations in the Community replacing Regulations 2407/92, 2408/92 and 2409/92 (SEC(2006)943; SEC(2006)976)
- Proposal for a Regulation of the European Parliament and of the Council on a Code of conduct for computerized reservation systems (COM(2007)569 final)
- Commission Directive 2008/49/EC amending Annex II to Directive 2004/36/EC regarding the criteria for the conduct of ramp inspections on aircraft using Community airports
- Commission Regulation (EC) N° 351/2008 implementing Directive 2004/36/EC as regards the prioritisation of ramp inspections on aircraft using Community airports aims at improving the implementation of the Directive
- Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC
- Commission Regulation (EC) No 8/2008 of 11 December 2007 amending Council Regulation (EEC) No 3922/91 as regards common technical requirements and administrative procedures applicable to commercial transportation by aeroplane
- Proposal for a directive of the European parliament and of the Council on the minimum level of training of seafarers (recast) (COM(2006) 610 final)
- Proposal for a directive of the European Parliament and of the council on safety rules and standards for passenger ships (COM(2007)737 final)
- Proposition de Directive du Parlement et du Conseil sur les redevances aéroportuaires (COM(2006)820 final)
- Proposal for a Regulation on a Code of Conduct for computerised reservation systems (COM(2007)709 final)
- Proposition de directive sur la sécurité des infrastructures routières (COM(2006)569 final)
- Proposition de directive visant à imposer aux autorités publiques la prise en compte dans les appels d'offre des avantages des véhicules les plus performants sur le plan environnemental et énergétique (COM(2005)634 final)
- Proposition de directive relative au transport intérieur des marchandises dangereuses (COM(2007)852 final)
- Proposition de directive concernant le respect des obligations des Etats du pavillon- "Etat du pavillon" (COM(2005)586 final)

- Proposition de directive établissant des règles et normes communes concernant les organismes habilités à effectuer l'inspection et la visite des navires et les activités pertinentes des administrations maritimes (refonte) - "Sociétés de classification"(COM(2005)587 final)
- Proposition de directive modifiant la directive 2002/59/CE relative à la mise en place d'un système communautaire de suivi du trafic des navires et d'information – "Suivi du trafic"(COM(2005)589 final)
- Proposition de directive établissant les principes fondamentaux régissant les enquêtes sur les accidents dans le secteur des transports maritimes et modifiant les directives 1999/35/CE et 2002/59/CE – "Enquêtes sur les accidents maritimes" (COM(2005)590 final)
- Proposition de règlement relatif à la responsabilité des entreprises assurant le transport de personnes par mer ou par voie de navigation intérieure en cas d'accident – "Convention d'Athènes" (COM(2005)592 final)
- Proposition de directive relative à la responsabilité civile et aux garanties financières des propriétaires de navires – "Responsabilité civile" (COM(2005)593 final)
- Proposition de règlement du Parlement Européen et du Conseil relative à la mise en place d'un Fonds d'indemnisation pour les dommages dus à la pollution par les hydrocarbures dans les eaux européennes et d'autres mesures complémentaires (COM(2000)802 final)
- Proposition de Directive du Parlement européen et du Conseil relative à l'interopérabilité du système ferroviaire communautaire (COM(2006)783 final)
- Proposition de directive modifiant la directive 2004/49/CE concernant la sécurité des chemins de fer communautaires (COM(2006)784 final)
- Proposition de règlement du Parlement européen et du Conseil modifiant le Règlement (CE) n° 881/2004 du Parlement européen et du Conseil du 29 avril 2004 instituant une Agence ferroviaire européenne (COM(2006)785 final)

Proposition de règlement du Parlement européen et du Conseil concernant les compensations en cas de non-respect des exigences de qualité contractuelles applicables aux services de fret ferroviaire (COM(2004)144 final)

### **3 TAXATION AND CUSTOMS UNION**

#### **List of measures in force**

#### **3.1 Customs**

*Relevant Treaty provisions:*

**Art 23-27;**

**Art 95;**

**Art 133;**

**Art 135.**

*Relevant secondary Community law acts:*

**Council Regulation (EEC) No 2913/92;**

**Commission Regulation (EEC) No 2454/93;**

**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) No 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) No 1383/2003;**

**Council Regulation (EC) No 111/2005;**

**Council Regulation (EEC) No 3911/92.**

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](http://ec.europa.eu/taxation_customs/common/legislation/legislation/customs/index_en.htm)

### **3.2 Indirect taxation**

- Relevant **Treaty** provisions:

Mainly:

**Art 90;**

Additional:

**Art 39;**

**Art 49;**

**Art 43;**

**Art 56.**

- Relevant **secondary Community law** acts:

**Directive 2007/74/EC;**

**Directive 2006/112/EC** (+ 4 amending directives);

**Directive 2006/98/EC;**

**Directive 2006/79/EC;**

**Directive 2003/96/EEC** (+ 2 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** (+ 3 amending directives);

**Directive 92/12/EEC** (+ 4 amending directives);

**Directive 91/680/EEC;**

**Directive 86/560/EEC;**

**Directive 86/247/EEC;**

**Directive 83/648/EEC;**

**Directive 83/183/EEC** (+ 1 amending directive);

**Directive 83/182/EEC;**

**Directive 83/181/EEC** (+ 3 amending directives);

**Directive 79/1072/EEC;**

**Directive 78/1035/EEC** (+ 1 amending directive);

**Directive 78/1032/EEC;**

**Directive 76/308/EEC** (+ 5 amending directives);



**Directive 72/230/EEC;**

**Directive 69/463/EEC;**

**Directive 69/169/EEC** (+ 8 amending directives);

**Directive 68/297/EEC** (+ 1 amending directive).

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](http://ec.europa.eu/taxation_customs/common/legislation/legislation/taxation/index_en.htm)

### **3.3 Direct taxation**

- Relevant **Treaty** provisions:

**Art 18;**

**Art 39** (to 42);

**Art 43** (to 48);

**Art 49** (to 55);

**Art 56** (to 60);

**Art 94;**

**Art 293.**

- Relevant **secondary Community law** acts:

**Directive 69/335/EEC** (+ 4 amending directives);

**Directive 76/308/EEC** (+ 4 amending directives);

**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).

The following webpage contains a list of legal measures in the **tax area** adopted since 2003:

## **4 HEALTH AND CONSUMER PROTECTION**

### **4.1 Food Safety**

#### **1. 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

#### **2. Placing on the market of food, feed and animal by-products**

- 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
- [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 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
- 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
- [Regulation \(EC\) No 1774/2002](#) of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption
- [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

#### **3. Controls**

- [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
- [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
- [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 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
- 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 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 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

#### 4. Food Safety

- 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
- [Directive 2000/13/EC](#) of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of 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
- Council [Directive 89/107/EEC](#) of 21 December 1988 on the approximation of the laws of the Member States concerning food additives authorized for use in foodstuffs intended for human consumption
- Council [Directive 88/344/EEC](#) of 13 June 1988 on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients
- 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 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 89/398/EEC](#) of 3 May 1989 on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses
- 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.
- [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
- Council [Directive 80/777/EEC](#) of 15 July 1980 on the approximation of the laws of the Member States relating to the exploitation and marketing of natural mineral waters
- 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

## 5. Animal health

- [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 92/102/EEC](#) of 27 November 1992 on the identification and registration of animals
- 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 2160/2003](#) of the European Parliament and of the Council of 17 November 2003 on the control of
- [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
- 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 64/432/EEC](#) of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine
- Council [Directive 91/68/EEC](#) of 28 January 1991 on animal health conditions governing intra-Community trade in ovine and caprine animals
- Council [Directive 90/426/EEC](#) of 26 June 1990 on animal health conditions governing the movement and import from third countries of equidae
- 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 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 [01/08/2008]
- 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

- 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  $\beta$ -agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC
- Council [Decision 1999/879/EC](#) of 17 December 1999 concerning the placing on the market and administration of bovine somatotrophin (BST) and repealing Decision 90/218/EEC.
- 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
- 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
- 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 90/539/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
- Council [Directive 98/58/EC](#) concerning the protection of animals kept for farming purposes
- Council [Directive 1999/74/EC](#) of 19 July 1999 laying down minimum standards for the protection of laying hens.
- Council [Directive 2007/43/EC](#) of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production.
- Council [Directive 91/629/EEC](#) of 19 November 1991 laying down minimum standards for the protection of calves
- Council [Directive 91/630/EEC](#) of 19 November 1991 laying down minimum standards for the protection of pigs.
- 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 [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 90/427/EEC](#) of 26 June 1990 on the zootechnical and genealogical conditions governing intra-Community trade in equidae
- 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 [Decision 90/424/EEC](#) of 26 June 1990 on expenditure in the veterinary field

## 6. Feed

- [Regulation \(EC\) No 183/2005](#) of the European Parliament and of the Council of 12 January 2005 laying down requirements for feed hygiene
- Council [Directive 70/524/EEC](#) of 23 November 1970 concerning additives in feedingstuffs
- [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
- Council [Directive 93/74/EEC](#) of 13 September 1993 on feedingstuffs intended 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

## 7. Phytosanitary



- 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 (Codified version)
- Council [Directive 91/414/EEC](#) of 15 July 1991 concerning the placing of plant protection products on the market
- Council [Directive 76/895/EEC](#) of 23 November 1976 relating to the fixing of maximum levels for pesticide residues in and on fruit and vegetables
- Council [Directive 86/362/EEC](#) of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on cereals
- Council [Directive 86/363/EEC](#) of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on foodstuffs of animal origin
- [Council Directive 90/642/EEC](#) of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables
- [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
- 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 92/33/EEC](#) of 28 April 1992 on the marketing of vegetable propagating and planting material, other than seed
- Council [Directive 92/34/EEC](#) of 28 April 1992 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
- 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
- Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights

## 4.2 Public Health

- 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

### 4.3 Consumers

- 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 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis
- 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 (codified version)

## **5 JUSTICE, FREEDOM AND SECURITY**

### **List of measures in force**

Please note that the list does not include legal instruments adopted under Title VI of the EU Treaty.

#### **5.1 Fundamental rights**

Article 6 of the Treaty on European Union and a general principle of Community law according to which Member States must respect fundamental rights when implementing Community law

#### **5.2 Citizenship**

- Article 12 of the Treaty establishing the European Community
- Articles 17 to 22 of the Treaty establishing the European Community
- 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 (OJ L 329 of 30 December 1993, p. 34);
- 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 OJ L 368 of 31 December 1994, p. 38);
  - Council Directive 96/30/EC of 13 May 1996 amending Directive 94/80/EC laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals OJ L 122 of 22 May 1996, p. 14);
  - Council Directive 2006/106/EC of 20 November 2006 adapting Directive 94/80/EC 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, by reason of the accession of Bulgaria and Romania OJ L 363 of 20 December 2006, p. 409).

#### **5.3 Data Protection**

- Article 286 of the Treaty establishing the European Community
- Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8 of 12 January 2001, p. 1).

- Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data OJ L 281 of 23 November 1995, p. 31).

#### **5.4 Asylum and immigration**

- Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 50 of 25 of February 2003, p.1);
- Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 222 of 5 September 2003, p. 1);
- Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 316 of 15 December 2000, p.1);
- Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 62 of 5 March 2002, p. 1);
- Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381 of 28 December 2006, p. 4);
- Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates (OJ L 381 of 28 December 2006, p. 1);
- Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199 of 31 July 2007, p. 23);
- Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157 of 15 June 2002, p. 1);
- Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network (OJ L 64 of 2 of March 2004, p. 1).
- Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals OJ L 149 of 2 June 2001, p. 34);

- Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 OJ L 187 of 10 July 2001, p. 45);
- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof OJ L 212 of 7 August 2001, p. 12);
- Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence OJ L 328 of 5 December 2002, p. 17);
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers OJ L 31 of 6 February 2003, p. 18);
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification OJ L 251 of 3 October 2003, p. 12);
- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents OJ L 16 of 23 January 2004, p. 44);
- Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air OJ L 321, 6 December 2003, p. 26);
- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities OJ L 261 of 6 August 2004, p. 3 and 19);
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted OJ L 304 of 30 September 2004, p. 2 and 12);
- 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 December 2004 of p. 12);
- 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 of 3 November 2005, p. 15);
- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status OJ L 326 of 13 December 2005, p. 13).

## **5.5 Borders and visas**

- Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105 of 13 April 2006, p.1);

- Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (OJ L 405 of 30 December 2006, p.1);
- Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, of 14 July 1995, p. 1), amended by:
  - Council Regulation (EC) No 334/2002 of 18 February 2002 (OJ L 53 of 23 February 2002, p. 7);
  - Council Regulation (EC) NO 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81 of 21 March 2001, p. 1), amended by:
    - Council Regulation (EC) No 2414/2001 of 7 December 2001 (OJ L 327 of 12 December 2001, p.1);
    - Council Regulation (EC) No 453/2003 of 6 March 2003 (OJ L 69 of 6 March 2003, p. 10);
    - Council Regulation (EC) No 851/2005 of 2 June 2005 (OJ L 141 of 4 June 2005, p. 3);
    - Council Regulation (EC) No 1932/2006 of 2 June 2005 (OJ L 405 of 30 December 2006, p. 23);
- Council Regulation (EC) No 789/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications (OJ L 116 of 26 April 2001, p. 2);
- Council Regulation (EC) No 1091/2001 of 28 May 2001 on freedom of movement with a long-stay visa (OJ L 150 of 6 June 2001, p. 4);
- Council Regulation (EC) No 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form (OJ L 53 of 23 February 2002, p. 4);
- Council Regulation No 1030/2002/EC of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157 of 15 June 2002, p. 1) and Commission Decision of 14 August 2002 laying down the technical specifications for the uniform format for residence permits for third country nationals (not published);
- Council Regulation (EC) No 415/2003 of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit (OJ L 64 of 7 March 2003, p. 1);
- Council Regulation 693/2003/EC of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual (OJ L 99 of 17 April 2003, p. 8);

- Council Regulation No 694/2003 of 14 April 2003 on uniform formats for Facilitated Transit Documents (FTD and Facilitated Rail Transit Documents (FRTD) provided for in Regulation (EC) No 693/2003 (OJ L 99 of 17 April 2003, p. 15).
- Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data OJ L 261 of 6 August 2004, p. 4 and 24).

## **5.6 Judicial cooperation in civil matters**

- Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160 of 30 June.2000, p.1);
  - Council Regulation (EC) No 603/2005 of 12 April 2005 amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings (OJ L 100 of 20 April, 2005, p 1);
  - Council Regulation (EC) No 694/2006 of 27 April 2006 amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings, (OJ L 121 of 6 May 2006, p. 1);
  - Council Regulation (EC) No 681/2007 of 13 June 2007 amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings (OJ L 159 of 20 June 2007, p. 1);
- Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ L 338 of 23 December 2003, p. 1);
- Council Regulation (EC) No 2116/2004 of 2 December 2004 amending Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, as regards treaties with the Holy See (OJ L 367 of 14 December .2004, p. 1);
- Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters (OJ L 160 of 30 June 2000, p.37);
- Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 012 of 16 January 2001, p.1);
  - Corrigendum to Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 307 of 24 November 2001, p. 28);



- Commission Regulation (EC) No 1496/2002 of 21 August 2002 amending Annex I (the rules of jurisdiction referred to in Article 3(2) and Article 4(2)) and Annex II (the list of competent courts and authorities) to Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (OJ L 225 of 22 August 2002, p. 13);
- Commission Regulation (EC) No 1937/2004 of 9 November 2004 amending Annexes I, II, III and IV to Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 334 of 10 November 2004, p. 3);
- Commission Regulation (EC) No 2245/2004 of 27 December 2004 amending Annexes I, II, III and IV to Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 381 of 28 December 2004, p. 10);
- Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174 of 27 June 2001, p. 1);
- Council Regulation (EC) NO 743/2002 of 25 April 2002 establishing a general Community framework of activities to facilitate the implementation of judicial cooperation in civil matters (OJ L 115 of 1 May 2002 p. 1);
- 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 April 2004, p.15);
  - Commission Regulation (EC) No 1869/2005 of 16 November 2005 replacing the Annexes to Regulation (EC) N° 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims (OJ L 300 of 17 November 2005, p. 6);
- Regulation (EC) establishing a European payment order procedure No 1896/2006 of 12 December 2006 (OJ L 399 of 30 December 2006, p.1);
- Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ L 199 of 31 July 2007, p. 1);
- Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ L 199 of 31 July 2007, p. 40).
- Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes OJ L 26 of 31 January 2003, p. 41);
- Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims OJ L 261 of 6 August 2004, p. 2 and 15).

## **5.7 Free movement of persons**

- Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance) (OJ L 158 of 30 April 2004, p. 77).

## **5.8 Security**

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 of 13 April 2006, p. 54)

## **JLS acquis**

A comprehensive list of JLS acquis in force is publicly available on the JLS EUROPA website : [http://ec.europa.eu/justice\\_home/doc\\_centre/intro/doc\\_intro\\_en.htm](http://ec.europa.eu/justice_home/doc_centre/intro/doc_intro_en.htm)